

**LANGUAGE POLICY AND PRACTICE IN EASTERN CAPE
COURTROOMS WITH REFERENCE TO INTERPRETATION
IN SELECTED CASES**

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DECLARATION

I, Matthew Xola Mpahlwa, hereby certify that this thesis, which is approximately 67 167 words in length, has been written by me, that it is the record of work carried out by me and that it has not been submitted in any previous application for a higher degree.

Signed:

January 2015

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ABSTRACT

This study seeks to find what problems and process of interpreting are experienced by professional interpreters in the criminal justice system in South Africa. This study commences with an outlook of the origins and development of types of interpretation and then proceeds with critical review of scholarly literature dealing with interpretation in multilingual courtroom. This study explores the flawed language policy and its impracticality for the Eastern Cape courtrooms. This study undertakes a critical analysis of the current legislation (Bills & Acts). This study explores the extent to which the court automatic review proceedings act as a gatekeeper in ensuring against prejudice that can result in the non-use and use of indigenous languages in the trial courtroom within the Eastern Cape jurisdiction. Furthermore this study focuses on cases taken for review based on mis-understanding, mis-communication and wrongful interpretation that result in irregularities that appear on court records.

This study also investigates the primary barriers for the use of African languages as languages of record in the courtroom. An eclectic sociolinguistic approach which encompasses the ethnography of speaking, and discourse analysis (observation in the courtroom) is used as a methodology in this study. Furthermore, the analysis of case-law forms part of the methodology alongside court observation. This study saw court actors from different spheres of the legal profession give their personal views and encounters with regards the art and the state of court interpreting in the province of the Eastern Cape. This state of affairs may have disastrous and far-reaching effects in that incorrect and/or imperfect translation may relate to the very facts that are crucial for the determination of the case. At the end recommendations are given on how to remedy the current state of affairs.

CHAPTER 1

THE HISTORY OF COURT INTERPRETATION

1.1 Introduction and context of the research

This chapter aims to explore the verbal behaviour in a highly ritualised linguistic area, the courtroom. The history of court interpretation is the focus of this chapter. There will be an attempt to demonstrate that what is expected in terms of verbal behaviour on the part of an official verbal participant in the courtroom is far from fulfilled. This chapter also seeks to analyse the behaviour of the language court interpreter and tries to show what it is that the social setting would require for him or her, and why it is that these expectations in reality are not fulfilled. This chapter then sets the historical and general background regarding the study and practice of interpreting.

Most people enter a courtroom with little or no knowledge of their rights. Courtroom procedures are often complex, complicated and beyond some people's experience (Moeketsi 1999b:127-128). Language is a vehicle through which adjudication takes place. In a country where multilingualism is acknowledged, and where the Constitution seeks to protect language rights, there remains a language barrier in South African courtrooms which sometimes impedes the discharge of justice. Consequently, some scholars hold the view that the rights entrenched in the Constitution have no bearing as far as language use in the courts is concerned. They argue that the law "amounts to nothing more than a variety of rights" and that these "rights" may in fact be interpreted rather as "privileges" (Kaschula & Ralarala 2004:254, 256). The final South African Constitution was a product of constitutional negotiations and subsequent draft Constitutions that were created and governed by a set Constitutional Principles which were to be respected before the Constitutional Court prior to accepting a final draft. Principle XI or Section 6 sought the protection and promotion of language and culture.

The South African language court debate has over time shaped the South African political and historical culture. Before the European conquest, the majority of the South African population remained untapped and often shared experience of un-codified bodies of law. The Khoisan people who are believed to have been the first inhabitants of South Africa were later joined by

the Bantu speaking people, whose exact period of arrival is matter of huge debate (Wilson & Thompson 1969:39-41). Some scholars suggest the Bantu speaking population could have arrived around 300AD from East and West Africa (Venter 1989:21). By 1652, colonisation had taken root and with the arrival of Dutch East Indian Company at the Cape, they brought with them complex written bodies of law founded on the Roman Dutch law. At the time the language of the colonisers had played an essential position in the introduction of written law. The main intention of the Dutch East India Company was to establish private commercial ventures at the Cape. The Dutch had a charter from the Netherlands government to exercise total administrative authority at the Cape, and according to its directive, the law to be applied at the colony was the law of the Province of Holland (Zimmermann & Visser 1996:33).

What became of this importation was that the Dutch language and its local derivative, fledging Afrikaans were widely used and became the dominant languages in the administration and execution of the law (Loubser 2003:111-112). This domination of language use continued from 1652 until the end of the initial period of the Dutch occupation in 1795, 1795 being the year in which the British took over the governance of the Cape for a period of at least eight years (Zimmermann & Visser 1996:46). The British maintained control at the colony until 1803 at the request of the Dutch. The period of their governance was dominated by the Napoleonic wars. From 1803 until 1806, South Africa still experienced another spell of British rule, and when that period ended, the Dutch had found union in their relations with the French in a renewed Anglo French War. As a direct impact of the relationship between the Dutch and the French, the British fleet took over the Cape in 1806 (Zimmermann & Visser 1996:47).

After the British annexation in 1806, the use of Dutch as language was under a heavy threat. By this time the British advisers had called for the use of the British language in courts of law in South Africa (Venter 1989:26-27). The British would later remain in the Cape until all colonies in South Africa came to unity around 1910. For one and a half centuries after the end of the Dutch rule, English was the language of the colonial power and of the ruling political group in South Africa. Despite all changes in governance, the Roman Dutch law remained officially as the common law of the Cape Colony. This was because it was custom among the English, that once a country had been colonised, the law of that country would remain in force (Zimmermann & Visser 1996:55).

As time went by, there was a growing tendency among presiding officers at the time to favour English law over and above Roman Dutch Law, because there was a language barrier. Some judges had an inability to understand Dutch. This departure from Dutch was further compounded by the legal links, having judges imported from Britain and also the adoption of the Privy Council as the court of appeal (Zimmermann & Visser 1996:57). English was designated as the only official language shortly after the British assumed control. In 1822 English was proclaimed by Lord Charles Somerset as an official language at the Cape. This would mean that passed legislation, although originally English would be gazetted in Dutch in the Cape.

Long before the arrival of the British in the Cape colony, the colony was under the leadership of the Governor, and helped by magistrates called *landdrosts* at the time (Venter 1989:25). The *landdrost's* primary duty was to preside over disputes. In 1804, however many reforms were effected. The Governor and a council consisting of four salaried officials had full legislative and administrative powers. The *landdrosts*, as the representative of the Governor in his district, was required to protect the interests of Hottentots and the slaves, to maintain peace with the neighbouring “Bantu” tribes, to collect revenue and register grants of land and trial minor criminal cases. The court proceedings were in Dutch, which necessitated the need for an interpreter. This continued throughout the British occupation at the Cape (Venter 1989:26).

Even before the settlement of the Dutch in the Cape; Kotze argues that indigenous South Africans had already been exposed to the Dutch speaking people, this was made possible by encounters between the personnel of passing ships and local population (Kotze 2004:332). During the 17th century though, Kotze adds support by arguing that South Africa experienced ‘language-related consequences which malformed the linguistic landscape of the whole continent, from what he called Cape to ‘Cairo scenario’ (Kotze 2004:331). Because of different language backgrounds, the communication between the groups was enabled by ‘mimes and signs’ (Mwepu 2005:29-31).

From then on, South Africa experienced the linguistic “*bellum juridicum*” and this continued until the 1990s (Loubser 2003:115). There were growing proponents of the English on one side and Roman Dutch legal heritage on the other side. Undoubtedly language played a part in the orientation of the jurists towards either the English or Roman Dutch legal heritage. By this time, the British had intended to rubber stamp their existence in the Cape colony, although there was

no sole language policy, massive reforms directed at cementing the authority and control of British was high priority to British administrators. As a result, the colony saw the introduction of court systems. Circuit courts, matrimonial affairs and petty cases courts were established around 1811 to 1817 (Campbell 2005:38-39). As soon as these courts were running, a number of challenges continued to be the barriers of its functionality. Interpreters were then introduced into the system (Campbell 2005:40). On or about the 1950s, South Africa had experienced the formation of independent states, some of these states provided an opportunity to Dutch settlers to develop their languages accordingly through a number of press publications (Loubser 2003:140).

During the first half of the 20th century in the colony, a lingering anti-English sentiment came from members of the Afrikaans community. This would continue until the Second World War. During this time, it was a norm that some English speakers would respond to this sentiment with their own form of chauvinism. All these became contributing factors in the use of language in the Cape (Hosten 1988:62-63).

Later the Anglo Boer War brought to an end the independent states. As a result of the Anglo Boer War and the Treaty of Vereeniging, the South African States settled by Boers and by Britons were brought under one sovereign, and the way prepared for their ultimate federation or union. In this context it is no paradox to say that out of strife harmony came. However by that time interest groups had formed; and as such some people referred to themselves as Afrikaners, this group of people had managed to forge a sense of nationalism in South Africa. The rise of Afrikaans language has been built on the discovery that the Dutch language is a foreign language to the Afrikaner. It is a strange reflection that without the British occupation and influx of English-speaking settlers Afrikaans could hardly have survived its fresh and unsophisticated childhood on the lips of the Boers and their retainers (Bond 1971:145).

Had the Netherlands resumed control of the Cape in 1814 and the Dutch officials and immigrants striven to renew the ties with the mother country, Afrikaans would have been driven to the wall, as surely as the dialects of Britain are being ousted by the British Broadcasting Corporation's Standard English (Bond 1971:146). As time went, the British rule had become very unpopular among the original colonists, and many Boers departed from the British colony seeking new land in the north and north east (Janson 2002:215). That led to the migration called "The Great Trek", these are the very people who became known as the Afrikaans-speaking people.

Year 1910 saw the formation of the Union of South Africa, among the resolutions taken during the negotiations, was that English and Dutch would remain the official languages of the country (Kotze 2004:334). This was later re-enforced by the passing of Official Languages of the Union Act 8 of 1925. The South African Constitution Act 32 of 1961 stated that Afrikaans included Dutch, while the 1983 Constitution no longer made mention of Dutch. As noted, this followed after the passing of an Ordinance passed in 28 May 1825, addressing language issues. The preamble of the ordinance asserted that it was “for introducing the use of English language in the judicial transaction of the court of magistracy” (Campbell 1897:106). By this time several provinces under the control of the British and the Boers had been formed. These were Natal, the Boer Republic of the Orange Free State, and the South African Republic (Wilson and Thompson 1969:334). Soon after the Anglo-Boer War, intensive orthographical rules were developed, and everything had to be in Afrikaans. The Holy bible translation into Afrikaans was for example completed in 1933.

In 1961, the Republic of South Africa Constitution Act 32 of 1961 sought to reverse the recognition of Dutch as a stand-alone language. It then recognised the Dutch language, as part of the Afrikaans language (Loubser 2003:123). Throughout this time, unfortunately African languages had not received any attention. The language climate during this time created a sociolinguistic stratification of the multilingual community. This meant that interpreting in court processes became major task and a major requirement in the judiciary would look like thenceforth. Therefore actors in court proceedings placed reliance in court interpreters to enable communication in court. It is this situation that in February 1929 Professor Jabavu, when addressing delegates at the National European-Bantu Conference lamented. He expressed his dissatisfaction in the manner in which court interpreters went about their business. With vivid examples he painted a picture of the treatment the Natives were receiving at the hands of interpreters. His main concern was the faults and miscarriage of justice experienced at the hands of incompetent interpreters.

It was with the dawn of a new South Africa, that the interim Constitution officially gave recognition to indigenous languages (Loubser 2003:144). Since the advent of the new Constitution in South Africa; it remains true that the realities of multilingual South Africa cannot be ignored. In establishing a grounds for effective communication in the adjudication of cases,

the following Statutes were enacted, the Magistrate Courts Act 32 of 1944 and rules of the High Court (Loubser 2003:146). All the above statutes provide dispositions for use and translation of testimony and documentary evidence in indigenous languages in courts. However it is necessary to mention that these provisions are used as coping strategies rather than effective recognition of other languages, as languages of record. They ensure that evidence can be translated into English or Afrikaans.

South African cases are adjudicated in English and to some extent Afrikaans to date. This disadvantages speakers of indigenous African languages, who form 54,3% of the population. According to the 2011 census, isiZulu is the mother tongue of 22.7% of South Africa's population, followed by isiXhosa at 16%, Afrikaans at 13.5%, English at 9.6%, Setswana at 8% and Sesotho at 7.6%. (Census 2011) and this calls for interpreting services to be provided for them. While the provision of such services may be lauded as a way of bridging the communication barriers ensuing from the elevation of certain languages over others, the interpretation intervention is not always perfect. This calls for an investigation of interpretation services. Accordingly, the proposed research intends to focus on language practices in Eastern Cape courtrooms, focusing on interpretation as part of the adjudication of selected cases. Particular attention will be paid to instances of miscommunication and the implications thereof for the adjudication process in terms of financial costs, duration and ultimate outcome of the trial.

In the light of the reasons given above, a number of social scientists have attempted to focus on research in the study of language in the judicial process. In particular the study of language as the focus of analysis is decisively new, yet it can be observed that the case of linguistic analysis is decisively indisputable. It is surely remarkable that social scientists and legal scholars have, until recently, largely ignored the systematic study of language and the law, if as individuals we accept that the dynamic social factor of language has powerful influences in legal process. The view expressed above is in line with the realist tradition predictions that hold the view that any result of legal proceedings is often determined by social conditions. The earlier works of O'Barr set the path in clearly demonstrating that language is a variable with noteworthy effects in the legal process (O'Barr & Lind 1978). For instance if one looks at the power versus powerless modes of speech, this showed that this linguistic distinction can have profound influence on the

reactions of subjects to testimony, even when the apparent substance of the testimony is held constant.

To date, there exists relevant academic research that supports and informs the context of research for this study (Usadolo 2010). However Usadolo's focus was on the use of foreign language usage in South African courtrooms. Cooke (1995, 1998, and 2009) seeks to provide awareness in the use of second language in the courtrooms. He submits that if one word answers to questions are used during cross examination in the courtroom, there can result complications and misunderstanding. He further argues that scholars can and must pursue sociolinguistic approaches in the examination and use of language in the courtroom (Cooke 1998:278-279). Some scholars are of the view that miscommunication as a result of misunderstanding occurs in both intracultural and intercultural encounters. It is true that research differs as to the definition of the concept miscommunication itself. The main difference is rooted from concerns whether participants realise that there is misunderstanding. Banks, Ge & Baker (1991:106) define miscommunications as "a particular kind of misunderstanding, one that is unintended yet is recognised as a problem by one or more of the persons involved." Moeketsi (1999) looks at semantic challenges that interpreters face; expanding the scope of research further in this area. She is of the view that any exercise of interpreting by court interpreters, do not ordain then perfectionists but obliges them to discharge a duty to explain to the judicial officer presiding the "lack of exact equivalent explanation of the utterance of evidence given." This is seen for instance in the use of generic verbs in isiXhosa or Sesotho corresponding to English. Eades submits that in the course of interpreting, this can yield to ludicrous output, in particular when cultural idioms present themselves through a spoken language. Yet there can be somewhat limiting factors because of the expectations that sits on the interpreter's head and shoulders. This is because he or she ought to remain "invisible and to appear non-intrusive" at all costs during the period of interpreting. On its own, the exercise of interpreting inhibits the interpreter in attempting to negotiate a clear settlement of understanding. Perhaps it is the cost to pay for a strictly regulated language of record. (Eades, in Paulston, Kiesling, & Rangel 2012:410- 411). In brief the above overview commands this study. Eades adds that from a pragmatic accuracy challenging the court, there are also linguistic challenges in terms of providing accurate semantic and grammatical accuracy (Eades 2012:410).

There has been a concern with regards to the extent to which justice is miscarried as a result of incorrect and/or imperfect interpretation of evidence inter-lingually between English (and to some extent Afrikaans) and indigenous languages. For instance in the case of *S v Ngubane* 1995 (1) SACR 384 (T), the accused was an isiZulu-speaker and some witness statements were given in Afrikaans. The magistrate observed that the interpreter was not strong in isiZulu and that the accused had not understood what was happening during the proceedings. When the matter was sent for review in the High Court, before conviction, the High Court echoed that the accused's constitutional right to a fair trial had been infringed. It took the view that the prosecutor would be swayed differently if the evidence was played back by audio tape to a different interpreter for the accused. As a result the High Court set aside the proceedings of the Magistrate's Court and held that the matter should be reheard by another magistrate.

This state of affairs may have disastrous and far-reaching effects in that incorrect and/or imperfect interpreting may relate to the very facts that are crucial for the determination of the case. The presiding officer's decision may, therefore, come nowhere near a just resolution of the issues between the parties. In the few cases in which the language practitioner speaks the language of the witness, interjections by the former eliminate the possibility of such miscarriage of justice. An illustrative case is *S v Mpopo* 1978 (2) SA 424 (A), where the learned presiding judge made adverse remarks regarding the witness's demeanour basing them on his understanding of isiXhosa when in fact the witness was speaking Sesotho. In the Eastern Cape Province, where I practice as a legal practitioner, I have observed that a number of cases are referred at mid-trial or after trial for automatic review. This may be as a result of misinterpretation and mistakes. Automatic review refers to a process by which proceedings of inferior courts, both civil and criminal, are brought before a superior court as a result of grave irregularities or illegalities occurring during the course of such proceedings.

An understanding of theories that underpin language practice applicable to interpreting and translation is a valuable tool for this study. Kommissarow (1985, in Gille 1995:130) states that: "It cannot be denied... that translation theory is supposed, in the final analysis, to serve as a guide to translation practice". This by extrapolation means that any study of this nature should be grounded on the understanding of theory of interpretation and translation. Interpretation across languages is arguably a form of translation. The difference between the two terms is to be found and assessed in the interpreter's source, which is the language of the speaker which he/she seeks

to represent, while the translator's main source is the written form (Stander 1991:15). Some scholars have gone a step further to encourage the use of the terms interchangeably while others say they are different. It is easy to argue that interpreting is a branch of translation (i.e. that the term "interpreting" is a hyponym of "translation"), while other scholars are of the view that although interpreting is similar in practice to translation, it represents a field of its own. The confusion arising from usage of both terms can be attributed partly to the fact that both facilitate communication between parties who would not, otherwise, have been able to speak, read and write the same languages (Moeketsi 1999b:95; Stander 1990:10). Ultimately, interpretation and translation are but two modes of what is essentially one operation: A process by which a spoken or written utterance takes place in one language, which is intended and presumed to convey, the same meaning as a previously existing utterance in another language (Stander 1990:20).

It is important to recognise in translation theories the notions of loss and gain, postulating that something is lost or gained when you carry a text across languages (Nida & Taber 1969). There is always the possibility of miscommunication in a communicative act that hinges so much on translation. If the translator goes slightly askew in the decoding the original text before encoding the message on the target text, the chances are that loss or gain will occur (Nida & Taber 1969:23). It is inferred that at some point every translator is faced with making a choice which is to be applied by using his/her linguistic and cultural competency as well as intuition and creativity. Choices are made to produce the dynamic equivalence that, as Nida and Taber (1969:24) put it, is "to be defined in terms of the degree to which the receptor of the message in the receptor language responds to it in substantially the same manner as the receptor in the source language." The notion of inevitable loss in translation is related to the fact that there cannot be any perfect one-to-one equivalence between two languages and two cultures. The occurrence of loss and gain in courtroom interpretation is not unusual, as indicated by the cited cases above. It is around these theoretical notions of translation that interpretation will be explored as the dominant practice in the Eastern Cape courts, with a view of either improving the services or even motivating alternative language practices that bestow African languages parity with English and Afrikaans.

1.2 A historical perspective

Over time, ethnographers interested in linguistic behaviour have long explored the speaker's role as the key variable in determining what a person will say in a given situation and how he or she will say it (Hymes 1972:10). Like in any linguistic setting, participants have all sorts of expectations regarding the verbal behaviour of other participants. Among English texts, there exist the most comprehensive text in academic inquiry into the history of interpreting in terms of the coverage of different times and settings. Bowen (1995) seeks to provide an overview of how interpreting as a profession has emerged and evolved from Ancient Egypt to post-World War II. This study affords a study of evolution of interpreting modes, equipment and training; and it speaks to the history of interpreters in religious and missionary activities, exploration and colonial contexts, military conflicts, and diplomatic settings.

Another useful resource in interpretation studies is the Routledge Encyclopaedia of Translation Studies presented by Baker (1998). This source provides a collection of brief summaries on the history of interpreters in various geographical and language categories, such as African studies in language. Also in this field is the focused research on interpreters in specific eras and geographies, which is presented by Hermann (first publication in 1956 and later revised 2002), who by his own history was a German interpreter in Greece and Rome. Later on Kurz (1985) sought to study the princes of Elephantine as "overseers of dragomans" by deriving inference of the earliest reference to interpretation found on their tombs. In other forms of study of interpretation, Karttunen (1994) examines the lives of various interpreters, who have willingly or unwillingly worked for conquerors, missionaries and anthropologists in the Americas. His work addresses matters relating to gender, imperialism and ethnicity; all these are attempts to provide detailed biographical data of these interpreter-guides.

In attempting to fill the long debated lacunae of the origins of simultaneous interpretation at the Nuremberg trial, it is necessary to give an overview of the history of court interpretation. The importance of the history stems from the revolutionary consequences that the new modality had for the profession. A clear distinction must be made among four different modalities of interpretation; however that ought to depend on the format of the meetings in which it takes places. With the Nuremberg trial, many scholars have attempted to categorise it as a form of conference interpreting, because it was an international and multilingual gathering with an

audience that went beyond the usual courtroom. Perhaps CNN coverage headlines captured the essence of the trials encoding the message as: *(The eyes of the world were pointed on the crowded Nuremberg courtroom)*.

The practice of court interpreting dates back at least as far as the dawn of recorded history. Harris (1997:12) argues that legal interpreting has been “documented in stone since the time of the Pharaohs.” As a result it is not possible to argue that the practice of interpreting is not foreign in Africa (Angeleli 2004). Insofar as legal interpretation is concerned, Colin and Morris (1996) argue that the interpretation trials dating back to 1682 and 1820 formed the foundation for the study of court interpreting. However there have been studies that had tended to focus on either particular interpreted events or particular interpreters. For instance, Gaiba (1998) explores interpreting arrangements at the Nuremberg trial. His source of research was enabled by available archival materials and interviews with several interpreters. Gaiba’s research is largely supported by the amount of information on interpreting due at this historical venue, which until then had not been discussed (Gaiba 1998:20). Relevant in this research is Gaiba’s extensive ability to describe the impact of interpreting on the proceedings, the interpreters’ lives outside the courtroom and the profiles of some interpreters during both the Nuremberg trial and the IMTFE both as war crimes committed during World War II and took place around the same. Gaiba asserts that the “Nuremberg trial was the first official international gathering in which simultaneous interpreting was used (Gaiba 1998:19).

He further convincingly states that any attempts at simultaneous interpreting any time prior to Nuremberg were mere “simultaneous successive interpretation” and “simultaneous reading of pretranslated texts” (Gaiba 1998:31). However Gaiba’s reasoning has not gone without critics, who challenge the assertions and suggest that he ignores any attempts of simultaneous interpreting at the 1928 International Labor Organisation (ILO) Conference and the 1928 Comintern. Shveistser (1999) argues that the use of simultaneous interpreting had taken effect in the 1928 Comintern and again in the 1933 Comintern. Baigorri (1999a) supports this by stating that there exist a multiple of archival records to point out that the attempts to use simultaneous interpreting emerged in the mid-1920s and what he terms “real” simultaneous interpreting was used throughout the meetings of ILO conference in 1928 (Baigorri 1999a:34).

On the whole Gaiba's work does afford a clear presentation of the interpreting system and further provides valuable information for further academic research such as the present thesis. However because of the general nature of its presentation, his research does not afford an in-depth, theory-based analysis. Reviewing Gaiba's book, Baigorri (1999a) suggests that more narrowly-focused studies could come as follow-up topics (Baigorri 1999a:513-514). Therefore it can be said that contrary to Gaiba's book *The origins of simultaneous Interpretation*, the title could be authored as "the coming of age" (Baigorri 1999a: 34) of simultaneous interpreting, or "the first time that simultaneous interpretation was used consistently and for extended periods of time.

There have been also studies that tended to focus on other interpreted events. For instance Semizu (2001) focuses on the roles of interpreters as intercultural mediators and first learners of foreign knowledge by focusing on 1708 incident in which a captured Italian missionary was interrogated by *Oranda tsuji*. This study looked at the Dutch interpreter in 17th -19th century Japan. Also McNaughton (200) developed his work through history of *Nisei* linguists who worked in military intelligence during World War II. After he sort to examine the vast amount of archival documents and testimonials of *Nisei* linguists to chronicle the time from the recruitment of *Nisei* prior to Pearl Harbor to their training in the Army's Japanese language schools and activities as interpreters. Published by the United Nation's Army, McNaughton book circumvents any in-depth analysis of the complex issues military linguists face, such as the task of using their language skills to confront their native or heritage culture as enemies. Through his own devotion, experience and pioneer conference interpreting, Herbert (1978) argues that interpretation found root from World War I, including the development of simultaneous interpreting. His latest work dating back in (1999), provides a regional history of interpreting, for instance the history of simultaneous interpreting in the 20th century (Chernov 1999); the teaching of conference interpreting (Seleskovitch 1999), and the historical aspects of court. Moser-Mercer (2005) provides a concise review of simultaneous interpreting programs mainly in Europe from 1929 to 1989.

Roland (1999) focuses on monographs on the history of interpreting on interpreters in diplomatic and political settings. His intention is to shed light on interpreters buried in diplomatic history. Selectively Roland elects to focus on interpreters who have worked in diplomatic and political arenas, from ancient times to the Cold War from Europe, the Middle East and the Americas to

China, Japan and India. It is worth noting that Roland does not give attention to some aspects of interpreting typically discussed in Interpreting Studies, such as interpreting modes and methods, the evolution of interpreting as a profession and interpreter training. However Baigorri remedies this missed opportunity and he provides a sociological and cultural profile of U.N. interpreters, thus looking at the clash among interpreters at the dawn of simultaneous interpreting, interpreter training and technological changes. Baigorri presents a scholarly, careful and thorough examination of the establishment and evolution of interpreting at the United Nations, which marked an important milestone in the history of conference interpreting as a profession. Baigorri's work also offers an analysis of personal backgrounds of the interpreters.

As indicated above, this is inclusive of the Nazi War criminal trials at Nuremburg around 1945 and 1946. Since the Nazi Wars, interpreting developed as a profession. From then schools of legal interpretation have been opened all over the world, in Europe, North America, Australia and Asia (Carter 1990). The European schools have exclusively focused on conference interpreting for the first period. Although some countries had been very forward in developing the system, the United States of America became the first country to regulate the quality of interpretation after the Federal Court Interpreters Act of 1978 had been passed (Gonzalez et al 1991). As the result of enactment of the Act, the law basically required that certified people would be fit to work for the federal courts and the administrative office in the United States. Courts set up a certification process. With some of the view that because we were born different, thus to say in multilingual societies, it means interpreters existed from the time immemorial even for those societies. Herbert (1978) is of the view that the interaction between people at the time was the result of contact and communication between communities. Therefore interpretation cannot be regarded as a new discourse (Herbert 1978:5). Interpretation history even goes as far back as book of Genesis in the Bible, which presents the early communication literature, a scene of Joseph for instance used an interpreter to communicate with his siblings, at the time pretending not to understand them. For Toury (2001:438-489) this was interpretation at its best.

Interpretation to date is taken for granted in multinational events, however the result of interpretation of complex, multilingual proceedings did not exist in any recognisable form until about 1920 (Gaiba 1998: 27). Before World WAR I, diplomats had to receive extensive training in the French language to enable them to communicate effectively in meetings (Gaiba 1998:27-28). In conferences such as the League of Nations and international war conferences, a need to

recognise and desire to accommodate as many countries emerged and that led to the adoption of the Filene-Findlay translation systems being used. The systems had been the brainchild of IBM (Gaiba 1998:30). It is fitting therefore that the trial marked the debut of a profession and a technology now ubiquitous at major international meetings. Gaiba's written account at Nuremberg presents a mode of a profession paying tribute to its pioneers. Much credit is given to interpreters and their organisers surmounted innumerable initial difficulties. Mainly all these efforts amounted to significant contribution to international justice. For the interpretation profession, it was an exemplary and in essence an unparalleled instance of human and technical triumph over the linguistic obstacles that can otherwise impede the implementation of the loftiest sentiments of fairness. The purpose of managed communication was described by an interpretation system's manufacturer, IBM as the goal "that all men may understand." An 'aquarium' was set; it was four desks separated by glass panels, which would accommodate 12 interpreters who would have to be at work at the same time. However all these arrangements made interpreting a conspicuous element in the courtroom (Gaiba 1998:20).

At the time this system was not simultaneous interpretation, pre-translated speeches were then broadcast simultaneously in different languages, and a selector switch had been developed where participants could choose a language in which to listen to the speech (Gaskin 1990: 43). The idea of using simultaneous interpretation, hitherto unheard of as a completely "live" unrehearsed form, emerged in particular from Chief Interpreter Leon Dostert of France. He had served as interpreter for both the German army occupying his town during the First War and the American Army which liberated it. It was during the Nuremberg trial that the interpreter's rapport developed (either linguistic or sometimes human). The middleman situation of the interpreter was also aided at times by the passing of notes in the English or German equivalent of a word with which an interpreter was having a problem with (Gaskin 1990:43).

It is true that simultaneous interpretation into a number of languages was developed for the first Nuremberg trial. At a stage where the trials were still in their planning stages, the need for spontaneous, immediate, multilingual interpretation became obvious (Gaskin 1990:44). Chief United States prosecutor, Supreme Court Justice Robert Jackson, noted during the organisational meeting for the Nuremberg tribunals:

I think that there is no problem that has given me as much trouble and as much discouragement as this problem of trying to conduct a trial in four languages. I think it has the greatest danger from the point of view of the impression this trial will make upon the public. Unless this problem is solved, the trial will be such much more that hate (Gaiba 1990:34).

Another striking event during the Nuremberg trials was that although it held to be fitting that “everything began” there as far as the profession of conference interpreting in its modern form is concerned, simultaneous interpreting in this “electronic” form was for many years practically never again used in full-blown legal proceedings. For instance the Tokyo Trials of Japanese war criminals did try to use simultaneous interpretation, but those proceedings foundered largely on the problems with written translations from Japanese. Furthermore in 1961, Eichmann and Demjanjuk in 1987 made further use of simultaneous interpretation, but during that time, it was essential to recognise the use of consecutive techniques for the provision and of the Hebrew version, the language of the proceedings and the official record. Gaiba, in his book attempts to touch on many questions which are vital to the running and the legal status of contemporary legal proceedings involving the use of interpretation, including transcripts, record of proceedings, electronic recordings, quality control, collegiality and many other issues. However Gaiba’s research cannot be said to be based in original audio recordings of the interpreters, which have apparently not stood the test of time.

There is consensus among scholars that formal recognition of court interpreting took off during the Nuremberg trials, thereby deeming it fit for the purpose of this research to commence the history of court interpreting at that point (Bastin 2001:97-98). Interpreter Peter Uiberall, when he realised that there was more challenges in interpretation than providing a path of communicative medium between parties, persevered. For him the use of “yes” and “ja” took centre stage (Gaiba 1998:105). For German’s it was an unwritten encounter that “ja” in many occasions can be used as a filler by German speakers. Therefore any interpretation that sought to assert the wording as a positive statement would be a fatal misinterpretation. Some scholars further suggest that Germans use “ja” in the same manner English speakers with “um” or “well” when attempting to respond to questions or when having a conversation. On one occasion during the trial, when a German witness sought to respond to questions or seeking to defend, that presented a mere opportunity through interpretation to incriminate himself either by association or knowledge,

furthermore also his hesitation could also be further interpreted as “unconditional admission. So if “ja” could be found in the transcript, the man could not go back on his word (Gaskin 1990:47). The reason why scholars are able to point out these matters is because the Nuremberg trials are so well documented; a number of people who were involved wrote memoirs or at one point contributed to collections of reminiscences. Furthermore these trials represented the first use of true simultaneous interpretation and that involved the working of different language systems. It was therefore the fertile ground where interpretation problems and ingenious solutions begin, in relation to the history of court interpretation (Gaskin 1990:48).

The formation of interpretation at these trials led to an “international genesis” to simultaneous interpreting history (Mikkelsen 2000:72). The interpretation that occurs today in domestic courts is a direct descendant of the Nuremberg system. In fact, the trials are credited with first awakening the American legal community to the need for defendants to have legal proceedings interpreted into their native languages (DeJongh 1992:2). During the trials, interpreters had realised that some interpretation errors would be unavoidable (Gaiba 1990:95). As a result, after the hearings, the written transcripts were typed each day from recordings of what the interpreters were thought to have heard and spoken so that court officials could also maintain their own records. However where there were disagreements over translations the transcribed records would be crucial point of reference (Gaiba 1990:96).

It had become the task of interpreters that if they were not on duty, they would be on review duty, where they checked mistakes from the court record and edited it to correct mistakes which may have resulted (Gaiba 1990:95). These transcripts would be then be relied upon heavily. On many occasions “the difficulties in translation among the various witnesses often made it necessary for Tribunal members to review translated transcripts after the fact along with volumes of other documentary evidence.”(Spears 2003:126). Another aspect worth taking notice of at the Nuremberg trials was that interpreters worked as native interpreters. Thus they interpreted from their native languages, interpreting into their second languages (Gaskin 1990:44). One would find a native German speaker translating a German witness’s testimony into English. However to date, interpreters work differently, they interpret in the reverse, when that happens, they are thought to be more accurate when translating into, rather than out of, their native language (Gaskin 1990:45). The same observation was achieved by United States judges and British judges at Nuremberg that interpreting into one’s native language has the benefit of eliminating

difficulties arising from interpreters' accents. Some unique observations went further to note that judges at Nuremberg found that it was tiring to listen to heavily-accented English for hours on end (Gibbons & Grabua 1996:40).

What is worth noting during the trials is how the use of equipment was associated with the introduction of court interpretation as a profession and also concerns of quality of interpreting had become a matter of concern (Mikkelsen 2000:72). Later after the 2nd World War, the world saw the coming of formalised training across the globe. The late nineteen seventies saw a totally different turn of events, and the early 1970s saw a marked interest in the study of oral courtroom language. Most of scholarship interest emerged in the Common Law countries as the following bare testimony (Atkinson & Drew 1979; Danet & Bogoch 1980; O'Barr 1982; Conley & O'Barr 1990; Gibbons 2003).

On or before that time it is worth submitting that massive scholarship was focused on language of the law and on the written or codified language. The focus of the research in interpretation had been a result of a discourse which sought to cement the work of discourse within the monolingual courtroom. The inspiration created by this kind of work saw research expand into the field and into the study of the dynamics of the bilingual courtroom, with the view to expanding research in the role of the interpreter, as a participant. This phase of research offered a deeper understanding of the significance of language in the courtroom, with a clear relevance to the practice of court interpreting. It is undoubtedly the thesis of this chapter that the South African legal system seeks that court interpreters be physically invisible and vocally silent, if that would be seen to be possible. Perhaps in simple terms, one would suggest that they ought not to exist as distinct verbal participants in their own right during the course of judicial proceedings.

Historically certain matters with regard to court interpretation are perennial, for instance an individual right to interpretation, deciding whether a need to interpretation exists (that is a source of determination) and interpreter competence. Furthermore a wide ranging scope of studies of court interpreting shows that difficulty stems from the case law authority that is available on many of the issues involved. Also at the same time there is a huge body of material to be researched, a status quo which Morris regards or equates with the "needle in the haystack" syndrome. Due to the focus of this research and merits thereof and furthermore for various methodological reasons, specifically space and readability constraints, in relation to the history

of court interpretation, this research provides a segmented history. Therefore the only expectation that this research should raise is to raise the types of issues within the area of interpretation instead of attempting to draw a rather chronological, systematic picture of policy and practice worldwide through the ages. Because of the author's research background, the main emphasis will be placed on South African jurisdiction, given the imperial tradition. This will be an attempt to provide a rather geographically and linguistically located research paradigm.

1.3 Problem statement

In the light of the above historical review, it seems appropriate to consider at this point just how this research rooted in social sciences will contribute to the overall research done. Although studies have been undertaken over time in South Africa by scholars looking at issues of interpreting, it is striking to find a relative dearth of material on issues of court interpreting. There is further absence of a study and survey that looks at regional or geographical processes that result in trial cases being taken for review. A review is the process by which proceedings of inferior courts, both civil and criminal are brought before a superior court as a result of grave irregularities or illegalities occurring during the course of such proceedings. It is apparent in this research that one of the factors which result in review is that often no considerations are made regarding interpreters (a) qualifications and (b) any possible knowledge of professional court interpretation ethics. The only factor which is considered is their ability to demonstrate some level of bilingualism (Moeketsi 199b:133). It is worth noting as well that this research draws largely on socio-cultural issues and looks at issues that have a bearing on the practice of court interpreting. Furthermore an attempt to look at experiences of legal officers and interpreters and what they understand their role to be in the court setting is undertaken.

1.4 Research goals

The following aims were identified, and inform the route that the research followed and the questions asked in order to realise the aims:

- To investigate and explore linguistic irregularities in the cases that have been referred for automatic review;

- To explore/investigate the prevalence of cases being sent for automatic review due to linguistic irregularities;
- To explore the use of African languages as an effective solution to linguistic irregularities in courts;
- To establish the roles of interpreters in the judicial system in the Eastern Cape;
- To observe how these roles are performed in the courtrooms by interpreters;
- To recommend solutions when addressing the challenges identified regarding the use of unqualified court interpreters;
- To establish what the language policy is of South Africa regarding the use of official languages in court;
- To establish whether the language policy is correctly applied in lower courts within the Eastern Cape jurisdiction. If so, the study will further investigate whether the language policy is equally applied.
- To energise and facilitate transformation.

1.5 Limitations

The Eastern Cape Province is regarded as one of the most rural regions in South Africa. Before the 1990s, within South Africa, ten homelands were created. Four of these homelands were granted independence by South Africa. These were Transkei in 1976, Bophuthatswana in 1977, Venda in 1979 and Ciskei in 1981. Before 1981, Ciskei was part of the former Black Bantustan within South Africa. In 1981, Ciskei was granted independence by South Africa, however this independence was not recognized by the United Nations, nor any country in the world. In 1994, Ciskei became integrated into South Africa. Transkei and Ciskei which makes up part of the Eastern Cape were both Bantustans. It is home largely to amaXhosa people, who most have not had an opportunity to attend formal education, but still have to make appearances in the courts of law. The legacy of the past can be felt in Eastern Cape courts. The continued dominance of Afrikaans and English is a case in point. It is indisputable that language is the repository of social, cultural and ideological values. It is for this reason and many others that the promotion of English as the language of record in court raised the discontent amongst academics, researchers and the public, who over time have tended to focus on the research centres in big cities such as Johannesburg in Gauteng and Durban, KwaZulu Natal.

It is important to submit that from the survey of news reports and cases taken for automatic reviews in the Eastern Cape Province, these have become a matter of concern. A number of irregularities arising from mis-interpretation, mistakes, mis-translation from the use of African languages in South African courtrooms room in the Eastern Cape Province have been prevalent. This is seen by a number of cases which are often overruled or referred back to the trial court once they go under automatic review proceedings. Therefore it is for this reason that the province serves as a melting pot situation that requires focused research.

Furthermore this research setting affords easy access and for the collection of data. There has been also increased academic interest in this area. For instance some have come to suggest that perhaps the consideration of appointment of judges with a specific language proficiency in a specific geographical area like the Eastern Cape would be a possible solution. Rule 37 and Rule 25 of the High Court and Magistrates' Courts rules respectively, the language to be used in the court can be determined and allocated to such judges. The allocation of judges and magistrates can then be done in order to expedite trials without the need for translators and interpreters. Access to affordable justice is supported by such a policy. It is safe to suggest therefore that guidelines that if Judicial Services Commission; and the Magistrates' Commission regarding appointment in respect of specific geographical areas in relation to language must be a requirement for new appointments. And this needs to be dealt with and inserted in the South African Language Act of 2012.

1.6 Preliminary chapter outline

This research is divided into six chapters. Chapter One serves as an introduction to the research. The legal problem which led to this research is discussed. This chapter also highlights the objectives, hypothesis and and significance of this research in the South African law. Possible limitations that might be encountered in carrying out this research are also suggested in this chapter. Chapter Two provides a theoretical platform, from which to answer the research questions. It provides the organisation of literature in relation to the problem, presentation of literature, summary of literature, statement of hypothesis and in addition, highlights aspects used in the study.

Chapter Three is the research methodology, which outlines and justifies the research design that has been selected. Chapter Four is the data presentation and analysis. This is the presentation and analysis of findings. Findings are linked to the literature and some conclusions are drawn. Chapter Five explores in depth how someone can become an interpreter. The chapter further looks at the selection and recruitment process of interpreters in the Republic. Chapter Six summarises the research and provides the conclusion to the research. Recommendations to address the challenges identified are also suggested.

1.7 Conclusion

This chapter outlines the crux of this research. In essence, it serves as the foundation to which all other chapters of this research are developed. The topic has provided a historical overview of the development of simultaneous translation, dating back to the Nuremburg trials. A history of interpreting in relation to South Africa's broader history of colonisation has also been outlined. The chapter also presented a preliminary chapter outline and challenges of court interpretation in the Eastern Cape Province. To understand this research better, one needs to have some kind of understanding of different viewpoints expressed by different scholars.

Literature was drawn from different parts of the world and also case studies such as the Nuremburg trials (1945) were overviewed as observed by (Grabau and Williamson in 1985 in Moeketsi 1999b: 98). That period is observed as a critical turning point in the history of interpreting. That later encouraged attempts to professionalise interpreting as a career of choice for many. The discussion of court interpreting in South Africa was focused primarily on two phases, thus before and after the advent of democracy in South Africa. The interpretation discourse in South Africa must be understood under the banner of language multiplicity of ethnic communities, as a language related phenomenon. What this means is that the interpreter not only does he or she need to be competent but must understand the cultural persona associated with various languages. This was apparent when the dearth of research literature on court interpreting was reviewed. This was done against the backdrop of limited literature by Mayne (1957) and Moeketsi (1999b). The following chapter will therefore provide a substantial literature review which expresses different viewpoints on this research.

CHAPTER 2

LITERATURE REVIEW

2.1 Introduction

Central to the present research is the notion of interpreting. This chapter deals with aspects of interpreting against the background of literature which has been published in relation to interpreting over the years. The chapter also deals with definitions and approaches to the concept of court interpreting itself.

2.2 Interpretation and practice

Before any attempt is made to define or embark on an extensive study about court interpreting services, it is important to explore the interpreting and practice as it exists to date. All this will be an attempt to build thinking points which will direct the literature review. When an interpreter is at work during the judicial proceedings, he or she is not simply “part of the furniture” of the courtroom. Other participants in the courtroom carry the view that the interpreter would simply melt into the woodwork, even though the magistrates or the judges would prefer that they do so (Mikkelsen 1998:19). Rather, attention is constantly drawn to them for a number of reasons. Anecdotal evidence has indicated that interpreters are often confronted with conflicting expectations from different parties, feeling pressured from all sides to conform to different roles. On one extreme, the court tends to see them as robotic language switchers, performing a task that can easily be performed by a machine. On the other extreme, the minority language speakers tend to see them as their advocates and saviours. In the middle of these two extremes are the professional requirements of their codes of ethics and their own self, exerting different types of pressures (Mikkelsen 1998; Morris 1999; Rudvin 2002; 2004; Angelelli 2004; Hale 2005).

It is argued that much confusion arises from the unstructured nature of the profession, where interpreting services are offered by people from a variety of backgrounds. On the one end of the spectrum are the highly trained, ethical professional interpreters who understand their role clearly and assert it in the interaction (Arjona 1978:36). Then there are the bilingual volunteers who act as ad hoc interpreters with no training. This results in a disparity in the background of

practising interpreters, leading to very different and conflicting performances, thus creating major confusion in those who speak through them (Arjona 1978:39). From the moment the interpreter is sworn in, attention is directed towards the interpreter. This is because they are permitted to begin their work in any given courtroom at any stage of a case pending before the court, and the interpreter must be sworn in. Interpreters are required to swear an oath to the effect that they will interpret to the best of their ability, as accurately as possible, the proceeding at hand. It is often the case that the sworn statement must be made in each courtroom in which the interpreter is scheduled to interpret. This is the requirement of the interpreter from the outset of a proceeding (Mayne 1957:152). Interpreters try their best to be as inconspicuous as possible during courtroom proceedings. On many occasions interpreters are fully aware that they are not supposed to make their presence felt and that everyone's attention ought to be riveted on the speakers for whom they are interpreting. Nevertheless, circumstances arise in which the interpreter feels they must intrude upon the proceeding, and this usually occurs when they recognise a problem of interpreting (Gonzalez et al. 1991:475). The interpreter is therefore tasked and expected to take a completely neutral position, however impossible this may seem. Having been sworn in, they know they have the task of confidentiality regarding private and professional matters about the case and about the privileged information between attorneys and their clients. Now, this means they are also called upon to notice in the court any conduct or anybody that impedes him or her from carrying out their professional duties with the necessary fidelity. Furthermore they are also called on to recuse themselves from any matter before the court if they are found to be experiencing some difficulties in abiding by these stringent ethical legal standards (Frishberg 1986:65); (Gonzalez et al. 1991:206).

In the following paragraphs an attempt to illustrate the performance and predicaments that interpreters face, one where they appear to go beyond their ethical and professional standards, is undertaken. Having engaged in numerous court observations and in discussing the role and practice of a court interpreter, it is notable that during the arraignment in one court case in the East London Regional Court, just after the court prosecutor and the magistrate had called about five accused and co-accused to enter the dock, the court interpreter without being ordered to do anything, Mr Tusani (the interpreter), rose up from the stool he had been sitting in and enquired from all the accused what their language preferences were. All this he did by asking "*Ke Bahlekazi nonke nithetha isiXhosa anditsho and niyandiva ne?*" (So, Sirs, you all speak isiXhosa, is that right, and you hear me then?) After that he proceeded to establish the identity of all the

defendants by making sure that they were standing correctly in the dock. As if that was not enough, he then arranged them in their correct numerical order as defendant number one to five. All the functions done above are associated with an officer of the court, and obviously these duties do not fall within the parameters of the conventional meaning of court interpreting. The biggest concern is whether an interpreter who performs these tasks, of his own accord, should be regarded as having crossed the professional line, or is she or he a necessary member of the courtroom personnel whose function it is to see to the smooth running of the court.

2.3 The function of court interpreters

The existence of a vast number of predicaments which are usually encountered in the courtroom relate to the function of court interpreters (Arjona 1978:36; Stander 1990:46). Regardless of local and historical differences provided for interpreting practice, it is contended that the vital quandaries facing interpreters tend to be the same across the spectrum in both time and space (Seleskovitch 1978a:5). Morris (1999) states that through a survey of interpreting services in a number of jurisdictions; it appears that interpreters are always made to feel the “low Indian” on the judicial system talisman shaft (Morris 1999:21). Even in jurisdictions with large populations requiring interpretation and concomitantly large bodies of qualified interpreters, such as the Eastern Cape Province, a basic problem always appears to remain in the Department of Justice and its attitudes in the court system. A study by Burris (1998) based in a California court revealed the same sentiments:

There is often dissatisfaction with the unpredictability of working schedules, so that where- and if –one is going to work is often up in the air until the last possible minute... Many of our colleagues were very discouraged by the appalling lack of respect and appreciation displayed by court administrative personnel. One very experienced interpreter mentioned that he felt that interpreters are ‘gum on the bottom of somebody’s shoe’ when they are working in the courtroom setting. (Burris 1998:7)

It is true that interpreters can find themselves in a conflict of interests regarding what other people expect of them. The majority of these dilemmas can generate a considerable amount of stress for the interpreter, who is after all, only a human with feelings (Seleskovitch 1978a:218). From prior research done, there exists anecdotal evidence which suggests that interpreters tend to

learn through sharing problems with colleagues, whether face to face, and decide together where to draw the line in a number of situations (De Jongh 1990:92). Some scholars have hypothesised that frustrations in South Africa over the lack of professional advancement, cutbacks in court interpreting services, and salary pay among other things, also is connected or interrelated to the feelings in the Department of Justice and within Constitutional Development more generally in South Africa. This does not take seriously the issue of providing proper interpretation services in its courtrooms (LSSA paper: 15). Recently Ralarala (2014) explored further the language question and language use in the South African criminal justice system. He looked at experiences and production of sworn statements made by the general public to police officials, who also form part of the justice system. He asserts that those who take statements, police officials, whom he calls “Transpreters” form an essential part of the administration of justice and there is a need for them to be adequately trained since the job can be a tedious evidential exercise in their line of duty (Ralarala 2014: 378).

Ralarala (ibid) suggests that the exercise by these court actors as “transpreters” who usually provide working documents for court processes such as contents of the docket with statements of witnesses, thereby providing a process of record of construction should be subjected to translation and interpretation training to enable an accurate exercise (Ralarala 2014:379). However Ralarala’s thinking is not necessary in line with the thesis carried through this research, since his research focuses on written narrative by completely different actors in the justice system, however the foundation laid down in his research is relevant for this study, hence reference is made to his research.

In most occasions interpreters need to be seen as impartial neutral figures in the legal system. Gonzalez (1991) argues that a court interpreter occupies a central position during the legal proceedings and their role is seen as a “language mediator” (Gonzalez et al, 1991:155), a “language intermediary” (Gonzalez et al. 1991:277), a “tool of justice” (Gonzalez et al, 1991:156), “court attache” (Gonzalez et al. 1991:416). The interpreter is also seen by some scholars as a “soft woman in between” (Abrahams, 1996:3; Malherbe 1990). It is however argued that on the personal level no court interpreter can remain indifferent to instances of incompetence, particularly where the consequences can be major, giving the proceedings a feeling of irregularity (Moeketsi 1999b:103). Mindful that the conduct of the interpreter is accordingly determined by this stilted environment, in taking the oath an interpreter may well

assert that he or she swears that at all times he or she “will well and truly interpret” (Gonzalez et al. 1991:475), “to interpret faithfully, to the best of his or her abilities... without fear, favour or prejudice” (Mayne 1957:9).

Another valid concern is based on the attitudes presented by legal professionals in the justice system where they consider themselves to be indifferent to the ethical standards and principles espoused by the majority of conscientious interpreters. On many occasions, these actors show disdain or elect to ignore or choose to blatantly flout such professional canons. By doing that, they are treating interpreters like *a piece of gum stuck on the bottom of the shoe* (ibid). It is rather ironic that in law, a profession of words, the legal actors (presiding officers and lawyers) seek to deliberately construct a role for interpreters, which attempts to deny the complexities inherent in any language. There is ever eminent linguistic control where the presiding officer often takes on the institutional role of order and control of flow of information (Pondy 1978:23; Morris 1949; Foucault 1977; Bourdieu 1991).

Anderson (1976) argues that interpreters, as the only ones with a full comprehension of both languages, enjoy “the advantage of power inherent in all positions which control scarce resources” (Anderson 1976:218). For many presiding officers, an ideal interpreter would only interpret what has been said and not have the need to interrupt proceedings. However, perfect interpreters do not exist, and communication through language is in itself an imperfect practice. For many judicial officers, when interpreters interrupt proceedings they suddenly stop being the voice of the participants and assume a role of their own accord and in their own voice. So the thinking behind this is that they move away from the strict role as mouth piece and become active participants (Hale 1996:113; Gonzalez et al, 1991). The following classical definition will be adopted in order to bring clarity to an interpreter’s role in practice:

A court interpreter is an officer of the court trained to listen in one language and interpret into another during courtroom and related judicial proceedings. The interpreter’s job is to minimise language obstacles between the court and all parties to a legal proceedings. (Ref Magistrate rules and High Court rules).

In terms of this definition, it is important to note that the survey of primary regulations in the country seems not to provide any identity or protection for the interpreter. Even the Constitution,

Act 108 of 1996, which protects the language rights of all other participants in the courtroom and further entitles the accused to court interpreting section 35(3)(k), rather omits anything that resembles protection for the court interpreter. Although on many occasions there is a clear indication that his or her role is pivotal, exact expectations and protections are not enunciated. On mere observations, there is consensus in the court corridors that the interpreter is indeed of low consideration, has a low standard of qualification, and is often a very poor matric in terms of grade. Only a six week training course entitles them to gain entry into the art of court interpretation.

The first elements which need major attention when dealing with interpreters is an outlook that seeks to examine aspects of communication that are considered of relevance to the process of interlingual interpretation, and considers in essence the law's equivocal attitudes to interpreters. This pinpoints the tendency by many other professional actors in the courtroom to consider the interpreter a mere pipeline or instrument, and furthermore by many language handicapped defendants their only alfa and omega; a linguistic and psychological glory (Seleskovitch 1978a:8). It is without contempt that the submission that actions and attitudes of different actors in the legal proceedings suggest a number of conflicting messages about the role expected of interpreters. As a result the actual practice of interlingual interpretation brings to question the existence of a code of ethics formulation or professional good standing associations, which deal with the certification and accreditation of interpreters (Frishberg 1986:65). Any profession of good standing and extensive experience in the field of linguistic interpretation provide a second yardstick of guidelines which help shape and determine interpreters' behaviour (Gibbon 1996:355). The last element in making this assessment relates to interpreters' human conditions: this is although in many occasions the suggestion that they suppress their personal feelings while providing interpretation services, in most cases like South Africa they are more likely to be exposed to stress, fatigue; and various affective responses are generated (Moeketsi 1999:30).

Predominately, two contrasting and typical scenarios or circumstances exist as a result of any provision created for court interpreting and interpreters ways of coping. The first approach explained by a number of scholars is what is termed the 'conduit' approach, here the interpreter is seen as an invisible instrument or a pipe line, with words entered through a source language (Laster 1990:15) i.e. isiXhosa and exiting completely unmodified, in the target language i.e. English. In essence scholars present a view that other court actors perceive of interpreters, thus

the use of interpreters depends entirely as the court sees it fit (Laster 1990:16). This approach was developed as a technical solution to avoid any enormous evidentiary problems associated with the exclusion of evidence as hearsay. This approach affords actors to treat the interpreter as a third party (Laster 1990:18). What one observes in this approach is that the role of a legal interpreter has been revised and reconceptualised as a mechanical service, which is not to be seen as a human interaction (Laster 1990:20). Perhaps it should go without saying that the advantage of the narrow conception of role is that it affords the legal profession to impose a seemingly “objective” standard of good interpreter to which any individual interpreter can be held to accountable. Now this bridging gap further provides a distancing of the emerging “professional interpreter” from the unethical and unsatisfactory practice (Lane 1985:56). Nakane (2009) observes that depending on changing discourse management, interpreters’ roles are also bound to shift and the shifting may affect the outcome of any court interaction. He says the roles shift because there is a need for problem solving. This seems to be a direct result of inadequate interpretation which may have just been rendered. Now in seeking to protect his or her vulnerable reputation of a competent interpreter, she asks questions, and all these are attempts to clarify the communicated message. Therefore there is acceptance that the interpreter cannot remain invisible in communication but there are times where intervention is needed to avoid miscommunication.

On the other end of the academic spectrum you are presented with a contrasting situation in which a relative number of defendants or accused persons who come before court consider interpreters as the saviours (Harris 1988:137). On many occasions interpreters go to lengths in attempting to clear the air, correcting this misconception, but those efforts are not without fail (Harris 1989:138). Caught in nobody’s land, between these two ends, the court interpreter is now made to feel like the merest of incidental item and, at the same time, the most important person in the life of the defendant or witness. Harris reminds us that these participants do not appear in court “not usually of their own volition..., [He is] almost invariably on the defensive... having failed some way to observe the law... His interactive position is therefore weakened by his role as “miscreant” (Harris 1989:139) Furthermore you have the accused, who from time to time, adds further complexity to the situation, seeking to commit himself in one way or another to giving the court all the information it seeks from him or her. Frank (1950) asserts that “as a stranger in the court, surrounded with unfamiliar circumstances giving rise to an embarrassment known only to himself” (Frank 1950: 81), he relies on the court interpret to benefit him or her.

Confronted with these two extremes, the accused person or witness who has no working knowledge of the judicial system's language, interpreters come into the picture incidentally regarding themselves as the Shangri-La of communication. As mentioned earlier, in their presence the accused person feels they can finally, without linguistic constraints, be able to express their feelings and thoughts, thus by escaping from any sort of isolation to which they are sometimes condemned long before their trial takes place. Furthermore this happens before any judgment and sentence is passed. Ironically, interpreters' attempt to explain the strict confines of their role and may further reinforce accused or witness's inclination to cling to them as potential saviours, providing not only a linguistic, but also a cultural and legal haven. The natural tendency for accused and witnesses to feel attached to the interpreter is not new, courts have been aware, and in some cases before courts they have offered comments that reflect a not-unsympathetic awareness of possible occurrence of interpersonal aspects in the interpreter and court relationship. A relevant academic formulation that captures essence of this issue expresses the relationship as follows: "Interpreter's relationship with the subject is professional, never sympathetic or personal. Although it can argued that it is not easy implement such an approach, in line with this argument, is the writing by a former interpreter who subsequently became a barrister in the English legal system, Morgan (1982) suggesting that:

While a lawyer must maintain and establish a relationship of polite aloofness with his clients, there is aloofness with his client, there is almost inevitably a strange, transient intimacy between interpreter and defendant. This is exacerbated by the fact that the interpreter stands alongside the accused in the dock and on the witness stand and repeats his words as they are uttered, using the first person singular. The result is a curious identification with his role. The accused, for his part, nearly always responds warmly, regarding the interpreter more as a friend and ally than as a person paid by the prosecution to do the job. After all, in many cases the interpreter is the only person around with whom he can hold a direct conversation! It is sometimes hard for him to accept that the interpreter's role is other than friend and mentor (Morgan 1982: 51).

Also the following text from court observation in the Mdantsane Magistrate Court, Bail Court, where regional court interpreter Lungisa Nanze extricated himself from a situation where the accused who had just been called to appear for bail began to talk to him about his case: *"Mhlekezi mna andilogqwetha, koko nje ndikho apha ukunceda kunxulumelwano, ke musa*

ukundibuza okanye undixelele ngetyala lakho, linda igqwetha lakho” (Mister I am not a lawyer, I am just here to enable you to communicate, therefore do not tell me anything about your case, I suggest that you wait for your lawyer). It is true that the communication by the interpreter in the above phrase conveys a sympathetic view, yet in a firm fashion the same message about the interpreter’s role as formulated in an official text.

It is without difficulty that scholars accept that the trustworthiness of interpreters has been an issue in the ethics of the profession. In any interpreted event, where different parties represent their own interests, the person who has the wielding authority of selecting interpreters will in most occasions avoid using an interpreter who seems to have an interest in the subject matter. It is Anderson (1976), who argues that the interpreters’ position as a person in the middle has the inherent advantage of power in all positions that control scarce resources and the interpreter can tend to monopolise the art and the means of communication (Anderson 1976:218-221). It is also indeed true that for defendants, who rely on the services of interpreters and often without prior knowledge of the functioning of the judicial system language, interpreters thereby render themselves as the Shangri-La of communication. This entire situation creates the gum syndrome, being likened as a piece of gum on the bottom of a shoe - ignored for all practical considerations, but almost impossible to remove. Tie that with the negative image of the interpreter, thus an important factor because it will be taken for a reality, alongside the fact that they have to sit next to a man accused of an obnoxious crime. It must be known that interpreters are in a “no-win” situation (De Jongh 1992: 60). The process they undertake in conveying the message from one language into another involves gaining an understanding of the intentions of the original language speaker and attempting to convey the illocutionary force of the original utterance (De Jongh 1992: 61). If that is not done, then one runs a risk of betraying the meaning of the original message. Therefore the suggestion is always that court interpreters must constantly make ‘judgment calls’ in deciding what latitude to assume. Armed with no forensic analysis background, his role extends to concentrating rather on the ideas expressed in the source language, than on the words uttered. The primary suggestion is that they focus on the meaning of what is said. A special task exists for the interpreter, in vertical terms he has to uncover a meaning, preserve it, add to its entirety, and then attempt to transmit it in its entirety and then transmit it as accurately as possible in the target language (Abrahams 1996: 10-12). Some scholars ascribe that what is being done in fact is a “process of exegesis and explanations” according to Seleskovitch (1978a:8) while Gile (1995) adds that the exercise is “an

approximation, at best” (Gile 1995: 49). Without exaggeration, De Jongh (1992) expresses that included in the preservation is “tone of voice, hesitations, other extralinguistic features, style and register” (De Jongh 1992: 61).

The gist of the interpreter’s predicament in the courtroom is that during such proceedings, to all intents and purposes the legal *fundi*’s or jurists seek to ignore the interpreter’s presence, eager to profess the believe that the interlingual interpreting process consists of purely mechanical factors. The particular image used to convey this view of the interpreter may vary over time. It is only appropriate then to address these views using case law development by legal professionals themselves. Thus the court interpreter has variously been compared to a phonograph (*Gregory v Chicago, R.I & P.R.Co*), add to that a transmission belt, transmission telephone or wire (*United States v. Anguloa at 1186*), a court reporter (*People v. Resendes at 612-13*), a medium of accurate and colourless transmission of questions to and answers from the witnesses (*State v. Chyo Chiagk at 704*), he is some say a mere cipher (*R. v. Attard at 91*), a bilingual transmitter (*Gaio v.R. at 430*), a translating machine (*Gaio v. R. at 431*), an organ conveying sentiments or information (*Du Barre v. Livette*), a mouthpiece; and a means of communication (*Gaio v. R at 432*). The end result of all these assumptions is that such connotations equate an interpreter with unobtrusive devices or channels, or straightforward technical adjuncts. Because language creates the reality it describes, now interpreters are depersonalised and a door is shut for any possible personal input or interactive engagement role. Any attention given to these agents is then deflected away from them as individual actors in their own right.

It can go without saying that the existence of negative views by legal professionals towards interpreters have long been established and documented over time. The views can be traced back to the emergence of consecutive court interpreting during the Nuremberg trial, when a member of the Tribunal Bench, Norman Birkett sought to describe interpreters as “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...” (Hyde 1964:521). Added to that is a view from America in the case of *Rajnowksi v Detroit*, where the court offered a rather less emotive, albeit highly cautious sentiments about court interpreting services:

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 by the trial court (*Rajnowski v Detroit, B.C. & A.R.Co. at 850*).

Perhaps it is more acceptable to suggest that, the interpreter may constitute far more than a reluctantly accepted practical necessity. In effect, Morris (1993) argues effectively that the judicial system idealises the role of the court interpreter as a mechanical facilitator of the language switching process. In this view, the interpreter becomes: “a phonograph, a transmission belt, transmission wire or telephone, a court reporter, a bilingual transmitter, a translating machine, a (mere) conduit or channel, a mere cipher, an organ conveying (presumably reliably) sentiments or information, and a mouth-piece” (Morris 1993:2). It theorises that the interpreter should achieve a perfect translation, however “it bases this assumption on an ideal world in which total equivalence is automatically achieved by any individual performing interlingual interpretation in a forensic setting. It thereby discounts the ambiguities inherent in all human systems of communication because, in this idealised view, they are entirely overcome in the interpreting process” (Morris 2010: 1).

The fears arise from the fact that the interpreter may use the opportunity to advance his or her interests. This is not completely unwarranted. Examples of such exist in literature, one being found in Ireland with a Gaelic poet defendant in the 18th century, who deliberately misinterpreted (Cronin 2002:55), and also in the Ukraine, where a sign language interpreter elected to deliver her political message on television while interpreting, pretending to be interpreting (Zarakhovich 2005). Therefore it would seem that the view of the interpreter is problematic. Bertone (2006) asserts that the “pre-established equivalence of words being used does not necessarily ensure the equivalence of the message” (Bertone 2006:60). Furthermore Poyatos observes that with regards to interpreters that “the lack of capacity to carry the whole weight of a conversation, or speech, that is, all the messages encoded in the course of it, because lexicons... are extremely poor in comparison with the capacity of the human mind for encoding and decoding an infinitely wider gamut of meaning” (Poyatos 2002: 238).

This whole discussion throws into relief any questions of the role of the interpreter and the professional standards and ethics guiding them in performance of their duties, and, as Anderson writes asserting that “in general, the interpreter’s role is characterised by some degree of inadequacy of the role prescription, role overload, and role conflict resulting from his pivotal

position in the interaction network” (Anderson 2002:212). Despite the interpreter having been sworn to an oath to “well and faithfully” interpret a speaker, the interpreter must, as Schlesinger writes “reconcile his own understanding of “well and faithfully” with whatever he or she thinks or perceives to be the court’s understanding of the same concepts” (Schlesinger 1991:148).

2.4 The effects of the physical setting

Like in most jurisdictions which follow the English law system, in South Africa the courtroom is largely dominated by a large platform in which the Judge or the Magistrate sits. Gaining entrance in the courtroom, one cannot help but be overwhelmed by the signs of the institutional power with which the court abounds (Moeketsi 1999b:17). It is argued that the physical layout of the court itself attests to the existence and the operation of a hierarchy of social relationships. Although the touch of architecture may differ from court to court with furnishings also, the courtroom basically stays the same. Its esteemed character is a fixed one (Moeketsi 1999b:17). What we have in the courtroom is a setting at one end that is open to ‘potential for abuse, in which those vested with more power prey upon the less powerful. Yes, blatant inequality and disparity is the order of the day. Moeketsi (1999b) summarises her observation of the court as follows:

“When I first went to a trial court, I saw something else. I saw power juxtaposed with powerlessness; knowledge with ignorance, confidence with fear, arrogant control with humble submissions, manoeuvring and manipulation with confusion and bewilderment. I saw character assassination at its worst. A bombarded B with questions, with a real barrage that left B bamboozled. The attack was so vigorous and so persistent that B was utterly perplexed” (Moeketsi 1999b:24).

On a close scrutiny the courtroom presents some “ecological arrangements”, demarcated into three distinct areas which afford the roles and relationships of the participating characters (Atkinson 1979:222). The first important demarcation is the magistrate’s or the judge’s bench, this is a “focal point of the courtroom” (Gonzalez et al, 1991:421). Here the presiding officer wields most of the power, and the power is real and very symbolic. His crown chair “commodious chair” stands far removed from all others. Elevated by platform, he has a chance to see and hear everyone in the courtroom. The presiding officer wears the black robe; he only

attends to court when everybody appears to be ready to receive his or her arrival. His or her address to the court is done while seated and those who are addressed by him have to stand when they address the presiding officer. All this happens to the exclusion of the court interpreter, who often changes positions.

On the one side you find a platform with the South African flag and behind the Magistrate is the crest of the Justice Department. Below the Magistrate, sits the stenographer, who works as court reporter, doing word for word transcription of procedures. She or he is not alone here; this table is big enough to be shared with court orderlies, the prosecutor and defence lawyer. As Gonzalez ascribes that this is a place where all takes place, he describes it as “sanctuary of the courtroom” (Gonzalez et al 1991: 416). Looking left of these personnel is the prosecutor and on your right you will find the witness stand. The interpreter has a seat which he shifts around the courtroom; however the interpreter spends most of his time sitting close to the witness box. The interpreter makes use of the barstool which he shifts around from time to time depending for whom he is interpreting for at the time. However this speaks to the notion that the design of South African courtrooms does not accommodate a specific place for interpreters. Looking directly opposite is the stenographer and the defence counsel sits to the left of the prosecutor, but facing the magistrate. Behind him is a further witness stand, Geldenhuys and Jourbert (1994) suggest that the Magistrate Court Act, is silent about where the accused ought to sit or stand. “Nothing in the Act prescribed the place where the accused should stand” (Geldenhuys & Jourbert 1994:165). Therefore any performance on the side of the accused is a matter of practice.

The third area of the courtroom is the public area, here members of the public sit on the public benches, and they too face the presiding officer and all other participants. This area exists separately from other members of the public and all other participants. This division in the courtroom is separated from the legal arena by a railing also known as “the bar of justice” (Gonzalez et al 1991:416). The audience may not enter the legal arena at all, so this railing serves as a barrier that “effectively maintains a physical division between the audience and the principal actors in the courtroom” (Gonzalez et al 1991: 416). Morgan (1982) argues that this seating arrangement is directly relevant as a factor in determining the degree to which a defendant will tend to ‘cling’ to the interpreter. In English court systems, witnesses have on their sides unobtrusive interpreters who aid the communication enabling an on-going version of everything being said in court. However there may well be a resultant problem, where the lawyer

will not be aware of interpreting problems, and the language-handicapped participants (who may or may not be aware that faulty interpreting is leading to difficulties. On many occasions the reason is that the witness depends on the services of the interpreter whose performance is sub-standard, and who may therefore tend to repress any such comments. One is made to imagine a situation where a third party is not available; such emotions are unlikely to be made during the proceedings. Or if the accused does not get an opportunity to complain about the poor interpretation, failure by the accused or the defendant's lawyer to bring the motion before court asking for the revival of case, will automatically lead to rejection of the interpreting related challenge in any subsequent appellate proceedings.

Morgan (1993) further points out that the physical setting of the courtroom can be a highly relevant factor in determining the degree to which an accused person or witness will tend to 'cling' to the interpreter. Here we are presented with catch-22 situation. The upshot is to reduce even conscientious interpreters to a partially silenced "piece of gum", unable to provide in full the services for which they were engaged and to which the accused may consider themselves entitled. Another worrying factor is that the South African interpreter is normally the only court official who comes from the same cultural, social and linguistic background as the defendant. Interpreters tend to have an empathy with the lay participant's plight, predicament and anxiety. It is true that this like-mindedness tends to urge him or her to want to explain incomprehensible criminal procedure and to ensure optimum participation by the defendant or witness in the case for or against himself, without, of course, attempting to compromise his duties of interpreting (Altano 1990:88). In a bid to stay above board, interpreters are often compelled to inhibit their human quality that dictates the notion of caring for those in distress. The relationship between a witness and a court interpreter has always been to "...deny the urge to help, at precisely the moment when the witness is turning to them" (Altano 1990:99). It should be acknowledged that the court interpreters are prominent and "legitimate" role-player in thier own right. Furthermore his duty is more active that the justice system is willing to acknowledge. The prevalent judicial assumption that the interpreter is a conduit whose presence has no impact of its own on the progression of a judicial event is rather mischievous and "fallacious... His presence does indeed alter the normal flow of events in the courtroom" (Berk-Seligson 1990:156). In many occasions interpreters argue that an omission or commission on their side is largely due to the fact that he or she intends to benefit both parties, thus the prosecution and the defence counsel. Interpreters

are eager to claim that intervention was, in fact to ensure that the defendant gets a fair trial and that the magistrates' obligations are fulfilled.

2.5 Defining interpretation and translation

Most noticeable research based on linguistic texts on interpretation begins by distinguishing interpretation from translation. This chapter will try to show that the sphere of interpretation on the one hand can be considered to be vaster than that of translation proper. It must be submitted that the etymological formation of the verb "interpret" makes for a semantically tense relationship with terms such as translate or translation. Therefore it is fair to capitalise on the polysemy of "interpret" thereby focusing on the meaning based theory rather than word-based understanding of the word. It has also been held vital to stress the distinction between the more general hermeneutic sense and a narrowly construed translational sense of the word.

In the legal setting, researchers find it striking that legal authorities' would view their sole prerogative as "interpreting the law" and would expect of a court interpreter to translate the language. Rather than the unholy semantic quibbling, this presents scholars with a fundamental challenge in the understanding of what is meant by interpretation and/or translation proper. Therefore the following few pages here will be devoted to attempts at finding an appropriate response. One of the aims of this chapter is to provide an overview of different views in delineating the distinctions between these terms. To afford such, a discussion of the definitions of translation and interpreting, highlighting the semantic differences will be engaged in.

Dwelling on this point is not merely a lexical question for consideration; and if it were a question of words, and if the consideration was merely the use of translation as a synonym for interpretation, all that may have been necessary would be solved by a mere agreement on the matter. Interpretation studies have been ignored for a long period and some have assumed the study regarding it tends to fall under translation studies. Perhaps the attempts are to afford weight to the view aptly argued by Komissarov (1985), that "it cannot be denied that translation theory is supposed, in the final analysis, to serve as a guide to translation practice" (Gile 1995:13-14).

The main issue is that the confusion in these terms arises partly from the fact that both are held to facilitate communication between parties. (Moekesti 1999b:94), further supported by Stander

(1990) who asserts that “people tend to think interpreters work the same field as translators” (Stander 1990:9). In spite of all of this, the idea that the entire activity of interpretation is to be thought of as translation has continued to gain momentum over time and has been absorbed by many scholars. In Steiner (1975), in a chapter entitled “*Understanding as translation*”, he reinforces the idea that the object of his study and approach is interlinguistic translation, and thus translation in the strict sense of the term is only a particular case of communicational relationship that every successful linguistic act describes within a given language (Steiner 1975: 3).

It is worth noting that interpretation has become a potentially charged and ambiguous term in the judicial context, when applied in the judicial process. So before attempting to describe the two concepts, it is important to submit that the law’s attitude to interpreters is at odds with the findings of current research in communication which recognises the importance of context in the effective exchange of any message (Morris 1995:24). As in any courtroom setting, interpreters are simply not allowed to attempt to use their discretion and place themselves as any possible mediators in the judicial process. Although it may be the case that the act of interpretation be held to be distinct from translation, it is held to be desirable and acceptable for jurists, but utterly inappropriate and prohibited for linguists. Further confines are discoverable, that the law prescribes precisely those aspects of the interpreting process which enhances the ability of the interpreting process to be performed with greater accuracy because they have two undesirable side effects from the legal point of view (Morris 1995:26).

Representing the first view, Nord (1997), states that scholars can elect to adopt the use of the notion of Translation (with German pronunciation) (Nord 1997: 106), which had been earlier introduced by Otto Kade, a self-taught interpreter at the University of Leipzig (1968), as an umbrella term with processes that are common to both translation and interpreting. What Kade as early as the 1960s did was to offer a definition of interpretation by elaborating on the feature of immediacy, which in turn had the ability of distinguishing interpreting from other forms of translation without resorting to the dichotomy of oral vs. written (Kade 1968:10). Whatever may have been Kade’s definition of interpretation then, it however offered a clear vindication from the general characterisation of interpreting as an immediate type of translational activity, which can be held to be performed “in real time” for immediate use (Kade 1968:11). It must be submitted however that the ephemeral presentation and immediate production go some way towards covering the need for conceptual specification. It complicates interpreting, linking it to

the notion of translation, further leaving many scholars exposed to more general uncertainty of how to define the term translation. Although it can be argued that while the study of interpreting does not presuppose an account of translation in variants and ramifications, those scholars who elect to define interpreting as a form of translation imply that no interpreting scholar can remain aloof to the underlying conceptual issues (Kade 1968:35).

Ideally, the same sentiments are echoed by Gile (1995) who provides that interpreting and translation are basically the same, he asserts that this is because they re-express “in one language what has been expressed in the other” (Gile 1995:2-3). It would be useful to map out shared ground by these two concepts to help identify court interpreting as distinct, if it is so. Perhaps the same exercise would afford us a basic understanding that interpretation and translation that are “two varieties of the same intercultural communicative interaction based on a source text” (Nord 1997:104). The assessment of these meta-process will further confirm that the two activities can be considered in essence similar.

Hatam and Mason (1997) advocate that translators can be seen as “trying to assist in the negotiation of meaning” (Hatam and Masam 1997:1). For them translators are “seeking insights towards the whole relationship between language activity and the social context in which it takes place (Hatam and Masam 1997: 2). Accordingly, Roseann Duenas Gonzalez et al (1991), assert that translation refers to the general process of converting any message (Gonzalez 1999:294). He notes that the only difference that can be made is translating written messages and interpreting oral ones is the presence of the interpreter in the communication process. Another difference levelled by Gonzalez is that of time constraint, he asserts that interpreters “ must instantaneously arrive at a target language equivalent, while at the same time searching for a further input” (Gonzalez 1991:295).

In seeking clarity in the discipline of interpretation, many scholars find it necessary to lend collaboration across the discipline of translation, if it is so separate. In doing so, Mikkelson (2000) argues that any broad sense in which translation is based and adopted for use by various scholars, the term itself, read carefully, denotes the overall process of interlingual meaning transfer, regardless of whether it is to be seen as oral or written (Mikkelson 2000:66-67). From the onset the views by Harris (1981) accept without heavy debate that the two concepts of interpretation and translation have commonality:

“We had better admit at the outset that translating and interpreting have much in common. When all is said and done, they are but two modes of what is essentially one operation: A process by which a spoken or written utterance takes place in one language, which is intended and presumed to convey, the same meaning as a previously existing utterance in another language” (Harris quoted by Padilla and Martin 1992:196)

Another aspect that confronts the distinction of these terms is that among scholars, there is generally a view that translation studies subsumes interpreting, or includes categories referring to interpreting and translation (Schaffner 2004:5). Similar sentiments are offered by Franz Pochhacker, who asserts that English translation scholars are the root of confusion because they are not very explicit in their writings on whether or when they use the term “translation”, they are limiting themselves to the written mode, as opposed to other, notably German scholars, who maintain that translation as a hyperonym is an umbrella term for translation and interpreting (Schaffner 2004:6).

In Pochhacker, read with Schlesinger (2002:3) they suggest that in looking into interpreting studies literature, one finds that only a limited number of authors are ready and have the willingness to draw upon concepts and theories rooted in translation studies. Perhaps what is under discussion here is based on the idea of equivalence.

While occupying a central position in the Translation Studies for decades (Venuti 2000:121-2), suggests that it rarely figures in Interpreting Studies. The same holds true for function-oriented accounts of translation such as Vermeer’s (1978) *skopos* theory and Toury’s (1980,1995) concept of translational norms as a driving force in Descriptive Translation Studies. With very few exceptions, neither of these stalwarts of modern translation studies have been incorporated into the mainstream of interpreting research. By the same token, very few translation scholars have actively engaged in interpreting research or even mentioned interpreting in their writings (Pochhacker and Schlesinger 2002:4).

Although the scholarly debate continues on whether the interpreting processes, should or could be viewed in isolation as an independent discipline, some scholars remain mindful and protest heavily against the “little bother” position that is always seemingly to be adopted by Interpreting

Studies falling in the framework of Translation Studies (Cronin 2002:386). They further assert that the historical antiquity of interpreting studies remain very much in the minority interest in Translation Studies, yet as an activity interpreting is used often in the courts of law. Why then seek to minoritization of interpretation? (Cronin 2002:387). Providing a different voice, Angelelli (2004) feels that scholars should regret Interpreting Studies not developing too independently, not leaning much on any of the established social theories, nor on translation studies.

Cronin (2002) believes that interpreting studies have a potential for healthy development in which “a more materialist, politically self-aware approach to interpreting studies would unlock the enormous research potential of this area of translation enquiry and highlight the importance of interpreting and interpreters in any assessment of the impact of translation on humanity, past and present (Cronin 2002:388).

Another source of confusion as presented by Stander (1990) is the fact that interpreters are seen to be working in the same field as translators, then that results in a broad assumption that theories and definitions thereof should apply (Stander 1990:9). This generalisation gives birth to more sweeping flawed definitions of terminology, thus some scholars referring to translation as a “generic term referring to the transfer of thought and ideas from one language (source) to another (target) whether the languages are in written or oral form”(Brislin 1976:25). On the other hand, Arjona (1978) argues that translation must be viewed as a “generic term for inter-lingual, socio-linguistic, and cultural transfer of any message from one community to another through various modes of written, oral or mechanical means” (Arjona 1978:35). Many other scholars argue extensively about the distinction between the two terms without ever coming to any creative conclusion (Gile 2004:10-31). Padilla and Martin share the idea that although on the abstract level the terms can be held to mean different activities, but for interpreter trainers, it is easier to teach students with translation background to become interpreters than without one (Padilla and Martin 1992:195).

It is rather advisable for any scholar to move forward with discussing interpretation, the definition given by Mikkelsen (2000:66) and De Jongh (1992:35) indicates that not all translation and interpretation scholars agree with the generic sense in which translation is viewed. The emergence of interpreting scholarship around the 1950s gave a foundation in the

definition of the term. From the 1950s, writings on interpreting appeared, with first thoughts by Jean Herbert (Pochhacker 2002:5). By that time the emergence of interpreting as a discipline of study in universities had commenced. Herbert's writing gave an overview in line with historical and personal memoirs rather than academic studies on interpretation. Since then, there has been more influence on how research is done, and most research has been undertaken by professional interpreters themselves (Gile 2004:18). Writing in 1995 about the divisions of interpreting research, Anna Schjoldager noted that there is a gap of 13 years of research unaccounted for in interpreting studies (Schjoldager 1995:35). Since then much research has come from those looking into the linguistic, sociology and discourse studies (Pochhacker 2004:44). Interesting to find, is that Schjoldager further divides up the scholarship in interpreting, finding that there exists two groups, one being the liberal arts group, which tends to focus on what she terms the "theory of Sense" regarding interpretation as an arm or channel of communication. The work of this group of scholars is inspired by research carried forward by Danica Seleskovitch and Marianne Lederer (Schjoldager 1995:35-36). The Second group is named the natural sciences; here scholarship focuses on the initial foundation of interpreting research. They share the view that interpretation is still in its initial stages, which necessitates a theory construction. They further assert overall theory of interpretation is not possible to achieve, since the interpreting as a subject is multifaceted and not unfeasible to formulate (Schjoldager 1995:37). Another relevant submission made by the latter group is that "any research on interpreting should take the form of hypotheses being tested empirically" and thus it is preferable as interdisciplinary research (Schjoldager 1995:37). To date, it seems that there can never be a final concession that interpretation is part and parcel of the label of "translation" (Pochhacker 2004:11). It is worth noting that a majority of translation researchers have researched interpreting or have identified it in the scope of their work, therefore that presents the lack of interdisciplinary between the two schools (Pochhacker 2002:4). Pochhacker (ibid) argues that although interdisciplinary scholarship may be desirable, the expansion and the use of several diverse methodologies, theories and models when applied in interpreting studies research, all these can lead to a terminological problem and conceptual creativity (Pochhacker 2004:2). Nevertheless, the interpreting research is now already executed and has been established in definite norms. In the following few paragraphs an attempt to define interpreting will be engaged in and will aid an understanding of court interpreting.

The definition of interpretation offered by Mikkelson (2000) alerts scholars briefly to the explicit difference regarding the term. He asserts that interpreting can be viewed as “the transfer of an oral message from one language to another in real time...” opposed to translating, which he states as “...the transfer of a written message from one language to another, and may take place over long extended period of time after the given original message was written...” (Mikkelson 2000:66) Another definition which adds value to Michelson’s discussion is provided by De Jongh (1992) who states that translation is the transfer of thought and ideas through a process of written words from source language to target language. Add to that the definition of interpreting given as “an oral process of communication in which one person in the source language, an interpreter processes this input, and produces in a second language, and another person (or persons) listen(s) to the interpreted target language version of the original speaker’s message” (De Jongh 1992:35). Quite notably Nida and Taber (1974) provide a short, yet heavy definition of the term, they assert that translation “consists of producing in the receptors language, the closest natural equivalent of the source language, first in terms of meaning and secondly given in terms of style” (Nida & Taber 1974:12). A more recent definition of interpretation is provided by Heller (1995), according to her “interpretation most often refers to orally rendering into another language” (Heller 1995:348).

Many of the definitions cited above indicate that the grounded difference between interpretation and translation is on the salient basis that interpretation be regarded as an oral activity, while translation be taken as solely within the parameters of written text. When viewed historically, it is easy to assume that interpretation is rather an older practice of the two. Therefore, scholars are able to speak of a static, immutable and fixed in time practice and the other as an immediate activity changed, correct or with an ability to be modified (Seleskovitch 1997a:2-3). In making this distinction, one must remain mindful that translation is, not necessarily the crucial part of this study. It is submitted that the foregoing discussion was a mere stepping stone in attempting to define the concept of interpretation rather than engaging in any substantial discussion on the difference between interpreting and translation. As a matter of the outcome of the above distinction, it can be seen that similarities seem to outweigh the differences by far.

This is not the first study to ponder on this issue. Scholars such as Roberts (1997) and Gentile (1993, 1997) have also discussed the divisiveness of drawing distinctions among different types of interpreting. Gentile advocates for eliminating the adjectives and simply talking on

interpreting. Garber (1998), on the other hand, points out that there are some profound differences between types of interpreting, and that labels are helpful for distinguishing them. Perhaps it is naïve to think that people will discontinue the use of qualifiers, given the human propensity for classifying things. If we are going to use them, then they should serve some purpose other than mere divisiveness. Perhaps adopting a relativistic perspective with regard to the definition of interpretation may be useful. The relativistic approach suggests that there can be no such thing as an objective definition thereby fixing, once and for all, what can be regarded as the ‘true meaning’ or essence of what scholars perceive or believe something to be like. This approach has been adopted and used in the postmodern approach to meaning and has been reaffirmed by leading scholars as ‘non-essentialist’ shared ground in translation studies (Chesterman & Arrojo 2000:20).

The best course to adopt in interpretation studies is a historical perspective. This approach affords a criterion for categorisation and labelling in the social context of interaction or setting, in which the interpreted activity is carried out. It must be noted that interpretation often took place where different linguistic and cultural communities entered into contact for some particular purpose (Gonzalez 1991:24). Apart from such contacts between socially given contacts between social entities in various inter-social settings, mediated communication is also conceivable within heterolingual societies, in which case we can speak of interpreting in intra-social settings (Gonzalez 1991:25). It will not cause any annoyance to scholars to admit that interpreting is an inter-cultural mediation which takes place with regard to intensive on-site communication, adding “in unpredictable constellation” (Cronin 2002:389).

With the definition of interpreting being very difficult to come about, this may also be due to the fact that interpreting occurs in different settings, both formal and informal. An early admission that interpretation can be carried by professional and unprofessional interpreters is necessary for any study based on interpretation. Thus affording the scholarship that in the market place, in hospital, on the street, in parliament and courtrooms, where people work, live and play, interpretation occurs (Pochhacker 2002:2). It is necessary to note that modification of definitions as thought of by Pochhacker (2002), convey and define interpreting as follows:

“An interlingual, intercultural or signed mediation, enabling communication between individuals or groups who do not share, or do not choose to use, the same languages” (Pochhacker 2002:3).

In a later publication in 2004, he revised the definition assigned accordingly, moving away and providing a broad definition. This time he wrote:

“Interpreting is a form of Translation in which a first and final rendition in another language is produced on the basis of a one-time presentation of an utterance in a source language.” (Pochhacker 2002:11).

Using the above quotes to provide a much improved definition and understanding of interpretation provides for an assertion that interpreting can be seen as a communicative spectacle. For instance the second quote provides that interpreting is a form of ‘translation’ since it places interpreting rather in a more explicit context, namely as ‘a form of translation’ (De Jongh 1992:6). It further provides for an image of how interpreters work, and the interpreter only has one chance to produce a target text. In the context of interpretation in the courtroom, the flow of language needs to go swiftly, and soon disappears, this making it impossible to bear the verbal form to attempt to linger on what has just been said right now. What would follow is the next acoustic sign; this requires active listening to move the proceedings along. Overall, it is therefore plausible to submit that interpreting is a form of communication activity that occurs in various situations where a message is transferred from one language to another in a setting where language and culture present themselves as barriers rendering communication impossible (Stander 1990:27). The following phase will then deal with modes and types of interpretation.

2.6 Modes of interpretation

(i) Background to modes of interpretation

At the onset of the World War II, interpretation was done by conservative mode that saw simultaneous interpreting grow dramatically and finally crowding consecutive interpreting in the international scene. It is a common cause that in the emergence of the profession of interpretation until the middle of this century, consecutive interpretation remained the method employed by the practitioners of art. The situation which saw consecutive interpreting not being used was when the locale did not permit or allow for any loud interpretation. Further into the 21st century, the main spirit behind the use of the simultaneous mode may be the considerable valued time

savings, which can be accomplished in multilingual environments. What is experienced in the courtrooms today is a taste of the time savings in looking at the recent introduction of simultaneous interpreting in a two language environment by a number of judges and courts. With full dockets and sparse budgets, a number of magistrates and judges are trying to resort to simultaneous interpreting, but usually do not wish to spend time and more money. Therefore suffice to say that despite the currently much needed technique of simultaneous interpreting, the profession is entering the twenty-first century with the consecutive mode of interpreting dominating most areas of application.

Many scholars in the interpreting profession predict that consecutive interpretation is on its way out (Salimbene 1997:658). Looking at the spectacular rise of simultaneous interpreting in the last forty years and discussing the current situation and future prospects, a brief discussion of the two techniques is needed for the uninitiated. A brief survey of the different modes of interpreting is therefore apposite. Mindful of what the scholar Salimbene (ibid) wrote suggesting that “contrary to popular belief, interpreter education is not foreign language centered since the mastery of at least two active languages at (or) near native level of proficiency is a prerequisite for work and/or study in the field” (Salimbene 1997:659).

The following types of interpretation are presented herein in criteria mode, setting, directionality and language modality. In the following, four modes of interpreting namely simultaneous interpreting, consecutive interpreting, whispered interpreting and sight interpretation are discussed. With any practical consideration of court interpreter practice, one should guide his or her message rendition which is aptly illustrated in a comment given by Gentile (1991), in Gentile, Ozolins and Vasilakakos (2001:101-102):

“The transfer of the message must be complete; the interpreter cannot take upon himself or herself to summarise what the client says, nor to omit any element contained in the message, no matter how relevant or otherwise the interpreter feels that the element is to the situation. Accuracy also means the impact of the message must be maintained.”

(ii) Simultaneous Interpretation

There is general consensus among scholars that the introduction of this type of interpretation took root shortly before World War 2. At the time though, delegates in the United Nations had less interest in using this form of interpretation, because they felt when adopting the mode of interpretation, they were not able to check translations and there were too many mistakes that existed with this mode (Herbert 1978:6f). Later in the United Nations, due to the need to save time spent in using consecutive interpretation from one language into two or more languages, ‘experimenting’ with simultaneous interpretation emerged, because it was then seen as a solution to problems of interpreting (Herbert 1978:7f).

It is true that the world exhibition and the universal publicity of the Nuremberg trials around 1945 to 1956 further led to the popularisation of simultaneous interpretation being the first mode used on a large scale in the international scene (Bowen 1985:25). Its use led many to believe that it remained the best practice to be used and was the most effective mode (Bowen 1985:77). Other scholars indicated that the initial use of this mode was in the International Labour Conference in 1928 and also in the 1929 VI Congress of the Comintern in Moscow (Chernov 1992:149 read with Moser-Mercer 2005a:208f). At the time, Ramler argues that the use of the consecutive mode of interpretation could not have been feasible because it would have taken more time to complete hearings (Ramler 1988:437). What made simultaneous interpreting possible was the advanced technological development lead by IBM systems, in which broadcasting and telephonic communication was made possible (Roland 1999:127).

A fitting description of the simultaneous interpretation is one afforded in simple terms, in which the interpreter is identified as firstly situated in an isolated soundproof booth, and constantly receiving a source language speech through his fitted headphones which they transfer into the target language through a microphone to the target language audience at roughly the same time, taking up the original message segment by segment (Seleskovitch 1978a:125). Although simplistic in nature the definition affords Kirchhoff (1976) to describe the above process as “quasi-simultaneous at most or, more aptly, as requiring a phase shift from source language input to target language output” (Kirchhoff 1976a:111). The argument advanced here centres around the use of term ‘simultaneous’, thus justified only from the perspective of an observer because the interpreter’s output cannot take place exactly at the same time as the production of the source

language segment, even if this fact was observed as early as the 1950s, arguing that the “interpreter says not what he hears, but what he has heard” (Paneth 1957:32). In addition Heather Pantoga (1999) argues that in simultaneous interpretation, the speaker’s utterances are interpreted continuously, but inevitably with a slight lag (Pantoga 1999:643). Gile (2001) gives scholars an outlook to this type of interpretation by offering his Effort Model. His model is motivated by the fact that there is a need to allocate processing capacity resources to three competing concurrent operations: the listening and analysis effort, the production effort, and a short term memory effort (Gile 2001). Gile argues that in an ideal interpreting situation, each effort works in isolation and on subsequent speech segment. Therefore given the intrinsic nature of the discourse, the patterns are always unpredictable (Gile 1995:34). As a result, there can be more effort in a single simultaneously interpretation process. Another major consideration in simultaneous interpreting is the time pressure. The way one segment is processed affects the availability of processing capacity for handling further incoming segments. Therefore this makes an interpreter working in this mode to be prone to temporary overload or saturation, which might result in erroneous performance. In an attempt to account for errors and omissions, Gile (1997) introduces the idea of failure sequence. He suggests the following:

the failure scenarios built around the Effort Models are intuitive, and rely on many cognitive hypotheses: the idea that the efforts are highly competitive; that because of this competition, their individual processing capacity requirements can be added against total available capacity; that interpreters have substantial control over the allocation of processing capacity to the efforts; and so on. Close inspection of these hypotheses by cognitive scientists is required.

It must be submitted that the idea by Gile (ibid) is indeed a tentative one, as one might observe that in spite of all reservations made above, still there are numerous instances of failure sequences predicted by Gile’s model, and these have been reported for various language combinations.

De Jongh (1992) submitted that simultaneous interpretation “demands that the speaker almost contemporaneously speaks with the primary speaker whose words are being interpreted” (De Jongh 1992:45). It is therefore plausible to assert that in simultaneous interpretation, the interpreter makes the audience hear the interpretation at the same time as the speech is made.

This fits in squarely in Gile's (2004) definition that interpreting be seen as a mode in which the interpreter has to reformulate the source message "as it unfolds, generally with a lag of a few seconds at most" (Gile 2004:11). The speed of both the interlocution and the interpretation is controlled by the interpreter, whereas in a simultaneous interpretation situation, the interpreter seems to play a more passive role when it comes to speed control. With a benefit of time in his hands, the interpreter would be better able and be afforded time to think out his interpretation, or seek to correct his or her interpretation right on the spot. Petite (2005) holds that in these modes of interpretation, the interpreter must have an added ability to "perform online and on the spot (Petite 2005:27).

It must be submitted that despite cost-effective considerations, court interpretation should and must always take precedence over other considerations. In essence, justice is to be done and miscarriage of justice is to be averted. Although it can be argued that simultaneous interpretation is hard pressed for time, there is often no assurance of delivery of accuracy. In many occasions, the output of the interpretation tends to be simply an approximation, a summary with many details omitted therein. Russell (2005) argues that the contention that simultaneous interpretation guarantees less accuracy should be given careful consideration and should be given to research modalities that suggest the opposite. In her study, conducted moreover in subjects where highly qualified professionals practiced, "simultaneous interpreting resulted in dramatic errors that were not corrected during trials" (Russell 2005:153). That led her to conclude that the "consecutive mode demonstrated a greater degree of accuracy than did simultaneous interpretation" (Russell 2005:151). Some scholars have considered the description and the wording given to this type of interpretation, Robert (1997) read with Gentile (1997) argue that the divisiveness of drawing distinctions among different types of interpreting creates massive divisiveness. In this regard Mikkelsen (2007) argues that this type of mode should not have been defined as 'simultaneous', because in essence the interpretation does not really take place at the same time as the source language is spoken (Mikkelsen 2000:73). Gentile on the other hand argues for the elimination of the use of adjectives to describe interpreting, he asserts that scholars should simply refer to the exercise as interpreting. Accepting the status quo, Mikkelsen (2000) asserts that it is rather naïve of him to think that people would stop or discontinue the use of qualifiers in interpreting, given the human propensity for classifying things in the state of nature.

In the context of the debate above, some scholars have given some compromises, by offering flexible definitions to be adopted. According to Du Plessis (1997:2), interpreting is described as occurring “virtually simultaneously” from the given source language. While on the other hand, HIN (2007:13) suggests that interpretation in fact occurs in phrases where there is “nearly instantaneous delivery”. Anyone reading the above views would be inclined to think that the use of terms tends to support Gonzalez et al and Gaiba’s thinking. To Gaiba, the offering of the word “simultaneous is vague and embarrassing, and thus a misleading notion because interpreters face the need to first comprehend a minimum of information before they can translate into the target language” (Gaiba 1998:8). It must be submitted that even though parties engaged in trial could have to hear both the original speech and the interpreted version at the same time, those who are listening can pick up which portions of the reported speech were being translated. It is not a compromise to accept during the interpretation exercise, the average interpreter engages in a self-checking mechanism (Gaiba 1998:10). This mechanism is only available to the interpreter and can only be active to the time available for interpretation. Therefore often the use of simultaneous interpretation militates against the activation and activeness of this mechanism.

Although it may be necessary in completing any studies about simultaneous interpretation, an overview of the origins may be necessary, but those are not without conflict. Two points emerged during the Nuremberg trial, one was to conduct the trials expeditiously, this was afforded by the Charter of International Military Tribunal, and the second one was the need for the defendants to use their mother tongue languages to defend themselves, which in turn necessitated the use of simultaneous interpretation (Gaiba 1998:34). Its use during trials failed a number of sceptics, among those was Chief Interpreter Peter Uiberall. He confessed in an interview in 1992, that “a lot of people felt that it could not be done: there were many people who were quite sure that it was impossible to do a thing like that, so we had to demonstrate that it was possible” (Gaiba 1998:37). Reporting on the output of this new method of interpretation, Gaiba asserts that interpretation was not always going to be to everyone’s advantage, like Reichsmarshal Goering who is reported to have quipped to interpreters, “You are shortening my life by several years” (Gaiba 1998:110). Another lesson learnt was resentment by many legal professionals involved in the Nuremberg trials; they all shared the dislike of having to wait for the interpreter before engaging in a spirited argument in cross-examination (Gaiba 1998:113).

Another form of simultaneous interpretation widely discussed by scholars is known as whispered simultaneous interpreting. This form is also known by its French term as “chuchotage”, is considered as root variation of simultaneous interpretation (Herbert 1952:7; Gile 2001a:41; Pochhacker 2004:19). By root variation, one means in a number of words or seconds the interpreter lags behind the speaker (Gerver 1976:169). Roland (1999) argues that whispered interpreting is the “rudimentary origin” of simultaneous interpreting (Roland 1999:126f). Adding to the above is Cartellier (1993) asserted that whispered simultaneous interpreting had come into existence long before around 1919, during the Paris Peace Talks. In this form of interpretation instead of being in a booth relaying a rendition through the microphone, the interpreter is visible and physically present to his or her audience of the interpreted process (this can be two people) whispering an output into their ears (Jones 1998:5). Mikkelsen (2000) suggests whispering interpreting is mostly preferred in courtroom settings. This is because it is cheaper to use (Mikkelsen 2000:73).

In deciding on whether to use simultaneous interpreting in the courtroom, this should be guided by a number of considerations. The first is that interpreters must recognise the impact of these modes on the administration of justice. Secondly at all times, the type of interpretation chosen must seek to preserve the meaning being transferred and also protect the record (Mikkelsen 2010:4). Russell (2005) suggests that the problem with this type of interpretation has huge potential impact of errors within the interpretation, furthermore a number of judges have made numerous views about the quality and the accuracy of interpretation as being paramount in the assessment of any case before court (Russell 2005:154). With the same view, Moeketsi (2000) argues that this mode of interpreting on many occasions results in a “loss of quality of the target language message because of the need for rapid reproduction of the subject matter” (Moeketsi 2000:232). Where interpreters engage in this process, interpreters find it hard to switch roles especially where there is a rapid interchange of conversation between a number of court actors.

It is fitting to accept that simultaneous or consecutive interpretation studies can and are regarded as highly complex areas of interchange where language perception, comprehension, translation and production operations need to be carried out with expediency and virtually in parallel. In most cases, when interpretation occurs simultaneously, it is performed under severe time pressure (Tommola & Hyona 1990). Around 1976 and 1978, the research done by Gerver and Moser respectively provided a foundation for the development of several modes of interpreting

performance that we have come to study. Another survey of studies done in this area have looked at aspects of input, and output, giving focus on the length of ear-voice span (Lambert 1984:20) and furthermore on the recall performance of simultaneous interpreters as recorded by Chernov (1979). Around 1980s, the interpretation scholarship took a different turn focusing on simultaneous sign language interpretation by seeking to describe the model of cognitive processing and the impact of these on providing effective interpretation. A vast body of literature is available on the above, with the scholarship of Coke (1984), Colonomos (1987) and Ingram (1985) leading.

(iii) Consecutive Interpreting

A further review conducted in the study of spoken language interpretation indicates an emphasis on consecutive interpreting during some parts of the trial during the session. Numerous descriptive studies have attempted to examine differences between consecutive and simultaneous interpreting. In this type of interpreting, two successive phases of this *modus operandi* have been identified throughout its history and until after World War 1. On many occasions the process was taken for granted. It was around the League of Nations, that consecutive interpreting started receiving attention. Around that time speeches by political minders were brilliantly interpreted by outstanding interpreters (see Baigorri Jalón 2000). Even then, what was perceived as their outstanding memory and command of languages became the focus of attention, rather than the process itself. Consecutive interpreting is now considered a technical skill, which requires training, but probably not higher-than-average memory (Gile 1995:181). Unlike translation, both traditionally identified modes of interpreting; simultaneous and consecutive are marked by the temporal load. Seleskovitch (1978) finds comfort in submitting that consecutive interpreting can be seen as “the most noble of all types of interpreting” (Seleskovitch 1978a:iv). The above submission is based on the fact that this type of interpretation is based on perfection, because failure to deliver a correct interpretation, free of nuances can easily be detectable. This line of thinking supports Gerver’s (1976) attempt, who also asserts that consecutive interpretation “is often thought to be superior” to the other modes (Gerver 1976:178). For him, this is based on the fact that this type of interpretation is sincere to any source language used.

In consecutive interpretation, the interpreter talks during the pauses between the speaker’s utterances (Pantoga 1999:643). There is prevailing evidence that suggests that consecutive

interpreting results in much greater accuracy in transmission of the message (Alexieva 1991; Bruton 1985; Cokely 1992). Consecutive interpretation is seen as emerging around the early 1940s (Herbert 1978:8-9). For the purpose of having a discussion about the application of this form of interpretation, the definition given by Gile (2004) is flexible and suitable. He asserts that this mode of interpretation is where “the speaker makes a statement, which generally lasts up to a few minutes, while the interpreter takes notes, then the speaker stops and the interpreter reformulates the statement” (Gile 2004:11-12).

On its strength, this method of interpretation allows for the conveyance of content of the source language message, as well as critical information in the structural elements of those messages that are not contained in words: pauses, tone of voice, stress. From time to time, interpreters in South African courts are increasingly using consecutive interpreting successfully in the practice. How do these interpreters decide how and when to use consecutive interpreting? What is the impact of their decision on the quality of interpretation product? All the above have created renewed interest in the interpretation scholarship. Russell (2000) conducts a study that consisted of a comparative analysis of simultaneous interpreting. Also consecutive interpretation can be held to refer to a rendition of the whole source speech segment by segment; the interpreter gets an opportunity to take notes during the interpreting process. This description is not without controversy. The time consideration in consecutive interpreting was a submission made by the AIIC (*Association Internationale des Interpretes de Conference*) that this time can be between 15 to 20 minute intervals. Adding to the above, Gonzalez says the time and the pace or speed taken entirely depend on the source language of speaker and the subject matter at hand (Gonzalez 1991:379). The speed of the source speaker can be interjected upon by the interpreter who interrupts as a strategy to request a repetition or a rephrase of the original message (HIN 2007:9). In the judicial context, consecutive interpreting is used to ensure quality and the production of a “legal equivalence”, defined by Gonzalez et al (1991) as “a linguistically true and legally appropriate interpretation of statements spoken or read in court, from the second language into English or vice versa” (Gonzalez et al 1991:16). This is in line with what Mahmoodzadeh (1992) suggests, indicating that the interpreting of any source language given through consecutive interpreting must be in “closest rendering” as possible (Mahmoodzadeh 1992:232). Thus for instance the witness’s testimony, the accused persons in trials, in depositions, questioning and further sentencing must be interpreted as faithfully as possible (De Jongh 1992:37).

Furthering an understanding in the definition of this mode of interpretation is Pochhacker (2004) who breaks down the traditional boundary for consecutive interpreting by attempting to re-set the continuum for the utterances to be processed and interpreted. Since consecutive interpreting does not presuppose a particular duration of the original act of discourse, it can be conceived of as a continuum which ranges from the rendition of utterances as short as one word to the handling of entire speeches, or more or less lengthy portions thereof, 'in one go' (Pochhacker 2004:18-19).

Pochhacker starts his assignment by dividing the notion of consecutive interpreting into two categories. Namely classic versus short and the following assertion is made: "Consecutive interpreting with the use of systematic note-taking is sometimes referred to as 'classic' consecutive, in contrast to short consecutive without notes, which usually implies a bidirectional mode in a liaison constellation" (Pochhacker 2004:19). In any comparison between the simultaneous interpretation and consecutive interpretation, it is true that consecutive interpretation is often used, this is partly due to the number of well qualified simultaneous interpreters and technical difficulties that may be exhibited (Gile 2001). Studies done over time indicate that consecutive interpreting results in much greater accuracy in any transmission of the message (Alexieva 1991; Bruton 1985; Mikkelsen 1994). Barnwell (1989) is too keen to come to the conclusion that simultaneous interpreting offers very little time to reflect on the linguistic choices needed for a precise rendering. However in consecutive interpreting, the interpreter often waits until a complete thought has been uttered and then can start with interpreting (Barnwell 1984:13).

Review of literature further shows that various approaches have been employed to model the interpreting process. Herbert (1952) argues that the approach to use when looking at different interpreting activity is to use an activity-based approach. He then breaks down the working procedure of interpreting into three distinct parts: (a) understanding; (b) conversion; and (c) delivery (Herbert 1952:9). Although this division is held by many scholars as highly irregular, sometimes being criticised as being insufficient, for the purpose of this study, the division is without problems. During the first phase, Herbert says that the interpreter needs to manage the six prerequisites for good standing. These prerequisites are as follows, hear it well, have an intimate knowledge of the language in which it was given, be acquainted with the specific culture of the country of the speaker, be aware of the linguistic peculiarities of the country in

connection with pronunciation, terminology, be well versed in the subject matter and lastly have the advantage of a wide general education (Herbert 1952:10).

It must be submitted that most process models proposed to account for the interpreting process have been rooted and oriented towards describing the simultaneous process. To date only a few models have been presented and have dealt with the consecutive interpretation process. Insofar as consecutive interpretation is concerned, Pochhacker (2004) argues that Herbert's account presented above is too general since it only touches on language-related issues and practical interpreting techniques. He further suggests that Herbert attempts to make suggestions without venturing much into the mental aspects underlying the process (Pochhacker 2004:47). As a result of lack thereof, more detailed models have been presented by several scholars. Among those is Seleskovitch's theory of sense, Gile's effort models and Weber's models. By no means are these models the centre of this research, furthermore the list herein is by no means comprehensive, but used for the purpose of sampling, since there are now other researchers who have suggested more or less similar models or stages of the process either in passing or in detailed discussions (Dam 1993:297) read with (Henderson 1976:108).

As a matter of interest, a more cognitive – oriented model has been presented by Seleskovitch (1986). His theory of sense attempts to identify three stages in which any possible interpretation would occur: thus “apprehension” of sense of the source language message in the interpreter's mind, and furthermore “expression” of that sense in the translated language (Seleskovitch 1986:376). For Seleskovitch, his model addresses any cross cultural pairs and discourse types, in an attempt to break away from any language, grammar or style to the interpreter's mind. Whereas Weber makes provision for five stages for the consecutive interpreted event, he however provides that there is hearing, listening, analysis, memorisation or note taking and interpreting phases. Simply explained, the first phase is without problems, since it is rather automatic and cannot be subjected to any interruptions; but simply enough to make the interpreter understand the meaning of the original speech. The rest of the phases in essence simply require skills development in interpreting such as good listening, note-taking and offering a careful rendition. This will be dealt with in the following pages.

Contrary to the above, Gile (1995) attempts to give a comprehensive account of the interpreting process, he envisages a two stage approach in the consecutive interpreting process as a

combination of 'behavioral tasks'. These tasks involve listening and note taking for comprehension, note-reading and speaking for production (Gile 1995:183). It must be submitted that in any attempt to discuss aspects of the interpreting process, a crucial consideration is the time factor in both simultaneous and consecutive interpreting (Kirchhoff 1976:45). Furthermore in consecutive interpreting, attentional capacity is also to some extent required, this is a result of two distinct phases, which are sometimes viewed as "double simultaneous" (Van Hoof 1962:20).

During the defined first phase of consecutive interpretation, the interpreter's attention has two focus points, on being able to apply simultaneous listening, analysis and note-taking, while in the second phase, the interpreter must seek the ability to reproduce the source language text by deciphering the notes. Other fundamental difference between these methods of interpreting is that the bulk of information derived in consecutive interpreting during the input stage is committed to the interpreter's memory. All this is due to the fact that since the time span elapsing between note-taking and speech reconstruction is a matter of more than several minutes, there is no need for the notes to cover all the information contained in a source-language text. Herbert finds it informative to pass this message using the following lines "[...] to serve as milestones in a speech which is still quite fresh to the mind" (Herbert 1952:34). Therefore given the discrepancies between simultaneous interpreting and consecutive interpreting, the processing capacity management in consecutive interpreting tends to impose different demands than in simultaneous interpreting. Having discussed the external pacing factor, most notable in consecutive interpreting is that only the first phases is jeopardised by saturation. Gile (1997) argues vehemently that in the second phase of reformulation, "there is no risk of overloading due to a high density of the speech over time (Gile 1997:203). Gile argues that this is caused by the fact that while the source language text is undergoing reformulation, there are no further input segments coming during that time. Therefore during this stage of functionality, the interpreter is relieved from attention-sharing and can concentrate on the processing of a given speech before him or her. It must go without saying that in cases of overloading processing capacity, when close to saturation in the listening and analysis phase, the interpreter can elect to stop taking notes and rely solely on his or her memory for the relevant speech segments (Gile 1995:205). Agrifoglio (2004) is not quick to accept note-taking as remedial strategy in coping with consecutive interpreting, he asserts that in many occasions insufficient notes, taken as isolated items by an interpreter can lead to the failure in establishing "an exact relationship among them" (Agrifoglio 2004:60).

This may result in an adverse effect. While talking about reformulation, it is important to have sight of what Nida (1964) and Seleskovitch (1978) noted, that any successful interpretation must not only be seen to include reformulation and “retranslation” into the target language, it must also produce the same impact or impression on the target language audience as that so created by the original speaker. Furthermore although subject to heavy debate, there is evidence in literature that interpreter’s using consecutive interpreting work from memory and notes, thereby finding it easier to break down the interpreting process (Mikkelsen 1994, Harris & Sherwood 1978, Alexieva 1991). Seleskovitch (1995) solidifies the relationship between the cognitive processes involved in consecutive and simultaneous interpreting when she states that “simultaneous interpretation can be learned quite rapidly, assuming one has already learned the art of analysis in consecutive interpretation (Seleskovitch 1995:30). Furthermore Bruton (1985) suggests that any continued progression of exercises aimed at teaching interpreters to grasp, analyse, remember, and only then reproduce the message of the speaker is subsequently possible to proceed with to acceptable simultaneous interpretation where required or desired. It is true that both interpreting modes employ the same cognitive processing skills, with the only difference being the amount of time that elapses between the delivery of the source of utterance and the delivery of the interpretation.

It is true that consecutive interpretation does need additional execution time, which scholars say goes between one-tenth to three quarters of the original time given for the interpretation process (Seleskovitch 1995:36). Furthermore it can even be engaged in when the interpreter does not have a text in its entirety, that is, the person delivering the source utterances may have to say, but the interpreter has enough information to deliver a message that could stand alone if needs be. An interpreter may elect to use consecutive interpretation when there exists an edited and condensed message by the source language speaker. It is important for an interpreter to recognise the importance of the verbal proceedings. This is because any given edited information can result in opportunism by defence counsel, who would merely wish to take advantage of any inconsistencies or verbal slips (Gonzalez 1991:379). Therefore at all times, the interpreted voice must seek to lend a true voice of the accused person or witness by ensuring that every aspect of the source language uttered by the speaker is interpreted into the translated language, as “faithfully as is humanly possible” (Gonzalez 1991:380).

Although there is no vast literature labouring the point of interpreter fatigue when using consecutive interpreting, Grusky (1988) accepts fatigue as a drawback and asserts that a great deal of consideration must be given to that. Although it is easy to admit that consecutive interpreting is taxing mentally and physically (Grusky 1988:26), a further consideration must be that interpreters are always constantly under a great deal of pressure to seek to retain every single element of the source language message, although in many occasions their powers of recall can be said to be advanced by taking notes, they must rely mainly on their memories. Although the interpreter may have the freedom of interruption, it is not unlimited, (Gonzalez et al 1991:395). Even if engaged, the witness may simply elect not to give the same answer the second time around and vital testimony or correctly echoed facts may be lost.

Interpretation in the courtroom cannot be regarded as a process without problems. This is due to the fact that the court must always seek to protect the court record and adopt suitable instructions in making parties aware of the potential problems that can be exhibited in court (Hewitt 1995:19).

In concluding this section, it is interesting to note that the courtroom has not only been the only platform in which consecutive interpretation has been valued for its additional accuracy it provides. During the early years, the great debate took platform during the early years among interpreters about the relative merits of the two modes of interpreting. Correctly cited in Baigorri-Jalon (2004), he described it as the “battle on behalf of consecutive interpreting waged by veteran professionals who sort to cut their teeth in the League of Nations and in other platforms of the diplomatic core.” After that emergence, simultaneous interpreters were then regarded as mere telephonists or parrots to anonymity in their booths, which stood opposite to “performers who dazzled delegates with their impressive memories and eloquent oratory” (Baigorri –Jalon 2004:67). Following Bargorri – Jalon’s line of thought, he reports that by the 1970s, the interpreting landscape source simultaneously interpreting replacing consecutive. He further asserts that the only purpose, in which consecutive is used, is to enhance and train simultaneous interpreters (Baigorri – Jalon 2004:147). Overall, there is generally accepted scholarship that consecutive interpreting is preferable when absolute precision is required. In some court jurisdiction precedents, mandates and certain modes of interpretation can be used, thus making its use a legal requirement, and the interpreter ought to follow the set law in these matters at all times.

2.7 Types of interpreting

(i) Community Interpreting

A review of interpreting literature seems to suggest that any discussion focused on the types of interpreting should be, or is rooted on the basis of the setting and the focus of the subject being interpreted at the time. The two distinct types of interpreting are namely community interpreting and conference interpreting. Community interpreting is said to refer to “interpreting which takes place in the public service sphere to facilitate communication between officials and lay people: at police departments, immigration departments, social welfare centres, medical and mental health offices, schools and similar institutions” (Wadensjo 2001:33). The discussion here is focused on justifications of why community interpreting is considered as a super ordinate (general term) that is held to include all other types of interpreting, inclusive of court interpreting.

For scholars such as Dubslaff and Martinsen (2003), they suggest that the term “community” interpreting subsumes other genres that are in existence in interpreting scholarship. In this regard Phelan (2001) and Mikkelsen (2000) that is the case (Phelan 2001:1). For some scholars, community interpreting can also be known as ‘cultural interpreting’ (Pochhacker and Shlesinger 2002:8; Pochhacker 2004:15). For HIN (2007), this type of interpretation is designed to enable locals or residents of a community to gain access to public services when they do not speak the main language of the community or regional dialects. This description exists in contrast to interpretation afforded to politicians and diplomats who may from time to time participant in conferences (Mikkelsen 1996a:126f). Another controversy encountered when seeking to differentiate community interpreting from other types of interpreting is the following phrase “it enables people who are not fluent speakers of the official languages of the country to communicate with the providers of public services so as to facilitate full and equal access to legal, health, education, government, and social services” (Carr et al 1997). This type of interpreting has also come to be known as liaison, ad hoc, three–corned, dialogue, contact, publics service, and cultural interpreting; it must be submitted that there seems to be little or no consensus whatsoever about the definitions of these terms and whether or not they are synonymous (Gentle et al 1996, Carr et al 1997).

The exercise of this type of interpreting is carried out bi-directionally in consecutive mode; this tasks the interpreter to work into and out of both languages (Wadensjo 1998:49). HIN (2007) suggests that each language gets interpreted as both source and a target language. This is the character that gives this type of interpreting to be referred to as 'liaison interpreting' (Gentile et al 1996:1) or 'dialogue interpreting' (Wadensjo 2001:33). It must be submitted that this should not mean that liaison interpreting must be said to refer exclusively to interpreting in community or business settings. The very definition of liaison interpreting is as a given form of interpreting in 'spontaneous conversational setting' (Hatim & Mason 1997:219), thus positioning of liaison interpreting in the middle ground between community and conference interpreting. Gentile et al's (1996:ix) refer to "liaison interpreting in non-conference settings", seeking to indicate that liaison interpreting can be used to refer to a variety of interpreting settings including high-level ones as long as the interpreting instance can be regarded as conversational, not monologic (Keith 1984:312).

Although interpreters work in one direction at a time, there are instances where interpreters are forced by circumstances to work in two directions with each of the languages involved becoming interchangeably the source language and the target language. In these situations, the interpreter works in both directions and source language speaker gets an opportunity of becoming the audience during the same interpreted dialogue which is different from monologues typical of consecutive interpreters (Pochhacker 2004:20). This situation is typical of 'interpreter-mediated communication in face-to-face interaction' (Mason 1999:147). Scholarship in this type of interpreting developed as a sub-domain around the mid-1980s. The scientific inquiry appeared only about a decade later and was heralded by Wadensjo's (1992) doctoral dissertation on interpreting in the immigration and medical settings. From there on, the domain became a subject of heavy scientific research and continued to grow to the extent that the profession is now more likely to be regarded as a full time job than a part-time hobby for amateurs, (Mikkelsen 1996a:127). It was for a very long period where community interpreters were once considered as amateurs and well-meaning but misguided "do-gooders" (Gonzalez et al 1991:29). To date, the growing interest in research in community interpreting is reflected in the growing volume of contributions on (Mason 1999; 2001) and interest in issues in community interpreting and in convening of academic conferences dedicated to research into community interpreting (Amato & Mead 2002), such as the 'Critical Link' series of the conferences (Roberts et al 2000, Brunette et al 2003 & Carr et al 1997). Some academic advocates continue to consider community

interpreting as an umbrella term that includes court and medical interpreting (Mikkelsen 1996b). Another debate suggests that in fact community interpreting is by definition performed in the consecutive mode (Gentile 1997). With such submissions holding water, it must be known that in fact simultaneous interpreting is often used when the interpreter is capable of it and the situation is conducive to it (Gentile et al 1996). For Gentile (1997), he submits that he is not comfortable with using the term “community interpreting”, he proposes that for a lack of a better descriptive word, the term “liaison interpreting” better describes the process (Gentile 1997:111). For him, if scholars do not discontinue the use of the term “community interpreting”, he says he foresees an adverse effect on the profession which may lead to a “Cinderella image” (Gentile 117-118).

(ii) Conference Interpreting

Conference interpreting is billed as one of the most prestigious and highly paying forms of interpreting, but an equally demanding one as it is characterised by high-quality performance owing to the growing developments in international communication. Scholarship on conference interpretation can be traced back to the 1950s which is marked in essence also as the beginning of research into interpreting studies (Gile 1995a:1). Furthermore other studies have also drawn profiles of relevant issues that seek to have characterised the literature on conference interpreting (Pochhacker & Shlesinger 2002:5). For Pochhacker (2004), the only association that can be done with relation to this type is that it can be associated with multilateral diplomatic interpreting. Furthermore the call by the European Union (EU) has also contributed to the spreading of conference interpreting to almost all fields of interlingual and intercultural communication (Pochhacker 2004:16). Conference interpreting is mostly carried out in simultaneous interpreting settings.

2.8 Conclusion

This chapter sought to give an overview of the development of interpreting in general and how that shaped court interpreting in particular. This chapter further outlined theoretical perspectives and approaches to both interpreting and translation. A number of scholarly views present themselves when it comes to the definitions of interpreting and translation. Any attempt to explain the differences between the two, presents innumerable and contrasting scholarly views. There are those who suggest that translation should be considered merely as a form of

interpreting, while others scholars canvass for interpretation that should be considered as an independent field altogether. Flowing from the above was to outline the different modes of interpreting and further types of interpreting. Another issue dealt with in depth in this chapter was the categorisation/classification of legal/court interpreting under the umbrella types of interpreting. Furthermore, defining factors which regulate such classification were given.

The next chapter focuses on the methodology used in this study. There I attempt to describe the methodological underpinnings of this research. In particular, I describe in detail the methodologies used, that is qualitative research and the case studies methods. A further description of research setting, participants and data collection methods is outlined.

CHAPTER 3

RESEARCH METHODOLOGY

3.1 Introduction

This chapter deals with the research methodology adopted for the purpose of this research thesis. The chapter also focuses on providing and justifying the research design that has been selected.

3.2 Qualitative and Quantitative study

The fact that this study is located within the domains of the social sciences and humanities has influenced the choice of a qualitative approach. Researchers such as Nelson, Treichler and Grossberg (1992:2) assert that the qualitative approach is “interdisciplinary, transdisciplinary and sometimes counter-disciplinary”. The preference for this approach is further reinforced by the fact that it is also practised in linguistics, in areas such as pragmatics, discourse and conversation analysis (Wray et al. 1998:95). With this approach the results from the data will be largely represented by words (Walliman 2006: 54-58). But to meet the goals set in this research, it will be necessary to quantify the prevalence of cases taken for review due to linguistic irregularities.

It is worth submitting that a high level of relevance to the practice, as well as the predominant use of authentic data in legal interpreting research does add strength to the validity of studies such as the present. A survey of research done, signals that the majority of research done has focused on the collection of authentic interpreting data or of the opinions of the participants involved in interpreted interactions such as interviews (Berk-Seligson 1988, 1990, 1999; Hale 1997b; 1999; 2004; Mason & Stewart 2001; Pym, 1999; Rigney 1997) and focus groups (Fowler 1997; Kelly 2000; Hale & Luzardo 1997; Angelelli 2004). All these emerge from methodologies derived from discourse, conversation analysis and ethnography. In painting the picture, descriptive research is crucial in obtaining an understanding of the practice and attending to the structure of the body of empirical evidence that complements founded anecdotal evidence (Remenyi 1996:23).

This is motivated by the fact that the researcher intends at going beyond the use of numbers and generalisations and to engage people. The qualitative aspect of the interpretive paradigm is appropriate to the current research because it seeks to interpret a social phenomenon in a natural setting in which people's experiences, actions and knowledge can be held to be gathered and captured (Merriam 2001:56). What this method further enables is the use of resources which can inform us about what happened, as qualitative researchers, our aim is to study a slice of events as they happen in the field (Babbie & Mouton 2001:271). A noteworthy factor regarding qualitative research is that it is mostly used and conducted in a relatively structured manner and qualitative research is that it is normally conducted in a relatively unstructured and flexible manner (Struwig & Stead 2001:13-14). Although that may be happening, the reliability may be sometimes called into question. Researchers tend to be quick to jump to assumptions and generalisations, all of this based on a small database or from inclusive results. This is why this experimental study, attempts to use a combination of sound qualitative and quantitative methods of analysis. These are needed to test the hypotheses raised by descriptive studies.

3.3 Research Paradigms Methodologies and Methods

3.3.1. Paradigms

(i) Interpretive and inductive paradigm

In doing this research, the researcher adopts the meaning and the understanding of the term “paradigm” as correctly defined by Kuhn (1962), who asserts that it refers to “the source of methods, problem field, and the standards of solution accepted by any mature scientific field at any given time (Kuhn 1962:103). Guba (1990) adds more taste to the definition by saying he thinks the term refers to a “basic set of beliefs that guide action” (Guba 1990:17). What both thinkers wish to share is that the term gives the researcher's window to the world, and how this worldview leads his or her research. It is fitting to suggest at this point that this research and rather my ontological assumptions that may emerge have come about as a result of construction by the individuals I will research.

The first tiers of this research are located within the interpretive and inductive paradigm (Cohen, Marion & Morrison, 2000). What I aimed for through the use of these paradigms was to attempt to comprehend the subjective practices of individuals rather than focusing only on mechanistic

understanding of human behaviour which is envisaged through the positivist paradigm (Cohen, Marion & Morrison 2000:16). Motivating the use of the paradigm, Van Rensburg (2001) submits that any attempt to use such a paradigm would mean an interpretive research method rooted or “interested in the meaning that people make of the phenomena” (Van Rensburg 2001:16).

Adopting the interpretive paradigm, one cannot avoid noting meaning equivalence associated with this paradigm. Schwandt (1994) says it is a paradigm that provides a symbolic experience that attempts to “understand phenomena and to interpret meaning within the social and cultural context of the natural setting” (Cantrell, 1993). Even though on the other side Van Rensburg says that this paradigm can be somewhat limiting by asserting that “interpretive researchers are often not that interested in taking actions through or even after their research; their focus is on unravelling the complexities of social life as they and the research participants experience it” (Van Rensburg 2001:17). The assertions made above maybe somewhat true about this research in essence, where the research will enter the courtroom discourse as the research design stipulates and furthermore, reflect an interest in contextual meaning-making and conceptual understanding, rather than generated rules. It is true to hold the viewpoint that this research will seek to indulge in rich, detailed information of a qualitative nature through in-depth questionnaires, document analysis, and all of this is afforded and supported by available literature reviews and interviews.

It is true and necessary to mention that this research reflects the belief that absolute objectivity is impossible to achieve, but one can make efforts to strive towards achieving this (Patton 2002). Guba (1990:10) also believes that reality can be held to exist as a mental construct, and, because any perceived facts are to be held to be value-bound. This necessitate that also any possible inquiry be value-bound as well. So overall, the research has adopted a paradigm that will require of the research to seek to “enter into the world of another, to empathise, experience their worldview, and convey this to others” (Goldenberg 1992:9).

The researcher attempts to employ multiple methods in order to capture as much of the reality of the research as possible. All these are deemed necessary and “are needed to generate and test theory, and improve understanding over time of how the world operated” (Patton 2002:92). Therefore this will afford the use of different sources of information to validate data triangulation, which in turn will activate a degree of accuracy and reliability of the findings

made. The key word for this process is to seek corroboration of the same facts or phenomena which have been established (YIN 2003:98-99).

(ii) Critical Paradigm

The motivation for the adoption of this paradigm in this research attempts to find a recognised and workable platform that will enable one of the research aims to be met. One of the goals of this research is to energise and facilitate transformation. In doing that, there has to be an acknowledgment that events do not exist independently, but are tied up in time and place to the social and economic context (Guba 1990:25).

Therefore anyone who attempts to do research in this particular setting must bare that in mind and be critical of such settings. Critical theorists can be held to share the idea that the worldview is embedded in issues of equity and hegemony and consider the main purpose of any critical research to be the emancipation of people “through critique of ideologies that promote inequity and through change in personal understanding and action that leads to transformation of self-consciousness and social conditions” (Cantrell 1993:83). Like the interpretive paradigm, this paradigm rejects the notion of positivist approaches and asserts that there should be an inquiry which is value-free (Guba 1990:23). It is worth mentioning as well that there are tenets where these two paradigms differ. For instance, where interpretativists seek understanding and interpretation, critical research attempts to emancipate through the questioning of ideologies (Cantrell 1993). If this paradigm is adopted, it will enable the researcher to investigate the relationships between various participants in the courtroom and furthermore seek to explore different interests served.

3.4 Methodology

Methodological rigour has been striven for in interpreting studies for the last decade. Gile (1990) asserts that “although interpretation literature includes a fair amount of speculative theorising [...], it contains very little scientific research” (Gile 1990:28). He proposes that the focus in researching should be “careful observation of facts as opposed to speculations”. Furthermore methods and reasoning process should be “explicated for the benefit of the reader, who can thus assess their accuracy and validity, and replicate experiments to check results (Gile 1990:28-29).

For Franz Pochhacker's (2004) methodology, rigour and data became the key-words. He asserts that most researchers have moved into a dialogic, discourse based interaction paradigm, but that still leaves the methodology in quantitative approaches and cognitive processing (Pochhacker 2004:78-79). Therefore as observed in many studies, they previously invoked the reality that the researcher's wishes to analyse case studies does at times not succumb to being quantified and measured.

Winston (1995) describes methodology as employed to signal or indicate the conceptual and philosophical assumptions that justify the use of particular research methods. It is through methodology that researchers are able to better position themselves to understand not only the products of scientific inquiry, but also the process itself. (Winston 1995:38-39). Another academic definition of methodology is afforded by Saunders (1997), who asserts that it "involves a multistage process which one follows in order to undertake and complete the research project" (Saunders 1997:3-4). The stages that I advanced in this research include: topic formulation, literature review, design, data collection, data analysis and reporting of the findings. In terms of methodology acceptance is given to the idea that methodology can be "viewed as an interface between method practice, substantive theory and epistemological underpinnings (Harvey 1990:1). Then as such, "presuppositions that inform the knowledge that is generated by the inquiry" are accepted (Harvey 1990:1-2).

In this research, the methodology employed is located within the ethnographic methodology, as this will allow the researcher to explore the setting of the research in a more naturalistic fashion. Now ethnography will be examined in greater depth.

3.4.1 Ethnography

This research is motivated by the cardinal belief that the level of relevance of research to practice is given value and strength by the predominant use of authentic data, which in turn validates such studies. The nature of this research takes into consideration the notion that "there is no such thing as absolutely "raw" data. Data is ultimately taken, not given" (Arrojo, Chesterman 2000:1) and that the choice of ethnographic research holds potential as an overarching framework of this research. As seen with most studies in interpreting, researchers as of yet have not found objectively measurable standards which can be used to assess interpreting quality (Kurz

2001:398). Pochhacker (2001) also adds that this search for a common method leads to another problem, when the time comes to define what is meant by quality, because quality research may also take on numerous forms.

Watson-Geogo (1988) holds the view that ethnographic research focuses on “people’s behaviour in groups and on cultural patterns in that behaviour” (Watson-Gegeo 1988:577). However he further argues that data collection, nevertheless, must take place within a theoretical framework, which serves to guide the researcher to particular aspects of behaviour, and informs the research questions that are asked. It is true that this particular research exhibits this particular feature, as I observe the setting and the participants, furthermore attempting to get their views. Ethnography is said to represent one type of qualitative observational research, although a number of observational research approaches exists under the umbrella of ethnography (Scollon 1988:276-276).

There is more academic support in suggesting that the roots of ethnography have been seen in anthropology and sociology research (Altkinson & Hammersley, 1994) further in (Wilson 1982 in Nunan 1992:33-34). Wilson further holds that ethnographic research can easily associate with the naturalistic-ecological perspective of human behaviour, which on many occasions tends to stress the importance of context and a qualitative phenomenological approach, which in many instances evaluates and questions the belief in objective reality “beyond” the participants and researchers (Nunan 1992:56). Therefore generally speaking, an ethnography can be said to be a piece of research in which a culture, or social group, is observed in a natural setting over a period of time (Creswell, 1994).

Important to note is that ethnographic research entails the notion that “there is interaction between questions/hypotheses and data collection/interpretation”. All these would be attempts in “finding a theory that explains data” rather than finding “data to match a theory” (Nunan 1992:52-69). It is the view that the research carries forward that the certain flexibility provided by this method is beneficial in the initial stages of this research. Another feature that must be noted is that the method also stresses that we must also observe the key principles of “holism”, thus suggesting both the behaviour of individuals and groups under investigation and the context in which behaviour occurs and which has an impact on it must be taken into account.

Furthermore the research should take into account as many factors which may have an effect on the phenomena under investigation (Nunan 1992:55).

Watson-Gegeo (1998) adds that in looking into a more holistic nature, the focus mainly is not breadth of data, but rather on the depth of such data. By doing that, the research adds an added advantage of being able to point out through ‘portrayal’, and point out that “rich, descriptive accounts” seem to offer “a kind of intermediate technology of research adapted to the study of practical problems in realistic time scales” (Nunan 1992:58). It is fitting then to submit that ethnography is at all times seen equally, as accepted and respected ways of research, and serving the purpose of finding out more about the objects of our study.

3.4.2 The extent of critical ethnography

Although as presented above the appealing principles of ethnographic research might seem at first glance the best method, one must be alive to the possible drawback of this approach, as well as of the ways that exist as possible safeguards against these. For instance, Nunan (1992) says that the bulk of criticism is directed at the fact that ethnography mostly works with certain contexts and situations, which are described in detail, as a result of detail, that makes it difficult to include all in a research paper (Nunan 1992:58-62). However some scholars have noted that critical ethnography affords on the other hand an alternative that seeks to explore (Thomas 1993:4) and change the setting of problems identified during the research. As Carspecken (1996) asserts that research needs to be critical, and should seek to change society for the better. I find it necessary to include this critical ethnography as a supplementary approach. This research aims to be critical in that it will identify possible ideologies of the participants involved in the research, particularly in establishing whose interests are being served by the current situation in the courts. This supplementary approach will seek also to provide a primary outcome of this type of research, thus affording a critique of cultural and social processes in the courtroom, as well as research conducted into these.

The rest of this chapter will focus on the methods of data collection and the sampling methods used to select the population for this study.

3.5 Data Collection

The suggestion that ethnographic research is flexible when it comes to any particular research methods or tools puts the process of data collection at ease. In this chapter I describe with particularity on how the researcher collected data on which this study is based. It must be submitted that data collected in the application is of a qualitative approach and it is usually stated in words and cannot be precisely measured or quantified in numbers (Walliman 2005:55). What can be deduced from the reading of earlier chapters is that the qualitative approach was used and complemented by a quantitative approach which takes the format of basic descriptive statistics. In this research descriptive statistics will be used in an attempt to explain the fundamental characteristics of a collection of data; and this method is seen as very vital in summing up of possible variables (O'Leary 2005:238-239). As a matter of further engagement in this study, data distribution is reflected in the form of a tabular representation of the percentages of respondents with regard to the issues covered in the questionnaire (see Appendices B, C and D). Put simply, the suggestion is that data will be analysed and presented to reflect the degree and actual rate of occurrence of particular variants (Wimmer & Dominick 2000:233-234).

3.6 Participants

3.6.1 Who, How and Why

The setting is Eastern Cape High courts and lower courts, which are courts of first instance for the majority of both criminal and civil cases. For the purpose of this study, interpreting in five High Courts was analysed: the Grahamstown High Court, which is a full bench, Port Elizabeth High Court, Bisho High Court, East London High Court (sitting periodically) and Mthatha High Court. Lower Courts: Grahamstown Magistrate and District Court, Port Elizabeth Magistrate and District Court, Bisho Magistrate and District Court; East London Magistrate and District Court and Mthatha Magistrate and District Court. All these courts are courts of first instance, which motivates their choice. Furthermore these courts have been chosen because they are situated in one of the biggest provinces in the country, which means that they get the bulk of cases in which interpreters appear. Therefore permission was sought for this research from the Department of Justice and Constitutional Development to conduct this research (see Appendix A - Letter of introduction).

Also for the purpose of this research, both interpreting in criminal and civil cases was investigated. The reason for this is that the State only provides interpreters for criminal cases, and lawyers have to find their own interpreters in civil cases. The reasons for this are (1) that interpreter assistance is mainly required, and used, in criminal cases, and (2) that interpreters assisting in criminal cases, and interpreting between isiXhosa and English, are always authorised interpreters whose names appear on the official list. Records in the both High Courts and lower courts (as in all other courts in South Africa) are in English or Afrikaans only, as if proceedings were always monolingual, and they are not verbatim. Of course, one consequence of this is the impossibility of proving interpreter errors or inaccuracies after the fact.

In criminal cases heard in lower and High Courts the participants are the magistrates/judge (see magistrates and judges questionnaire as in Appendix C), the prosecutor (see questionnaire as in Appendix D), the defence counsel, the defendant, the witnesses and the interpreter (see questionnaire as in Appendix B). There are no jury trials in both courts. Each participant has a specific role and the procedure is laid out in the Criminal Procedure Act. The Magistrate hears the case, which involves asking questions and allocating turns, and passes sentence. The prosecutor prosecutes the case and aims for a conviction. The defence counsel presents the defence and aims for an acquittal or a reduced sentence. The prosecutor and the defence counsel present their case from the point of view of the party, or parties, they represent. They both have a message to sell, and they will both want to bring certain issues or aspects into focus. To achieve this purpose they will present evidence and examine and cross-examine witnesses.

The interpreter is present in the courtroom to ensure that the other participants may communicate as if the proceedings were monolingual. The goal is to ensure the success of the communication, i.e. that all details as well as the message of a particular dialogue is understood by all participants. Though present in the courtroom, the interpreter is not a part of the proceedings. The court will presume that s/he is familiar with the guidelines and court procedure. There are expectations that she or he will take the oath. When seated the interpreter will sit next to the defendant or witness whom she is to assist, and, ideally, the other participants will communicate as if s/he is not there. Ideally, because in reality participants often find it hard on their part to ignore the interpreter's presence and in fact speak directly to him or her, instead of through him or her. Some participants seem to forget that the interpreter is not the author of utterances (Wadensjo 1992) but merely relays the utterances of others. However, based on my own

experience and conversations with other court interpreters, I venture the statement that this, though annoying, is not a serious problem for a court interpreter, and that most interpreters will simply go on rendering utterances in the first person as if the “mishap “had not occurred”. The same is similar to civil procedure used in the conduct of civil trials. It is because of this explanation that all actors in the courtroom form part of the participants in this research.

3.7 Interviews

In order to collect part of the required data, I employed the method of observation, as well as interviewing. As a legal practitioner I spend most of my time in court. I am competent in isiXhosa, Sesotho, isiZulu and the languages of record, English and Afrikaans. The essence of interviews in this research was to obtain first-hand information from parties in a court case. Secondly they were used as a means of corroboration and/or explanatory clarifications. This method will also set uniform questions to magistrates, prosecutors, attorneys, senior interpreters, principal interpreters and chief interpreters. Both structured and unstructured interviews were utilised, the former of which took the form of a questionnaire both with closed and open-ended questions. It must be accepted that interviews used in ethnographic research facilitate the democratisation of the research by allowing the participants a viewpoint in the process (Carspecken 1996). Furthermore interviews tend to allow the researcher great leeway when intending to collect data, and allow for an opportunity to observe the interviewee while responding and asking questions. This aspect is particularly important for this type of research as the research aims at obtaining insider accounts and perspectives (Carspecken 1996:32). Interviews are always further categorised as standardised, unstandardised and semi-standardised interviews (Berg 1998). In this research semi-standardised interviews were utilised.

The interviewing process allowed the researcher and the respondents to interact more and thereby make possible additional explanations in research discourse. Also this is to afford the time to go beyond the mere exercise of interviewee responding to questions. This method also set uniform questions to magistrates, prosecutors, attorneys, senior interpreters, principal interpreters and chief interpreters. The justification for the use of interviews is that they allow for social interaction between the respondents and the researcher or interviewer hence making it possible to provide additional explanation in cases where the respondent does not understand the question put to him/her (Welman, Kruger and Mitchell 2009:165).

In some interviews, unstructured questions were used. According to Wimmer and Dominick (2000:163), open-ended questions are used when the respondents are required to provide their own answers. Wimmer and Dominick further add that with open-ended questions, respondents are able to provide in-depth responses to the questions asked, and the researcher is able to ask further questions not covered in the questionnaire.

3.8 Observation

The courtroom observation was aimed at collecting primary data regarding the use of language in court and the implications thereof. I undertake to observe the cases that I am not professionally involved in. At the time of observation I chose relevant cases, the proceedings of which are recorded by a stenographer for filing. I then transcribed the recordings and analysed them. From the observation point of view it is sometimes said that people forget quickly the fact that they are being recorded and observed. This may be partly true, but documented subjects may find it difficult from time to time not to pay attention to the fact that they are under surveillance. It is worth submitting that institutional talk is by definition controlled and agenda-bound, and at least in many occasions the lay people involved may experience being objectified and observed in this kind of encounter. Therefore the presence of an interpreter in a sense adds to the perception of surveillance, for the lay persons and the professionals alike.

The method adopted in this research was then complete participant observation, this type of observation is of the view that the participant enters into the world of the researched as a “native”, and in the process of doing that he acquires information first hand of the setting (Hammerly 1995:16). In most settings, the researcher does not have any contact whatsoever with the participants (Creswell 1994:14). The second reason for adopting this covert method is that it will enable the identification of the relative status, thus of each participant in the court process. Because the courtroom is public domain, I felt justified in using this type of observation.

It must be noted that when a researcher observes, he simply views ongoing activities, without making any attempt to control or determine them. Data from subjects who are expected to share patterns of behaviour can be pooled. Subjects with contrasting characteristics can be compared (Wray 1998:185-186). Data is usually gathered in various ways; as a result observation data is

qualitative in the first instance, consisting of recordings, transcriptions and notes relating to your subjects' behaviour and language. An advantage to the use of observation studies is that they are relatively easier to administer. Indeed for instance with the use of pre-recorded material, you can avoid many of the practical difficulties of data collection. Observation has also been used in this study at the planning stages in order to get ideas and to further determine the feasibility of the main procedure to be used in this study.

What may be difficult in this method is to predict what sort of material you will get. Furthermore observations are difficult to replicate on another occasion because there are so many uncontrolled variables. Lastly, it may well not be easy to produce well-focused conclusions because the data is so unstructured and multi-faceted (Wray 1998:189).

3.9 Case study and purposive sampling

By design, this research considers very importantly case studies relating to the subject matter. This method is used to select the parties (respondents) who were part of the study. According to Wimmer and Dominick (2000:84), by means of purposive sampling, it is possible to select subjects on the basis of specific qualities and characteristics. Purposive sampling was also used to select attorneys and advocates from the ones observed in court automatic review proceedings. The reason for the inclusion of advocates and attorneys is that they are principal members of the verbal court process. It is specifically important to learn about the linguistic challenges they encounter in courtrooms when representing their clients. The data from the interviews was used in formal analysis (Bogdan and Biklen 1992:158). It must be noted that case studies can be used as a vehicle for both qualitative and quantitative research, especially when a researcher is dealing with language plus special circumstances like the courtroom. It may be necessary for instance to build up a profile of normal individuals and also aspects that relate to language. All this will enable the researcher to accumulate background knowledge of what the range of normal developments is, so that you have a baseline against which to interpret the patterns you observe. With that done, the data collected here is valid in its own right (Wray 1998:190).

3.10 Conclusion

This chapter served to define the methodologies and the methods that had been employed in collecting the data for this research. In particular, an interdisciplinary approach was described as combining qualitative and quantitative approaches. The action of the quantitative approach in this research was limited and confined to a tabular representation of the processed numerical data. This chapter has also described how the data was collected and how participants were selected was described. The different methods of data collection were inclusive of both structured and unstructured interviews. Also, researcher observation played a vital part of this research. In addition, case studies rising from South African case law were used as a form of sampling. Additionally, any other sources of information contained in the study were given, and furthermore it was explained how the researcher gained access into the research field.

As a guiding principle, ethical considerations for the study were described and explained in this chapter. The raw data collected was transcribed and subsequently analysed. In the next chapter, a detailed discussion of theoretical perspectives on interpreting will be given in relation to the data analysis.

CHAPTER 4

DATA ANALYSIS

4.1 Introduction

In this chapter, an analysis of the data collected in terms of the methodology devised in chapter 3 is presented and furthermore research questions as presented in chapter 1 are answered. This chapter is also mainly an ethnographic discussion of the data derived and solicited from court interpreters, magistrates, and prosecutors. In this chapter a summary of the findings resulting from sampling methods used is embarked upon. It must be submitted that data analysis was an ongoing exercise through the duration of the study; as a result data herein is arranged on the basis of the identified subject matters into which they fit. What also forms the focus in this chapter is rather addressing the “narrow” questions in this research, namely:

1. What are the duties of a court interpreter?
2. Are there any identifiable wrongs with court interpreting?
3. If problems exist, what are the problems with the current system of interpreters?
4. Are any efforts being made to remedy these problems?
5. As matters stand, whose interests are served by maintaining the status quo?

Before any attempt is made at answering these questions, I find it necessary to provide a brief description of how the data is presented, as well as why I elected to view and analyse the data in this fashion. In this analysis I have separated questionnaires, interviews and observations gathered. It must be submitted that in essence the questions in the interviews were designed to ensure that data relevant to this research was directly elicited. The motivation behind this nature of presentation is to encourage a continuous flow of information. Furthermore, data presentation will feature prominently, hence a constant reference to post-survey interviews with the subjects of this study. The surveys serve as a safety net, in the case where responses to the questions tend not to accord with what is being asked or what the research had observed during court proceedings. The main aim for the lack of reasonable response may have been due to the fact that some respondents may have not given enough thought and reflected about their actual practice, and furthermore did not reflect about real issues concerning interpreting. Another reason may have been due to a lack of understanding of the questions, or the options available as many

answers in the questionnaires tended not to match the answers they would have liked to give. Therefore the researcher had deemed it necessary to rectify this effect; hence a post-survey interview was used in respect of some of those which needed elaboration. Although different types of questionnaires were given to five different types of respondents, namely court interpreters, prosecutors, magistrates and attorneys. It must be submitted that the main theme and emphasis in this discussion is on the data collected from court interpreters, while the data derived and collected from other respondents was used and discussed by way of comparison. A further submission is necessary, that in view of the present research no major distinction is made regarding court proceedings relating to bail applications and those relating to the main trials. In any event, in all these proceedings, interpreters are involved doing the same exercise of interpreting.

In making this presentation, all ethical consideration has been complied with, and in the event where a respondent's name is used, that is done with a given permission for their names to be mentioned and used.

4.2 Why Interpreters, and what are the duties of a court interpreter?

The interpreter's role has remained a controversial issue in interpreting studies. Gentile (1996) asserts that the role be defined as follows:

“Role is a social science construct used to explain behaviour and examine attitudes between at least two participants in any social situation. The concept of the role is inextricably tied to the idea of a reciprocal relationship [...] [Roles] exist only in relation to the other. [...] The role of the interpreter, like other roles, derives from observed behaviour over time and from evaluation of behaviour vis-à-vis that expected by professional associations or other occupational or social groupings.”

For anyone to appreciate the role of interpreters, it is necessary to give and ascertain the scope of their duties. For South African courts, respondents in questionnaires indicated that a court cannot sit without the interpreter being present. It is solely through the language proficiency of the interpreter that the court can then proceed accordingly. For instance in Grahamstown there are 8 full time interpreters, 5 males and 3 females. Most of them specialise in Nguni languages, thus isiXhosa and to some extent Sesotho. Although on average Afrikaans is also used. In many areas

visited by the researcher around the Eastern Cape, it so happens that the majority of the interpreters speak unique regional dialects which tend to be intelligible to most defendants who come before court. Furthermore a number of the respondents in this research live in these different linguistic communities and on occasion languages influence one another. In many black townships, the use of various urban argots such as *tsotsi taal*,^a and *isicamtho*^b is very prevalent. This necessitates that interpreters adapt the skills to learn these languages accordingly. These argots are generally utilised by urban youth, and even some interpreters have mastered various prison sociolects spoken by the majority of prison gangs. And in cases where miners are involved, the use of *Fanakalo*,^c this special lingua franca is adoptable as a language where necessary. On or about 1976 in interpretation studies, Anderson noted that the interpreter was “subject to client expectations that are often conflicting”, and as a result that led to “a power figure, exercising power as result of monopolisation of the means of communication” (Anderson 1976/2002:214). For Anderson, the details of the role of the interpreter may or may not seek to be “worked out on an ad hoc basis”:

These illustrate the fact that the interpreter’s role is always partially undefined - that is, the role prescriptions are objectively inadequate. The interpreter’s position is also characterised by role overload. Not only is it seldom entirely clear what he is to do, he is also frequently expected to do more than is objectively possible (Anderson 2002:211).

It must be submitted that in the South African context , as Anderson (2002) asserts that the interpreter’s roles are always limited by the Code of professional conduct, and other essential questions concerning the interpreter’s role, although they are enshrined in innumerable *Code d’honneurs*,^d have given rise to dissenting views. The internal Memorandum issued by DJCD (2002) gives guidance to the role of the interpreter in South African courts. According to the Memorandum, the primary duties of the interpreter are stipulated as to do interpretation work, further to do elementary clerical work when the court is not in session, keep court records up to date and clean recording equipment (DJCD, 2002).

^a Tsotsi taal are variety of mixed languages mainly spoken in the townships in South Africa, emerging from Gauteng province but also in other agglomerations all over South Africa. Tsosi is Sesotho slang word for “thug” or “robber”.

^b Isicamtho also known as Camtho is based in isiZulu or Sesotho with heavy codeswitching and many Afrikaans and English words. This language is spoken mainly in urban areas of South Africa and is based on the language Tsotsi taal spoken in the townships since the 1980s.

^c Fanakalo is a pidgin which was developed first in the Eastern Cape and then in the Natal sugar cane plantations. The mines later adopted and developed Fanakalo for the miners and used it as a lingua franca for mining purposes.

^d Code of honour.

Complaining about the seemingly expanded scope of their duties, one of the senior interpreters in the Queenstown area Nompumelelo Dyumfana said they often get instructions from administrative staff in the court to carry out duties not relevant to the scope of employment.

“These people, admin people, they don’t want to accept, they want to control us. We got our supervisors here but they want to jump over and come straight to us. I don’t know what their problem is. They want to give us chores and chores... you know we are doing a lot here entering cases here, we are also doing filing, so we do everything in this court.”

It is true that there is not a uniform description of these tasks to be carried out by interpreters. An overview of responses of interpreters shows that there is rather a “blow by blow” account of what is expected of them. For Mr Mankayi, a senior interpreter in the Queenstown office, he stated that:

“The duties of an interpreter are to link between the accused, the magistrate, and also the witnesses. So intertwining between them, at all times. At times they got, if the magistrate is speaking, the prosecutor will sit down then the advocate or the attorney will stand up. But you as an interpreter at all relevant times you have to interpret for the magistrate from the magistrate, for the prosecutor from the prosecutor, for the accused from the accused, to the attorney et cetera.”

For Zenzo Mduzana, who is a junior interpreter in the small town of Cala, in describing his tasks, most notably his emphasis was on the simplification of language. He asserts that, for him what is vital is:

“...to liaise between the members of gallery as well as the magistrate court and the attorneys and also to simplify the language that is used in the court and to also act as a court orderly if there are no police officers around. And to also assist with the admin work if there is a need to assist the clerk of the court.”

Although the internal memorandum stipulates two different types of duties for interpreters, from the survey of the data collected, it is clear that a number of interpreters do take extra duties which are not within their scope of employment.

What this phase of study has done is to give an outlook on the interpreter's scope of duties, over and above the exercise of "interpreting". It must be submitted that the guidelines set out by the Department of Justice and Constitutional Development are rather broad and vague, often leading to the misuse of court interpreters by court Management. What follows is verbatim ethnographic data regarding the interpreter's duties.

Nompumelelo Dyumfana:

"Then some of those things were taken away, they introduced court clerks, but still there were complaining that now if you, these things are take away, what the interpreters will be doing. We want to go to court ready thina because sisebenzisa our brains all the time *singadunwanga uyabona* ready for work but they see this interpreting thing as i-job e-very easy. But when you take someone and put him there in that chair aba-move so I don't know i-problem *yabo ba yintoni kanye-kanye* they want to control us, they got many questions about them an office manager will see you walking on the passage; is your court finished? *Ufunani yena apho* he does have anything to do with it. They see you going out; your supervisor knows ba you going out to the bank or where else. But they want to control, they don't accept this interpreting section as a section enozimela or something. *Uyabona*, so there's a lot of challenge really."

In South Africa there is very little written on court interpreting. Many rules and regulations discussed by interpreters with researchers are not written down, making it very difficult for anyone who is interested to peruse material and to scrutinise it. Unlike in many other countries, the South African court interpreter becomes appointed full time by the Department of Justice as a civil servant. To date there seems to be no legislation which protects them, even the Constitution of the Republic, which seeks to protect the language rights of defendants and witnesses, but seems to omit anything that resembles protection for the court interpreter. The duties of the court interpreter are rather challenging, on the one hand they must ensure effective communication between the two contesting parties. Secondly they must attempt at all costs to retain their status being neutral and to be impartial parties at all times. Furthermore their presence is important for the administration of justice. The following data in which this research is based upon is a result of information received first-hand in detailed interviews and discussion with a number of court interpreters. It is in fact true that very little acknowledgment is given to interpreter's duties. Most noticeable in the diverse South Africa, an interpreter is always forced to engage in dual roles, this requires of the interpreter to move beyond the surface of what is

being said and the meaning thereof, to embedded values that seek to define language: Thus having the task of interpreter defined as the “cultural broker” whose task is not only to translate but also to carry forward ideas of law and custom. As will be shown by data presented, there is a growing need for court interpreters to adapt to truly multilingual contexts and to seek to embrace the countries diversity. The level of protection provided to language rights by the Constitution has meant that interpreters are a means of ensuring the linguistic and legal rights of the majority of the population. The fact that they have such a role to play and yet continue to receive minimum training raises concerns about the lack of training they received from the Department of Justice and Constitutional Development. As a state institution, the Department of Justice and Constitutional Development which par excellence do their business in public and can be deemed important for it is an institution where one exhibits the reality of language rights or the absence thereof.

The Magistrates’ Court Act 32 of 1944 tasks the presiding officer (the magistrate) to call upon “competent” interpreters, in cases where they are of the view that the defendant’s or any other party in court is not sufficiently conversant in the language in which the evidence will be lead or given(Section 6(2) of the Magistrate Court Act). In the case of *S v Ndala 1996(2)SACR 218(C)*, the court reiterated the obligations of the magistrate as stated above and further echoed that any failure to provide a competent interpreter may or can lead to an irregularity and subsequent invalidation of the trial (*S v Ndala 1996 (2) SACR 218 (C) para 221*). At all times, when one views the duties of the interpreter, they must be read with s 25(3)(i) of the Constitution which guarantees that the interpreter is ought to provide “true and correct” interpretation of evidence. An interpreter’s duty must remain unambiguous; his role must be to discharge his duties without biasness. In the matter of *S v Mzo 1980 (1) SA 538(SA) para 539E*, the court said the only duty of the interpreter is to “convey an explanation to the accused in language which the accused understands.” Therefore the magistrate commits an irregularity if he delegates his responsibility to the interpreter. Furthermore when carrying out his duties, the interpreter must seek at all material times to deliver expert services and assume a neutral position in the contest between the parties. Channon writes as follows:

“A good court interpreter must have the ability to translate faithfully without adding to the questions asked or the answers given. He must be completely impartial and take no personal interest in the outcome of the case and remain unaffected by anything he sees or hears” (Channon 1982: 23).

Given the rate of crime and the fact that many accused before the courts seek the services of court interpreters, the interpreter functions should not be regarded as unimportant, because the structural influences on interpreters militate against the adequate performance of their task. This submission is supported and illustrated by research done on the operation of interpreters in lower courts in South Africa (McQuoid-Mason SAJHR 1992:599).

Many of the respondents in this research seek to share a common notion about the duty or role in court proceedings. A senior court interpreter in East London Regional Court 2, Lean Maphuti Margoto, described their duty as:

“It entails interpreting from the source language to the target language - it could be the court itself, the accused person, the prosecution, the defence or to the neighbours of the public which is the gallery or the witness itself.”

Another interpreter Nomsa Judith Majeng, who works at District Court 3, East London, explained when their duties actually arise in court proceedings:

“As the court interpreter I’m there to interpret from the source language to the target language, the source language here is Xhosa, Afrikaans and the target which is English but in many cases if the accused is Afrikaans, the witness is Afrikaans, the prosecutor is Afrikaans and the magistrate is Afrikaans then my services are not needed there because Afrikaans is also a language of record in court so those are two cases that are admissible then if it’s from Xhosa to English so I have to interpret - not addition - but just interpret for the person to understand it’s not like translation for the person to understand.”

Recognising the essence of interpreters and the role, many interpreters say the profession over time has received massive recognition, in that without them, the court comes to a standstill. Senior interpreter, Monwabisi Tusani describes the situation as follows:

“Uyabona (You see) we as the interpreters are the small cogs of this watch. We keep the courts running and ticking. But also for us to function effectively, we too need the big cogs, your lawyers and magistrates. So, I can say we are interdependent.”

It must be submitted that the interpreter’s position as a ‘cog’ in functionality of court machinery is vital and their subservient role in it is occasioned by their internalisation of the values and

attitudes of their court superiors or safe to say other court actors. It must be submitted that on many occasions the task of interpreters is compromised and biasness can result because of the power play in the courtroom. It is vital to note that the manner in which court interpreters exercised their discretion in the interpretation exercise was strongly influenced by their position in the courtroom hierarchy. At one end, you have the prosecutor and the magistrate and further superordinate to the accused person, while also from many observations their approach towards a witness was dependent on whom was in the witness box at the time. The above is in line with Angelelli (2004), who argues that factors of ethnicity, race, gender, age, status and power have a role to play in the way interpreters perceive their duty/role and conduct their interpretation, which according to Angelelli (2004:29), makes it impossible to maintain a neutral stance and seek to produce accurate interpretations. Now, that lends tension between the role prescribed by professional organisations, like the DOJ in their codes of ethics and even by interpreter training programmes on the one hand, and the reality of the interpreter's role on the other. From the respondents who participated in this research, mixed reactions were received. Some were alive to the suggestions made in Angelelli's (ibid) submission, while others see themselves as immune to the interplay of social factors. Some interpreters who participated in this research seem to be unaware of the power differentials between the interlocutors with whom they work with. Perhaps this can be due to the lack of familiarity with research and findings in their roles. This submission is supported by Angelelli (2004:80).

4.3 The Administration of Justice

A reading of section 35(3) k of the Constitution requires that an accused has a right to an interpreter. This right has to be understood in the following terms. Firstly, that this affords the accused a right to a fair trial and secondly for him to be tried in a language that he understands (Moore 1985:48). Read with section 6(2) of the Magistrates Courts Act 32 of 1944, provides that for the State to provide for a competent interpreter at its expense. The same is provided for in the High Court in terms of the Uniform Rules of Court, rule 6(1). In the case of *S v Ndala 1996(2) SACR 218 (C)*, the court reiterated that it is the magistrate's duty under section 6(2) of the Magistrate Courts Act to ensure and determine whether the accused is "sufficiently conversant" in the language of evidence, and in cases where the defendant is not, the services of a "competent interpreter" be provided *S v Ndala 1996 (2) SACR 218 (C) 221*. Court further said a failure to

provide such a competent interpreter can be regarded as gross irregularity and subsequent invalidation.

In another case, *S v Mafu 1978(1) SA 454 (C)*, the court said the presiding officer and the defendant were not satisfied with the services of the interpreter. The appeal court in this matter said misinterpretation that resulted in the matter and the failure to provide a competent interpreter lead to a gross irregularity. In another case of *S v Manzini 2007 (2) SACR 107 (W)*, in this matter, a convicted defendant had filed with the court alleging that imperfect incidences of interpretation resulted during the course of the trial. The court had been advised to await a review of the full court transcript by the chief or principal interpreter. The feedback from the report filed revealed shocking numerous errors made by the interpreter and it was concluded that the interpreter's performance was "alarmingly poor" and resulted in the infringement of the administration of justice (*S v Manzini 2007 (2) SACR 107 (W) para 109H-F*). A survey of case law dealing with the competence of the interpreter suggested that it is important that information provided or given to the presiding officer be accurate at all material times during the hearing, because the presiding officer relies on those facts to make findings on issues of credibility of the witness before court, especially presiding officers who are not accustomed to a language spoken by an accused person (*S v Mpopo 1978 (2) SA 424 (A) para 426G*). In the case of Mpopo, it is interesting to note that Corbett J does in fact provide a description of a court interpreter but fails or avoids providing a defining factor of a role of the interpreter.

Writing in 1999, Moeketsi suggests that if South Africa continues with the use of untrained court interpreters then grave injustices may result. She asserts that the current court system needs the support of competent interpreters with the ability to eliminate any linguistic barriers that may result. Moeketsi suggests that any dismay with any performance of court interpreters is caused by poor training and furthered by the lack of proper definition of the interpreter's role in court proceedings (Moeketsi 1999:24). The view presented by Moeketsi (1999) is supported by Hlophe J, who also asserts that the interpreter's role is and will remain crucial in securing justice in courts in South Africa, especially in courts of first instance, where the majority of the population largely appears unrepresented by learned counsels or attorneys (Hlophe 2004:43). The above scholars are supported by case law precedent which lends a voice to either the reskilling or the advancement of interpreter skills in South Africa.

In the case of *S v Ngubane 1985 (1) SACR 384 (T)*, the court further echoed that unnecessary additions by an interpreter were unsatisfactory, and that the interpreter must discharge his duty with precision and seek to be impartial at all relevant material times. In the case of *S v Mabona 1973 (2) SA 614 (A)*, the court said that what is needed of the interpreter is the exercise of his official duties, free of any frivolous intentions, and that he must also be the conveyer of the source language speaker's message. Noting further, Judge Thompson's comments in this matter where it is asserted that "it is not in the interest of justice that such officials (court interpreters) institute independent enquiries before or after interpreting for the justice of peace (1973:614). Contrary from what the learned judge said here, court interpreters do conduct pre-trial sessions of their own volition to ascertain the language of the accused. It must come to the realisation of all parties involved in the judicial process that that competent and adequate interpreting services are essential for the functioning of a good court system and also as a guarantor of constitutional rights to a fair trial (Lebese 2011:356).

For Mr Tusani, who regards himself as a seasoned interpreter and very fluent in the isiXhosa language, he says the root of the problem cannot only be pigeonholing the exercise of court interpreting itself, but also the focus must be interpreter recruitment. Mr Tusani verbatim explains:

"You see, many interpreter suffer in isiXhosa, because when I did my personal research I found out that the majority of court interpreters here are Model C (they come from English speaking backgrounds such as places like Uitenhage and the rest. Now they find it hard to connect with regional dialects that are spoken here in the East London area. This is because the local dialects of isiXhosa here are very different from those spoken in other places. So to have interpreter who lacks understanding, the presiding officers are always thrown off the ball and a miscarriage of justice can result."

For Nomsa Judith Majeng, the attitudes by a number of interpreters can potentially jeopardise the administration of justice. Nomsa explains:

"Yes we have to be concerned about those things because, for the people to know that crime is no joke, some people when they come to court they come for their families and now what if my brother is standing there and is made a joke of... so it's a valid concern for proper administration of justice. In one case an interpreter was caught and told that this is your profession so you

mustn't play with it, when you do your job you must make someone else wish to be like you one day so if you act like this I don't think you are taking us in the right direction."

For Leana Maphuti Margato, she believes that not all is bad with interpreting services in her district, she exclaims, "I've been fortunate enough to work with those interpreters who take their job seriously and who are trying their utmost best to do whatever possible to professionalise." Notable is that Leana rules out any attempt by interpreters to make inaccurate interpretations. "I should think so because I don't think it is for us as interpreters to add or to omit, ours is to just say what is being said in another language" said Leana.

A junior interpreter Luthando Godana believes that any possible jeopardy in the administration of justice is in fact caused by the treatment of interpreters on a daily basis. He adds that fatigue is one of the problems that may lead to inaccurate speech rendered in the courtroom. Godana explains; "Fatigue does cause problems. But people think it is an easy task and we are not taken seriously. I doubt any magistrate might adjourn because of an interpreter. So we just have to continue interpreting even if feeling tired."

For senior East London court interpreter Benita Moitheri Majeng, she says the gross errors are imminent and prevalent in their courts. She attributes this to a lack of understanding by interpreters that what they say in court directly affects the evidence record by the court. She explains:

"Yes, that means now the whole evidence is being distorted it doesn't come out the way it's supposed to come out and that is very dangerous because that is what they teach us all the time, to always be focused and if you don't understand something ask to be explained to..."

Majeng adds that what they have done of recent is that during their lunch breaks, they sit around in small groups to try and find words and the meaning.

We sit and we brainstorm about certain words sometimes he (the principal) would have some material that he brings and then he gives us and we have a standard way of interpreting whatever it is that we have so that we have the same meaning or the same way of interpreting things that we come across and then we ask other interpreters from other districts as well if we don't know or come up with the right phrase we ask them to assist."

While Mr Tusani explains how he personally seeks to avoid misinterpretation: “At all relevant times, I am always listening to the words of the presiding magistrate. I always ascertain that everything I say must be in line (kunqamane) with his production, and his or her sense of humour, if he becomes sensitive; I also pass the sensitive message. But all that causes me to be exhausted, but it must be done.”

Court prosecutor Mr Gabingca Luyanda Sydney, shares the view that the court must recognise the functioning of the court interpreter and seek to provide aims to him or her to ensure that his or her work does not hinder the administration of justice. He explains verbatim that:

“Usually in our courts there is indulgence given to interpreters, like for example, I will make example between myself and the interpreter that I’m working with. We are very close to each other, so every time there experiencing any problem, he can come and whisper to say, ey, I need a 10 minutes break. So that is an indulgence because we want him to focus, we want him to give exactly what is being said and render it known to the person or to the accused, and to the witnesses. All this is done to ensure that a clear message is conveyed. Now if he says he’s tired, the administration of justice can be called into question with inaccuracy. So he needs some five, ten minutes break, I will take that indulgence and inform the court that we need to take a five or ten minutes indulgence so that he can refresh and we can then proceed.”

Another factor that Sydney noted was that court interpreters had the tendency of not only interpreting what the presiding officer utters, but they would seek to add their information. “For instance when rights of the accused are administered by the courts, interpreters just do that as a norm, thereby not allowing the magistrate to exercise his task,” said Sydney. This situation relates to situations where the court inquires on whether the accused has a lawyer or not, but the interpreter seeks to add more vital and useful information to it. It must be submitted that the defendant is according to the law entitled to know of his rights from his or her defence counsel or from the presiding judicial officer or from his state appointed Legal Aid attorney. Geldenhuys and Joubert (1994) stipulate that it is procedure that these rights be explained to the accused by the judge or the magistrate in the lower court and not by the court interpreter (Geldenhuys and Joubert 1994:159). If the interpreter attempts to take it upon themselves to save the day and supply information that the presiding officer himself or herself had elected, omitted or neglected to state, an administrative irregularity emerges and that would lead to the miscarriage of justice, had it been for the interpreter correcting it. Now, it is then the undefined role for an interpreter to

act as the personal aid or assistant to the presiding officer when this is not the case. Overall many mistakes done by court interpreters remain unchallenged, because no complaints are often filed to have the matter sent for review in mid-trial, because the majority of the defendants who appear in these courts are without funds to take the matter up for review. Some errors also go undetected because most presiding officers and prosecutors have no knowledge of indigenous languages spoken by the accused in these courts, especially the Nguni languages spoken in the Eastern Cape area.

From the reading of the research there are two worrying trends emerging. Firstly, you have legal practitioners who have entered into coping mode and seemingly accepted the problems resulting from court interpreters but see them as not serious enough to warrant lodging a complaint. Secondly, it is not a contested notion that there are a number of problems resulting from gross negative perceptions associated with court interpreting. It would appear that although there is awareness of these problems from court interpreters, there is no advanced incentive to address these problems. The ignorance to address some of these problems leads to maintenance of the status quo. Generally, a universal perception existed that interpreters are making mistakes while interpreting. It must be submitted that the majority of respondents who are interpreters at all levels were very emphatic about these problems. A common mistake appeared in the *Cape Argus*, on 30th 2006, under the column “*Justice being lost in translation in South African Court*” written by Myolisi Gophe. This case concerned a taxi driver who was fined an amount of R500.00 for contempt of court. Appearing before the magistrate, the accused sought to explain that he was at home “*Ekhayeni*”, while the interpreter placed him in his house in Khayelitsha. In the isiXhosa dialect, “*Ekhayeni*” can also be understood to be travelling to one’s homestead or rural ancestral area such as the Eastern Cape in this matter. The terminology “*ekhayeni*” was mainly developed and used by migrant workers in Cape Town, it was held to refer to going home to your place of birth in the Eastern Cape. However at the time of interpretation in this matter, it was never explained to the magistrate in the Wynberg Magistrate Court that this meaning was in existence. As a result, the magistrate understood that the accused had willingly not attended court proceedings as ordered by the court. Before the Judicial Services Commission (JSC), 2011, KwaZulu Natal lawyer Zaba Nkosi, told the commission that interpreters needed to be brought under control to make sure that they do their tasks. He further advocated for the regular testing of language proficiency.

In South Africa there is very little written on court interpreting. Many rules and regulations discussed by interpreters with researchers are not written down, making it very difficult for anyone who is interested to peruse or study and scrutinise them. Unlike in many other countries, the South African court interpreter becomes appointed full time by the Department of Justice as a civil servant. To date there seems to be no legislation which protects them, even the Constitution of the Republic, which seeks to protect the language rights of defendants and witnesses, seems not to protect the court interpreter as indicated earlier. The duties of the court interpreter are rather challenging, on the one hand they must ensure effective communication between the two contesting parties. Secondly they must attempt at all costs to retain their status of being neutral and impartial parties at all times. Furthermore their presence is important for the administration of justice. The following data on which this research is based is as a result of information received first-hand in the form of detailed interviews and discussions with a number of court interpreters. Most noticeable in the diverse South Africa is that an interpreter is always forced to engage in dual roles. This requires of the interpreter to move beyond the surface of what is being said and the meaning thereof, to embedded values that seek to define a language. Thus having the task of interpreter defined as the “cultural broker” whose task is not only to translate but also to carry forward ideas of law and custom. As will be shown by data presented, there is a growing need for court interpreters to adapt to truly multilingual contexts and to seek to embrace diversity.

The Magistrates’ Court Act 32 of 1944 tasks the presiding officer (the magistrate) to call upon a “competent” interpreter, in cases where they are of the view that the defendant or any other party in court is not sufficiently conversant in the language in which the evidence will be lead or given (Section 6(2) of the Magistrate Court Act). In the case of *S v Ndala 1996(2)SACR 218(C)*, the court reiterated the obligations of the magistrate as stated above and further echoed that any failure to provide a competent interpreter may or can lead to an irregularity and subsequent invalidation of the trial (*S v Ndala 1996 (2) SACR 218 (C) para 221*). At all times, when one views the duties of the interpreter, they must be read with s 25(3)(i) of the Constitution which guarantees that the interpreter must provide “true and correct” interpretation of evidence. As pointed out earlier, an interpreter’s duty must remain unambiguous; his role is to discharge his duties without bias. In the matter of *S v Mzo 1980 (1) SA 538(SA) para 539E*, the court said the only duty of the interpreter is to “convey an explanation to the accused in a language which the accused understands”.

Therefore the magistrate commits an irregularity if he delegates his responsibility to the interpreter. Furthermore when carrying out his duties, the interpreter must seek at all material times to deliver expert services and assume a neutral position in the contest between the parties. Channon writes as follows: “A good court interpreter must have the ability to translate faithfully without adding to the questions asked or the answers given. He must be completely impartial and take no personal interest in the outcome of the case and remain unaffected by anything he sees or hears (Channon 1982:23).

4.4 Conclusion

In this chapter a summary of the ethnographic findings resulting from sampling methods used has been embarked upon. The primary goal of this chapter was also to address the narrow questions developed to shape the content of research. Moreover the data collected has yielded a discussion about procedures that can be used to deal with interpreting problems. Furthermore the analysis has yielded concern regarding potential variables as to the interpreter’s professional standing, status and experience. The presentation of data in this section was supported by the fact that data analysis was an ongoing exercise throughout the duration of the study. The data presented here is based on ethnographic interviews.

CHAPTER 5
ATTITUDES AND IDEOLOGIES IN SOLVING
INTERPRETING PROBLEMS
(A continued view from research subjects)

5.1 Training and skills development of interpreters

The major problems facing court interpreting have been identified. It is therefore imperative that these problems be defined with clear precision and in isolation. In essence, it is crucial for this research that these problems be discussed clearly and at length. It must be submitted that the problems identified constitute a composite list; it would be helpful to divide these problems into groups as described by respondents. The first part of this sub-section focuses on training and development problems as identified by respondents in this research. The second part of this analysis looks at language use problems that exist within the Eastern Cape court jurisdiction. The last part deals with workplace professionalization, this affords an outlook *inter lia* on the courtroom situation. As part of the discussion, an attempt to offer immediate solutions is undertaken.

5.2 Recruitment and Selection of court interpreters

It is common cause that the ideal process used for the recruitment of court interpreters is through mass media advertising by the Department of Justice and Constitutional Development. This is in fact subject to internal control and advertising first. The aim of this method of kick-starting a recruitment process is meant to ensure that a number of potential applicants are given equal opportunity to respond to the advertisement. Until early 2000, the employment of court interpreters by the Department usually took the form of an internal advert, indicating the specific court in need of an interpreter (Moeketsi 199b:131). After the initiatives introduced by DOJCD, making provision of access to courts by the general public, the recruitment initiation process was altered, as indicated in the annual department report (DOJCD Annual Report 2000). It must be

submitted that the process of advertising has since been followed by the department for the recruitment of indigenous language interpreters. It would seem from the data collected that the process of advertising does not apply when it comes to foreign language interpreters. In giving an explanation why this process was dispensed with when it comes to foreign language interpreters, an East London Regional Court Principal interpreter, Mziwoxolo Nombewu, explains that an exception is applied because “the need in these cases always appears too urgent to follow any normal recruitment procedure”.

This act may appear to exist contrary to the department’s set practices, which demand that the best practice be used, and furthermore the department’s administrative human resources wing is affected as a result of inefficiency. Around 2004-2005 we saw the tabling of the report called *Re Aga Boswa*, the crux of the report was the provision of proper job descriptions for interpreters: the central brief being “the improvement of court interpreters services and the implementation of effective disciplinary measures to rid the interpretation services of unprofessional and unbecoming conduct, which tend to compromise the efficiency of the courts”(*Re Aga Boswa report* 2004-2005). Before 2001, according to the administrative standards (PAS) and the structure code adopted by the DoJCD, the sole requirement to apply for interpreting in South Africa was a Grade 10 level education. Then it was only Principal interpreters who were required to have at least Grade 12 as the minimum academic standard. Given the current education standards then and now, and given that the majority of interpreters are black and come from disadvantaged backgrounds with sub-standard schooling, the requirement appears insufficient to do the critical task of court interpreting.

TABLE FOR QUALIFICATION AND GRADES OF INTERPRETERS

(Adopted June 2001)

PERSONNEL ADMINISTRATION STANDARD (PAS), PRESENT CORE AND THE REQUIRED CORE STRUCTURE

| Pas | Appointment Measures | Core | | Required Core Structure | |
|--------------------------------------|------------------------------------|--------------------------------------|---|--------------------------------|--|
| <i>Post</i> | <i>Appointment Measures</i> | <i>Post</i> | <i>Appointment Measures</i> | <i>Post</i> | <i>Appointment measures</i> |
| Court Interpreter Grade I Level 2 | | Court Interpreter Grade I Level 2 | Grade 10: No experience Language test | Court Interpreter | Grade 12, no experience. Language Test |
| Court Interpreter | | Court Interpreter | Grade 10,0-2 | | |

| | | | | | |
|---|--|---|---|------------------------------------|--|
| Grade II Level 3 | | Grade II Level 3 | yrs experience Or Grade 12, no experience, Language test | | |
| Senior Court Interpreter Grade I Level 4 | | Senior Court Interpreter Grade I Level 4 | Grade 10,2- 5yrs experience Or Grade 12, 0- 2yrs experience Language test | Senior Court Interpreter | Grade 12,2 yrs Experience; Language Test |
| Senior Court Interpreter Grade II Level 5 | | Senior Court Interpreter Grade II Level 5 | Grade 10, 5- 10yrs experience Or grade 12, 2- 5yrs experience | | |
| Senior Court Interpreter Grade III Level 6 | | Senior Court Interpreter Grade III Level 6 | Grade 10,5-10 yrs experience Or Grade 12, 5- 10 yrs experience | | |
| Principal Court Interpreter, Salary level 7 | | Principal Court Interpreter, Salary level 7 | Grade 12, 10 and above experience | Principal Court Interpreter | Grade 12, 5-10 yrs experience |
| Inspector of Interpreters, Salary level 8 | | Inspector of Interpreters, Salary level 8 | Grade 12, 10 and above experience | Chief Court Interpreter | Tertiary qualification,10 yrs experience |
| Chief Inspector of Interpreters, Salary level 9 | | Chief Inspector of Interpreters, Salary level 9 | Grade 12, 10 and above experience | Inspector of Interpreters | Tertiary qualification,10 yrs experience |
| | | | | Chief Inspector of Interpreting | Tertiary qualification,10 yrs experience |
| | | | | Head: Interpreting Services | Tertiary qualification,10 yrs experience |

A survey of court interpreter advertisements and also interview data indicates that today the basic requirements is that one must have a Grade 12 and in addition to that they must have the ability to speak and write at least two South African languages. It is further indicated that these must be not your first home language. Court interpreter Benita Moitheri Majeng says the languages advertised are important for the applicant.

“The requirement is just to have a matric and then you have the languages advertised and the post advertised at the time for example if they say that they

need someone who speaks English, Afrikaans and Xhosa that should be the requirement - it's your matric and your languages.”

For Principal interpreter, Mr Mziwoxolo Nombewu, “only a matric pass is strictly necessary for gainful employment as an interpreter”. A further assessment indicates that if a candidate possesses a tertiary or college qualification and has a computer literacy ability that can be regarded and be taken as having an added advantage. It must be submitted that language formulation and need will differ from province to province in South Africa. In the Eastern Cape, where this study is based, for any applicant, language proficiency can or would be assessed on the ability to speak, read and write isiXhosa and any other two *de facto* official languages. Thus, for instance English and Afrikaans. Any use of interpreter from other language groups in South Africa or the need to use foreign interpreters is on *ad hoc* basis. For those languages not usually spoken in the province, principal interpreters compile a data basis, and should a need arise that their interpreting services are required then the data base is consulted.

A recent advertisement in the *DoJCD*, indicates that for the level of principal interpreter, one must have the ability to speak the regional languages of that particular region they are appointed in. Although in many of these advertisements, it is always that possession of a tertiary qualification in legal interpreting that is necessary for a higher posting and appointment. Furthermore respondents indicated that the language requirement specified in the advertisement is only meant to select the best candidates from the pool of candidates before any oral and written interviews can be held. Therefore it should only be seen as the first gate keeping process of the recruitment procedure. The data collected reveals that a huge number of interpreters firstly did not have any interpreting background or experience prior to their employment with the department; and those who proceed to tertiary, were holders of diplomas, certificates and degrees which were not language or linguistic-related, and were not advancing their career prospects further. Although some have argued that the qualifications have been updated enough, however an uncontested claim exists that the process of hiring still remains to date a haphazard one.

5.3 Selection for interview and interview process

Having completed the advertisement process, the next stage is the selection of the correct candidate from the given pool of respondents. For scholars such as Nel, Van Dyk, Haasbroek, Schultz, Sono and Werner (2005) they state that “finding and hiring the best person for the job is a complex process of data-gathering and decision-making that does not occur through a flash of insight” (Nel et al 2005:232). The interview exists as space where the speaking, reading and confidence ability of the person can be evaluated. It is true that these are personal qualities which are necessary for the exercise of court interpreting (Nel *et al* 2005: 237). It is the expectation that every person applying for an appointment as court interpreter must be subjected to a heavy proficiency test conducted by the principal interpreter in that region. And then having passed this test, the applicant ought to receive a twelve month probation period in a vacant post to an area where he has proven to be conversant with the African language spoken there. Nomsa Judith Majeng, an interpreter says that on many occasions a person is given “a script, if you say you are good in a language they ask you to interpret this language on the script to another language and it is simply that...” There is no reference point of how the interview panel ought to be composed off.

A majority of the respondents indicated that in the past experienced interpreters and chief interpreters would gather to shortlist the candidates before the interviews. However, these interviews should be conducted in the presence of the human resources management personnel and specialists, but that does not happen.

| Responses | Number of Respondents (N= 30) | Percentages |
|--------------------------------------|---|--------------------|
| Yes, an oral interview | 27 | 97% |
| No, I was not interviewed | 0 | 0% |
| Yes, both oral and written interview | 3 | 3% |

Table: Illustrative exercise of the interview process

From the above it can be extrapolated that the majority of the court interpreter say they had been interviewed, and in the process of their recruitment this is done by means of an oral test. There is relatively very few of them who responded that they had not been interviewed before being employed. The lack of oversight by the department in this process may be the result of

employment of incompetent interpreters by the *DoJCD*. Also indicated in the advertisement for all applicants is that they would be subjected to a language test, but no code or guidelines exist to ascertain how these tests are to be carried out. Princilla Murram, a senior interpreter said that over the years there has never been a consistent language test or formalised one. “These days, it depends, it’s a test by the management, it’s rather a secret and I do not know where they get the test from.”

Moeketsi (1999b) states that the written language test done by interpreters is meant to be a check against translation of short texts that may be used in court. All these are attempts to check the translation skills of the interpreter (Moeketsi 199b:133). For the respondents, the oral interviews are done by asking the candidate questions and passages in different source languages and interpreting such questions into the said targeted language. Mr Nombewu, whose duty as a principal interpreter is to conduct language tests, states that:

“During the process of interviews we formulate questions, for a beginner we ask the person to interpret an English question paper to Xhosa and Afrikaans to test the person’s ability.” Asked if that was sufficient, he replied: “Ja, what we usually do is look at that moment when you are under pressure because it’s similar to when you are in court in many instances.”

Here accuracy and the presentation test are carried out and the candidate does receive immediate feedback on his or performance. Moeketsi (1999a:130-131) suggests that the method used to date dates back at the employment of Sol Plaatjie and others in the 19th Century (August 1898). Moeketsi is of the view that the testing means over time ought to have been adapted to changes that have occurred over time (Moeketsi 1999b:132). With modern courtrooms in existence, clients who are coming before court are well aware of their rights and would demand a proper system of interpretation. It is therefore reasonable that a comprehensive system of education be put in place, to produce and test for mature court interpreters, thus those who are better equipped to handle sensitive cases. It is worth noting that foreign court interpreters who practice in South African courts do not seem to be affected by this process, hence it emerges that they are employed without any formal interviews whatsoever.

5.4 Induction and orientation training for newly employed court interpreters

At the beginning of their career, on many occasions interpreters have found themselves being assigned a court station, without any prior internal training being provided by the Department. One may expect that having had the interpreter pass the language test in the interview, the applicant would receive temporary employment during the one year probation period. Many respondents in this research indicated that after passing the language test, they were given relatively few hours or no hours at all to observe other senior interpreters engage in the exercise. Others said because of the general lack of interpreters in districts where they were, upon appointed they took oath of office as worded in form W181 by the Department of Justice and got to work immediately thereafter. The potential problem with the above action may be that the said interpreter, without receiving any training and being called upon to work in languages beyond his or her competence, that this may be regarded as extremely unfair for the interpreter. Mrs Majeng described her first day on the job as follows:

“I started in 1999 as a temporary interpreter, on the first day I observed in court, the second day the interpreter that I was working with said I must do a postponement just to be clear, to get used. So, I did a postponement on that day and on Friday she told me that I was going to do a shoplifting case and I did such, the first case I wasn’t used to it because the questions that were being asked were rather difficult.”

Another interpreter Mr Tusani says that what helped him accelerate in his training was the fact that a senior and older interpreter had been assigned to help him.

“I was trained by an old interpreter Mr Ndyamarha and I was observing at district court for the first day and the interpreter there was Mr Sdyakholo. What I gathered was that interpreting is all about innovation and you must have love for it and also develop a talent. Interpreting gives you exposure and you need to raise your voice and pick up things and I went to the civil court as a clerk. Since high school, I have been very enthusiastic about isiXhosa language and even attempted to write a book. So from there I moved to my own court.”

What appears to be of essence at this stage of the induction, is that interpreters must be taught court etiquette and court procedures. They must also be accustomed to the phases of trial, the

functions and address forms of different role players in court, the different crimes heard before court and the definitions of the crimes, and the different role players in court. All this induction is afforded through verbal instruction by the principal interpreter on various aspects of court functionality (Moeketsi 1999b:133). Stander (1990) takes it upon himself to explain the process in detail. One of the techniques noted and identified by a number of respondents is the activation of a “buddy system”, thus referring to the appointment of the senior interpreter to give continued guidance and further orientation to the new interpreter.

The senior interpreter is mandated by the principal to carry out these extra duties, although they are not specified in the employment contract of the said interpreter. At all relevant times, Stander (1990) explains that at all relevant times, questions from the new recruit are encouraged and are taken as part of the learning process. Stander (ibid) sums up the process as follows: “The senior interpreter is there to monitor the performance of the new recruit, to iron out any major problems the interpreter may experience initially, and to ensure that no misinterpretation takes place” (Standar 1990:101). During this time, the appointed senior interpreter must always guard against the new recruit being exposed to the rigors of the court interpreting before they have even been trained, but that effort may prove fatal, because the scarcity of skilled labour to deal with the influx of cases in lower courts in South Africa calls for more interpreters. On many occasions the new recruit will be expected to perform less important processes such as conducting postponements and bail hearings. Also during this probation period, the interpreter is expected to attend the Justice College for courses, if called upon to do so, but many responses indicated that the courses rather come very late and outside the probation period. Very few respondents indicated that during this phase of the employment, they seek to make a collection of the glossary of terminology used in court and share, comparing notes with senior interpreters. Thus it seemed that a personal effort needed to be made by individual interpreters and that this was not mandatory during their induction and orientation period.

In response to a question on what role the interpreter plays as a principal interpreter during the induction process, Mr Zizi, who is based in the Queenstown Magistrate Court said:

“In our office we locate them and introduce them to the other staff. Go to the presiding officer tell them that we got a new somebody who is just sitting in and listening for

instance in court. Each and every day in the morning sessions, they all get to sit here, and tell me about what they observed in yesterday's proceedings."

There is consensus in human resource management and training that the essence of employee induction is meant to afford and ensure the "seamless placement of new employees", and this exercise ought to be done in manner that yields productiveness in the workplace. For Nel (2005) starting a new job is considered to be one of the most stressful life experiences, and a proper induction process that is sensitive to the anxieties, uncertainties, and needs of the new employee is of the utmost importance" (Nel et al 2005:251). It must be submitted that no such induction procedures are afford to foreign language interpreters.

Another problem raised by interpreters was the delay in the in-service training offered by the Department of Justice and Constitutional Development. In many cases new interpreters find themselves exposed to the rigors of court interpreting before they can even be trained. The training of all members of staff under the Department is always carried out in terms of the in-service training model designed by the Department. During interviews and in questionnaires, a question was asked whether respondents had received in service training. The aim of asking such a question was to establish which of the respondents and to what stage had they received such training.

IN-SERVICE TRAINING

| Responses | Number of Respondents (N= 30) | Percentages |
|-------------------------------------|---|--------------------|
| Yes, I have had in-service training | 25 | 95% |
| No in-service training by DoJCCD | 5 | 5% |

Table: Indicative of an In-service training after employment by the DoJCCD

In questionnaires the majority of the respondents indicated that they had received training from the Department of Justice and Constitutional Development's Justice College, but the training came very late after they had been initially employed. Very few interpreters indicated that they were still to receive training from the Department since their employment began. As matters

stand now, there are various types of training organised by the Justice College ranging from a beginners' course to management courses for court interpreters. Targeted for newcomers is the Beginners Course, which takes places twice a year at the Pretoria Campus. According to the interpreters' course outline, the duration of the Beginners Course is five weeks but the respondents in this research indicated that it had been reduced to two weeks. The content of the course takes the form of a theoretical session, which is focused on criminal procedure, criminal law, the interpretation of legal concepts to indigenous languages and court attendance.

The said beginner's course is facilitated and conducted by principal interpreters and the training method used is simulation of real court situations (Moeketsi 1999b:134), giving them practical skills. It must be submitted that the bulk of the training is said to relate to the specialised art of court interpreting. All this necessitates that there be an appreciation of the essence of interpreting, as compared to contextual translation or syntactic translation. Benita Moitheri Majeng, an East London based interpreter like many other interpreters in other districts expressed their concern about the training coming very late for many interpreters. She says that a number of things that interpreters learn, they must learn for themselves through experience in court.

"You first get into the job you are hired and then they send you. But sometimes the other districts they do send the temporary court interpreters to the initial courses."

For Fezeka Mbana, an interpreter in Cofimvaba who has been an interpreter for more than five years, she says that such training only exists by name in the Department:

Adv. Matthew Mpahlwa: And in-service training?

Fezeka Mbana: (chuckling), there is no such thing.

Adv. Matthew Mpahlwa: I hear sometimes the beginner's course arrives after five years?

Fezeka Mbana: You see, so you have to swim yourself you are thrown to the deep end.

Adv. Matthew Mpahlwa: And what are the risks of that?

Fezeka Mbana: Ah! The law not interpreted properly firstly, of the people being misled, of the Constitution not delivered in a proper way because ours is to tell the people about the Constitution that's our job then if you are not trained it's going to be difficult.

A senior interpreter in Queenstown, Mr Mankayi, states that the duration of the training offered by the Department has a direct impact on the provision of poor interpreting services in South African courts, especially within the Eastern Cape area.

“You see the in service training question, I think it is not enough because you just go there for three weeks. Even when you’re taken to that course maybe after a year, a year and a half after commencing work, it is still not enough.”

Adv Matthew Mpahlwa: And by that time you are already interpreting?

Senior Interpreter: Mr Mankayi: By that time you are already interpreting and pulling by yourself.

A junior interpreter in Cala, says that she is not sure of what training she was sent to and not entirely convinced that all was done to prepare her as an interpreter.

Adv Matthew Mpahlwa: Have you then received any in service training?

Nokuthula Maliti: I wouldn’t say it was an in service training, and yet I do not understand the in service training word because we did go to training just a few weeks back. Uhm it was not very good training because the person that was training us was only having lots of problems. She only took time with us for a day in a week, so we only spent one day with her in a week, so it wasn’t working.

Very few interpreters still feel that the beginner’s course does serve its purpose and still find it useful. Principal Interpreter Thandisizwe Tyhatyha is one of them.

AdvMpahlwa: Do you then receive any in service training once you have started?

Stanley Thandisizwe Tyhatyha: Yes we do receive in service training, because I think that there are many courses that I have attended as from today I have been an interpreter for +/- 30 years now so there are a lot of courses that I have attended and beginners course, advanced course, management courses and so forth. And also then there are some courses that I have, that I am still going to attend.

AdvMpahlwa: And do you find those useful?

Stanley Thandisizwe Tyhatyha: Ja they are so useful, because nowadays we are dealing with different cases that is these *Zuma* cases (rape cases) and other cases then there are other terms that are being said there so you have to familiarise yourself there and all those kinds of terms there.

Calls for a revised system of court interpreter trainers have been echoed by a number of court interpreters in this research.

Principal interpreter Mr Zizi: To me, if they can give people a chance to train them even before they come to court, if you can get that, but I don't know how because the department will say, they cannot spend money on somebody that they don't know because this guy is not working here but if you can get some way or a mechanism whereby you can train them before; so that they can be trained then after that come to court.

Once an interpreter has completed this initial course, his further development is monitored by the principal interpreter concerned, who ought to offer further guidance as may be necessary. On successful completion of this course, the interpreter returns to his local court station of deployment, where they departed from initially for training. It must be submitted that an interpreter does not have to be deployed to a region where his or her language is spoken, but that this should be the case. For instance the Eastern Cape is seen as predominantly isiXhosa speaking, but that one finds also various other languages present and spoken by locals. However the interpreter would need to be conversant with isiXhosa. This is in line with Moeketsi's suggestion when she asserts that: "...an interpreter, whose mother tongue is Xhosa, and who is from a predominantly Xhosa-speaking region, may not be deployed to a Sepedi area, nor may an interpreter who grew up in a rural area be suitable for deployment to a court in an urban area, because he may not be conversant with the regional and social dialects of his own language, as used in that unfamiliar environment." (Moeketsi 199b:134). Many respondents in this research have commented about the lack of in-service training or possibility of mentoring once they have returned in their stations. Interpreters often find themselves with no support structure and left to their own training devices to seek any possible remedy to their problems. Another point made was that district Courts without principal interpreters are lacking or do not receive any type of in-service training.

There are other in-service training courses available and offered by the Justice College. An Advanced Course is also offered to Regional and High Court interpreters, an overview of the course shows that interpreters who take part therein are exposed to more technical aspects of the law, and they also get advantaged on how to handle different situations that may result in court. Some areas of the law covered include techniques of fingerprinting, as well as dealing with

sexual offence cases with particular emphasis on DNA evidence and ballistics. Those in attendance in such training also are taken on an educational tour in MEDUNSA where they are required to observe the performance of a post-mortem and seek to take note of medical terms used.

5.5 Performance and evaluation (supervision)

The issue of supervision, monitoring and control is a matter of great concern and contention for most court interpreters interviewed in this study. Over time the lack of proper supervision has been identified as a root of many problems in court interpreting. The Department's 2002 report said the lack of monitoring was failing because there were not sufficient posts created delegated for supervisory roles both in High and Lower Courts in South Africa. As matters stand, interpreters are monitored by Control Officers in various courts, and in the absence thereof, Court Managers also exert control over interpreting activities in their courts. In most cases these individuals are focused and their higher education and training focuses in human resource management and administrative actions. On many occasions, these personnel do not have any training in interpreting and find it hard to even associate themselves with the provision of such services in court. It is also remarkable to note that their job-description identifies them as purely administrators and makes no provision for the supervision and the evaluation of interpreters.

As a result of this situation, many interpreters rebel against this formation and forced structure on them. This often results in the breakdown of trust and communication between the court administrative staff and court interpreters. Principal interpreter Mr Zizi expresses his dissatisfaction on the interference by administrators in their court:

Adv Matthew Mpahlwa: Why are you people reporting to clerks?

Principal interpreter Mr Zizi: That's a very good question; advocate, one of our senior interpreters here in Komani once said to us that is the main problem because we said; you cannot report to somebody who doesn't know what you're doing, that is the problem we are dealing with here for instance one of those guys you'll see always very much troublesome. For instance now I have got a case in Dordrecht in the regional court, where they need a foreign interpreter. Procedurally the court manager is supposed to ask for an interpreter and pay the interpreter out of their budget and not from my budget for this court. But they just want to run the whole show.

They like to interfere even the regional head was once here I told him the problem is that they are interfering they don't know what interpretation unit is about.

Mr Zizi also makes reference to a grievance that he has lodged with the Department and says he does not acknowledge the clerks who will be reviewing him.

Principal interpreter Mr Zizi: I am sorry to mention but let me mention advocate, I've got a grievance for my performance with my supervisor. We agreed about the bonus and all those things because I am not just trying to boost advocate but I am doing my job and I know I am doing it very well now because of that the moderation committee - it's four guys all of them are clerks. No one of them was ever an interpreter before, or a magistrate or a prosecutor or a lawyer because they can accommodate those guys because if you are a prosecutor, advocate, a lawyer, and a magistrate those people know the court they can assess me, but these guys know nothing, nothing at all.

Another court interpreter Nompumelelo Dyumfana says in the process of monitoring carried out by administrative staff, as court interpreters they are often harassed:

"You know these clerks have got a problem, because you know when there was this introduction of principal, we didn't have principals before. So when they introduced these principals as our supervisors, these people, from administration, they don't want to accept that they do not have control over us, they want to control us. We got our supervisors here but they want to jump over and come straight to us. I don't know what their problem is. They want to give us extended duties, so we end up doing a lot of work here filing. We used to take filings before, but some of these things were taken away when they introduced clerks. When they see us in the passage, they ask a lot of questions, especially our office manager here in this court. He would ask: is your court finished? But that does not concern him. If they see you going out of the building, even if your supervisor is aware, they want to know. They don't accept this interpreting section as independent.

In line with the recommendations made in the 2002 Department of Justice and Constitutional Development, envisaging the introduction of more inspectors, Mr Zizi agrees that this would remedy the situation.

Principal interpreter Mr Zizi: Yes, you see, Advocate, if the interpreters, for instance they've got here, the principals, they've got chief interpreter here, they have got the principal and the

inspector that can give us an opportunity to improve. The administration would stop to interfere, you'll see. (**Matthew cuts in:** line of management) you'll see, we can get very good interpreters without any problems. If you can notice now, interpreters are very cheeky, very cheeky to actually the administration because, they say now, if they don't know what they are doing, why are they here? I tell the administration now and again, stop interfering. If you have something to tell my junior interpreters, inform me, so that I can tell them because if you tell them yourself, they say how come.

Those interpreters working in rural areas often complain about the lack of chief interpreter visits at their station, they suggest that this impacts on the continued provision of sub-standard interpreting services.

Stanley Thandisizwe Tyhatyha: The problems that are being faced by us as interpreters, I think can be reduced if our principal court interpreters and our inspectors then were doing their rounds to see what problems we encounter either quarterly or after 2 months. So if then our principal court interpreters or our inspectors were doing their rounds to find out about our problems then I think we can find the solution.

Tyhatyha believes that monitoring is also a shared responsibility, and senior interpreters should do their part at all times. He then describes how he goes about his monitoring system:

“Yes that is something I do because at times when they are in court. I would then go there and listen to what is being interpreted and how they are performing in court. I often tell my interpreters that if you do not understand something it is still the right thing to say you worship with due respect I did not get the phrase or your last phrase so can you make it simple for me.”

Mahlangu (1993) correctly points out that the hierarchy of the court interpreting profession is problematic, also finding it necessary that there be an introduction of inspectors in all interpreting court station within the Republic (Mahlangu 1993:49). Moeketsi (1999a) in her research finds that as matters stand the Department only employs four inspectors to have an extensive task of serving nine provinces. Often, they are described as ‘over-worked and consequently inefficient’ (Moeketsi 1999a:140). The duties of the said inspectors were to carry out inspections of every interpreter on an annual basis, and the feasibility of such an exercise has not been questioned in the past. The initial idea in the introduction of inspectors was that over 18 to 24 months every court in the country would be visited by at least one of the inspectors, spending at least one full day with him in court. During this period it was envisaged that any

short-comings that come to the attention of the inspector during his visit would be detected, and discussed by him or her with the said interpreter. The possibility of that happening under the current situation is limited, which necessitates a revised strategy on the part of the Department. From the reading of the 2002 DJCD report, it is made clear that a number of recommendations which were previously made were not implemented because “there is a unit at a National level to manage interpreting issues” (DJCD 2002:15).

A number of factors presented in this subsection are indicative of lack of any proactive evaluation structure. When a number of principal interpreters were interviewed in this research they suggested that they do court visits regularly to ensure efficiency. But during the period of data collection, in particular observations done in various courts did not support the assertion they had made. A majority of interpreters provided an unequivocal “No” evaluation that was done by their principals. With some interpreters, their last evaluation that they could remember was when they were still junior employees, just after the induction or orientation at work. It must be submitted, where the miscarriage of justice must be guarded against, it is essential that court principal interpreters must always be mindful of quality produced in court and also should provide for monitoring mechanisms which seek to enable performance to be monitored or assessed by a designated authority. A number of scholars have provided suggestions to the monitoring and evaluation systems for court interpreters. For instance Nel et al (2005) suggest firstly a 360% rotation feedback. For Nel, this can be done through questionnaires, where those who attend a particular court can be asked to respond to questionnaires about the performance of an interpreter designated in that court (Nel et al 2005:479).

This is seen as useful, if court interpreting is viewed by the Department as a complementary element in the provision of a successful dispensation of justice. Another proposed method of evaluation is based on absolute judgment, this affords principal interpreters the opportunity to come to decision or pass judgment on the court interpreter’s performances based on criteria and clear standards set by the Department. With that done, the evaluators would be able to know the specific areas of weakness and where to direct his/her feedback on the part of the court interpreters (Nel et al 2005a:477).

5.6 Professional interpreter association

As matters stand, there is no recognised court interpreter association. From this research, when respondents were asked whether they belonged to an association, many were quick to answer “No”, and it appears that those who answered “Yes” thought that the word ‘association’ was used in broad terms to refer to a ‘trade union’. However some felt that the formation and the recognition of the interpreters association would lead to a reduction in a number of problems.

Principal interpreter Mr Zizi: We are in the process of forming an association. At the moment we are really thinking about it. In the Eastern Cape region we met to nominate our executive chief. We are not really happy about the executive, that’s why my colleagues are not thinking of changing the executive. Because I do not feel that the people we nominated are among us. For instance Mr X, a principal interpreter in Mdantsane always wants to be on each and every committee. Why should that happen? You can’t be in every place leading but there are other people with the same ability?

Some feel, dissatisfied already with the leadership of the South African Language Practitioners Association (SALPA) which in the past has purported to be representing court interpreters in a number of platforms.

Nompumelelo Dyumfana: Ja, we do have an association, I remember we once went to a meeting, and people were not happy about X and his leadership. So people seemed to be less interested with those X things. I also disassociated with that association, but I do think a revised one would help.

For some people who belong to various unions, among those being NEHAWU, they said they were not regarded fully as part of the union because there was uncertainty about the status of their employment as court interpreters. Some responded that they were regarded as casuals. During the period of this research, it appeared that a majority of court interpreters are not unionised, making it difficult for them to have union representation in cases before their employer, being the Department of Justice and Constitutional Development. Furthermore the majority of court interpreters interviewed were not aware of the existence of the South African Translators’ Institute (SATI). Seasoned interpreters interviewed also in this study said SATI was not an officially recognised association, and they did not see it adding any value to court interpreting. As a result of claimed neglect that took place over the past years, many interviewees feel they can do without an employee’s trade union.

One may well ask the question then as to how the judiciary interpreting compares to other professions? Sociologists and historians have written a great deal about the development of professions, focusing primarily on what have long been recognized as the two most powerful ones, medicine and law. Recently, the interpreting profession itself has been the subject of research and discussion (Witter-Merithew, 1990; Tseng, 1992; Mikkelsen, 1996). These analyses of various professions attempt to answer the following questions: 1) What distinguishes a profession from an occupation? 2) How does an occupation become a profession, and why are some professions more powerful than others? 3) What is the difference between a professional association and a trade union? 4) What role does credentialing play in the development of a profession? More and more occupations are claiming status as professions in an effort to increase their prestige (Sapp 1978).

Firstly, judiciary interpreters must emulate other professions by forging alliances with the state (court systems, government agencies, and legislative bodies), clients (the legal profession and advocacy groups for non-English speakers), and universities to raise standards and enforce them without sacrificing its autonomy. Individual court interpreters have played a key role in standard-setting and enforcement to date, but rarely have their professional associations been officially recognized as interlocutors in the discussion of these issues. Interpreters must also understand how the law of supply and demand works. At present, there is little demand (in the economic sense) for interpreting services because those who perceive themselves as the interpreter's clients, litigants who do not speak English, have no purchasing power to back up their desire for competent interpreting. Interpreters must make every effort to convince the legal profession that the court interpreter's clients include not only non-English speakers but also judges, attorneys, and other judiciary personnel. Once these powerful professionals realize that it is in their best interests to have competent interpreting, the resultant demand will enable interpreters to negotiate for better working conditions.

5.7 Subject-matter training - specialised courts

Although a number of reported cases presents rather a tiny proportion of all recorded cases, the severity of the impact on those accused and those who fall victim make it a subject of major importance within the criminal justice system in South Africa. Perhaps it is proper to suggest that

all the sins befall the forensic interpretation of medico-legal evidence. The greatest danger is the over interpretation of evidence. On many occasions this leads to over-interpretation, which tends to lead to both normal and abnormal findings by the court. This may be a result of borne out ignorance, or a lack of impartiality, a failure to recognises that there may be alternative accounts of what took place which goes un-interpreted by the interpreter. This may also result in medical evidence being given greater weight than it actually deserves. One can then be faced in the courtroom with menaces of over interpreting the normal findings. Sometimes one finds that a positive finding by medical experts is over interpreted as a positive finding.

It must be submitted that one of the key features rooted in the common-law tradition is documentary based evidence. This feature is predominant over and above the oral evidence. Now documentary based evidence such as medico legal reports require a skill or an art of interpretation, where the interpreter has the ability of providing word equivalents from source language to target language. Originally, interpreters were called into court primarily to interpret witness evidence, and non-English-speaking defendants were often left to fend for themselves. Our courts today are occasioned by the use of DNA tests and ballistics tests which become the prime evidence of each case before court. At the centre of it all, is the use of medical terms which necessitate good interpretation. Perhaps also this problem may be expressed that the lack of equivalence between the lexicons of the source and target language largely remain a challenge. With the development of the law taking its course, interpreters do not receive any support from the Department to Justice to enhance their skills in interpreting medical terms.

For instance in March 1993, South Africa saw the introduction of the Sexual Offences Court (SOC). About 54 courts had been staffed to give attention to specialised courts. The Wynberg Sexual Offences Court became the first official establishment; its functionality was designed to look at sexual offences committed against women and children (Mabanda 2005). In the words of Sadan et al (2001), the introduction of these courts were a reflection and a commitment that “is reflected in the South African Governments ratification of the Convention on the Rights of the Child ... in 1995 and in the South African Constitution adopted in 1996, which enshrines the rights of the child in Section 28 of the Bill of Rights’ (Sadan 2001:8). Furthermore Moulton (2002) shares the view that it was indeed necessary for one to adopt “a victim-based policy stance” to ensure the reduction of sexual crimes in the criminal justice system (Moulton 2002:13). On or about the introduction of these courts, it was recognised that sexual assault cases “were

unacceptably high” and that “the actual number of rape cases [was] substantially higher than the number reported” (Kruger 2005:4).

During all this time, hardly anyone thought that it was necessary to re-skill court interpreters to prepare them to function effectively within the specialised courts. A number of jurisdictions and countries have adopted the introduction of specialised courts. Among those are domestic violence courts of California (United States) (Weber 2000); the family violence courts of Manitoba (Ursel 1992) and Ontario, Canada, and the sexual offences court of Florida (Dahlburg 2001). From the review of literature when scholars are seeking to identify features of these courts, they often define these courts as inclusive of screening processes to identify cases that fall within the domestic violence or sex offences category (Weber 2000:24). Furthermore ensure the supply of “dedicated resources; and specialised court personnel, thus suggesting, “a team approach”, described as involving “the judge, prosecutor, defence counsel, treatment or intervention provider and probation or correctional personnel” (Weber 2000:24, citing Rottman & Casey 1999). From the scholarly views being expressed, hardly does the reader hear of court interpreters being part of the above collective. In the court observations and interviews done in this study, there is a general recognition that most interpreters are unfamiliar with the complexities of domestic violence matters, which tends to be consistent with the flow-on effects for victims and the efficient processing of cases (Weber 2000:27).

Some interpreters had the following to say about specialised courts and new amendments to the Acts relating to the functionality of the courts:

Principal interpreter Mr Zizi: Yes it is a valid concern, because 1) I’ll tell you one other thing each and every year every now and then there is one amendment of acts and all those things of introduction of new courts for instance and all those things our department it’s failing to take also the **interpreters to the training for that particular thing that is new, they will take the magistrate only taking for instance the prosecutors only what they will do.** An interpreter will go around searching for himself the information about all those things to me it’s totally unfair. I used to say for each and every change. Everyone in the court room, the interpreter, prosecutor, and the presiding officer must be taken to training so that they can be taught all together, and they can begin to know these things simultaneously. It must not be the case one knowing this and then they assume the interpreter is supposed to know and interpreter

in this fashion. Now when it comes to the crisis...the crisis in our department is not being caused by anyone but by the department itself.

Some interpreters do share that there are specialised training courses, which the department provides for them.

Adv Matthew Mpahlwa: Once you have received training from the Justice College, what then happens? Is there any further in service training?

Benita Moitheri Majeng: J court (interpreter): Yes, there is another course that they have. They call it the interpreter's advanced training and furthermore there is expert evidence training and they have also sexual offence courses. They deal with the sexual offences that we deal with in the daily duty that we come across in, in court - your rapes, your sexual assaults. You must know how to interpret those terms that they use in court because it becomes difficult when you do not have training because you get stuck sometimes, you don't know what or how and sometimes you know what is being said but you cannot interpret it. And in most cases where there is a new introduction, only Magistrates and prosecutors are considered and taken to training, and interpreters are just left there.

On the whole, it can be said that it is the contention that is carried out in this research that the existing pool of court personnel has been inadequately trained and prepared for specialised courts, due to the incapacity afforded by the Department of Justice and Constitutional Development. As matters stand now, there exist inadequate and inconsistent provisions of skills training and debriefing programmes for the court interpreting personnel. As a result, the possibility of experiencing trauma when dealing with cases can be high. Also this can be attributed to the lack of project management by chief interpreters who are vested with the duties of an oversight role and monitoring the training of court personnel.

5.8 Language and interpreting

There are mainly for areas of discussion that influence the language problems that behold this language use in our courts. The first one is identified by Kaschula (1995) and Moeketsi (1999b) as resulting in language cultural differences. The second area as discussed by Moeketsi (1999b) is misinterpretation. Moeketsi submits that misinterpretation results from inadvertent and intentional actions on the part of court interpreter. It must be submitted that in this research that a

number of people who stand in legal cases before the country's magistrates are South African indigenous languages speakers. Furthermore interpreters are required by the justice system to function in English and Afrikaans as the languages of record. Embedded further in these problems I submit that the use of legalese or legal language creates further difficulty for interpretation exercises.

In the Eastern Cape, where this study is based, isiXhosa among local inhabitants is the mainstream indigenous language, thus including areas such as Ciskei and Transkei. It must be submitted that the aforementioned is found in restricted areas in the Eastern Cape. The Xhosa dialect was founded and came to be recognised around the formation of the printing press by missionaries at the Cape. The house of Ngqika dialect, which is quite close to the Thembu (or Gcaleka) variant is the standard. The variants appear to be widely used in schools and are regarded as the standard isiXhosa in the courts of law in the region (Andrejewski 1985:546).

It is an unfortunate situation that even if a court interpreting exercise is undertaken by a seasoned interpreter, cultural dialects seem to present a barrier in the communication. This truculent is occasioned by potential errors and misunderstandings. In many courts, the respondents in this research submitted that there were occasions or instances where they were met with certain language utterances unknown to them in the languages they specialise in. It must be submitted that language and cultural issues cannot be separated even in the court process. The foundation of African indigenous languages belong to what is termed 'language families': For example, SiSwati, IsiZulu, isiNdebele, IsiXhosa fall within the Nguni family. Among the general public there is an untested assumption that if one has the ability of speaking an Nguni language, he or she can understand another Nguni dialect. This is often not the case. What confronts a number of interpreters interviewed; were different regional dialects used in the Eastern Cape region.

Adv Matthew Mpahlwa: With regard to regional dialect, how did you adapt, from Mount Frere to here, words change, how do you deal with that?

Sindie Lunyawana: I think you have to familiarise yourself with the dialect, like, you do your own research, we even from our colleagues here in Engcobo, then you ask him that, most cases this word, this term is used in Engcobo. Like "*ushushu*" and when a person says *ushushu xa ungowase Mount Frere ucinga fan'ba ebenganxilanga kakhulu* (be held to mean in Mount Frere area, he was not heavy intoxicated) but here, they use the word to say you were drunk. But in most cases, you are able to request from the magistrate: may I seek clarity from the witness,

uthet' ukuthini xa usithu ubeshushu(I ask the witness what you mean when you say, “ubeshushu”).

Mr Botya, an interpreter in the Engcobo Regional Court, says he often has to find the meaning of the words used as he is not from the region.

Adv Matthew Mpahlwa: Do you perhaps come across what is known as regional dialects?

Zamikhaya Botya: Eh, especially in this region, where I was coming originally; there would be some phrases that will be used where you find out that maybe as we are all isiXhosa speaking people but in some ways you wouldn't know what the meaning of the phrase is. If I can make an example, like when someone was saying; eh... *ndivelwe, ndivelwe*. To someone it simply means, maybe I'd heard something *there* but it doesn't interpret that way. It simply means I'd feel something. So that is a difference, because if you come from another region you find out that there would be a conflict in those words when you find out they are using some phrases in a different manner from the way you are used to. Uhm, I don't know whether I can make more...

Adv Matthew Mpahlwa: Please go ahead sir...

Zamikhaya Botya: eh, there is also a... it's commonly used in the radios. There is also a word that is used *ukutshuqa*, you cannot find that word around Engcobo, you can only find the word from eMampondweni (Among the Pondo people). So when one comes to Engcobo you find him in court he reads those words *ukutshuqa*, so here in Engcobo they would interpret *ukutshuqa*, as to crush something but literary it doesn't interpret that way. You'll find out it simply means that you take a short route.

For Principal interpreter Mr Zizi, the Justice College is also to blame for the lack of accurate interpreting of local dialects, because he asserts that some of the training materials are written in isiZulu language and beginners from all regions are taught to use those words. All interviews are again quoted verbatim.

Principal interpreter Mr Zizi: As we are speaking Xhosa here in the Eastern Cape, there are things that I think in our Justice College they interpret in isiZulu and then we start getting problems here in the Eastern Cape now. People will tell you no, not in our area, in our area, for instance in Queenstown, for instance when we talk about somebody hitting somebody with a stone; that now I've thrown a stone to that somebody; *ndamgibisela ngelitye*, that's what you are saying. But in the same instance, here in the Eastern Cape, when you go to Port Elizabeth, they'll

tell you about *ugqaya* that's one and same thing. Those are the things that we use actually to train our colleagues but it is a long process.

For instance here there are guys who are sitting where a fight started in one case. They will tell you that now, when we were there, one witness would say we were busy *faka*. To *faka* is to put something in, now when they are drinking, they say that now they are busy *faka* then they say to you, we've been drinking. Now someone who's not from this area of the region won't be able to know what is being said. If you are an interpreter, you will say *ufaka ntoni phi?* (*what are you putting and where?*) which means something very different now and that will lead to a different interpretation which will be very wrong. We are trying to learn more Xhosa and go deep... because that's what the witnesses tend to do is to repeat again, repeat again, what they have said. I don't understand, can you imagine then if now the presiding officer is a white man, who will say no, no, no this interpreter is incompetent, then they start calling for a principal interpreter to come to court and correct some phrases. I always tell my interpreters not to take chances and to make it a point that they understand what you are interpreting. Don't take chances.

Senior Interpreter Mr Tusani: We fail kwisiXhosa and when I do my research you find out that they are model C and some are from Port Elizabeth and I know isiXhosa salapha and isiXhosa saseMonti sahlukile even abelungu bayasazi isiXhosa, so as interpreters sibethakala kwinto yokuba iindawo esikhulele kuzo eTranskei and nakomaBhayi, isiXhosa saphaya sehlukile (in summary, isiXhosa from different places is also dialectically different).

By extrapolation from the material obtained above, a suggestion is given that it is rather crucial that an interpreter obtains an understanding of the issues and the language variation in order to render an effective interpretation exercise. Also this may act as a safety net for presiding interpreters who are not accustomed with a local dialect used in the area. On many occasions judicial officers place heavy reliance on the interpreted version. A lesson can be learnt in the decision of Chief Justice Munnik J in the case of *S v Mpopo 1978 (2) SA 424(A)*. Here the court had assumed to have knowledge of what the witness had said during the oral evidence. The presiding judge had further claimed to have knowledge of the language used by the witness and furthermore that an assessor by his side was a fluent isiXhosa linguist. On review, it had become apparent that the evidence was given in Sesotho by the witness and not in isiXhosa. Combating an embarrassing moment, the Chief Justice attempted to explain his misunderstanding by stating

that the witness came from an area where Xhosa and Sotho speaking people lived together. For a person who knows the languages, isiXhosa and Sesotho are so different that one finds difficulty in accepting that there can be an act of confusion between the two. Reviewing the case, Corbett JA stated that on many occasions although an interpretation procedure may not be entirely satisfactory but “... where evidence is interpreted the Court must have regard to what the witness himself says in the language which is interpreted (*S v Mpopo 1978(2) SA 424 (A) para 426G*).

On many occasions the task of the court interpreter is made difficult due lack of legal concepts, which are unknown in African languages and it may also be due to the lack of lexical equivalents from source language to a target language. Stem (2001) who identified a similar problems in working with languages says the common areas to find potential errors resulting is in allegation, cross-examination, pre-trial, pleading guilty or not guilty or beyond any reasonable doubt (Stem 2001: 6). According to Morris (1999b), Vidal (1996) and Hale (1999), a good interpreting practice should not only hinge on linguistic content, but also on social, cultural and psychological variables. All this needs to be done to ensure that interpreters are able to uphold the ethical standing and linguistic responsibility to maintaining the legal equivalence of the source language, which means respecting the speaker’s language level, style, tone and intent in the target language.

Trabing (2002) tells us that the interpreter ought to have a “working knowledge” of the language, and put differently they ought to have “a broad understanding , “very good every day grammar and syntax and specific knowledge in many fields” (Trabing 2002:14). Also necessary to mention for the purpose of this research is what Trabing asserts, he is of the view that idiomatic expressions and slang jokes are not easy to translate and let alone interpret either consecutively or simultaneously. Also the respondents interviewed in this researched showed a broad understanding of legal lexicon in English, it was very minimal in isiXhosa language. It must be submitted that when interpreting, cultural phenomenon and differences tend to have consequential roles at both lexico-semantic and the pragmatic levels, but it is important to concede that it would be virtually impossible for any given interpreter to know all the jargon and all linguistic nuances of Nguni cultures. It is a submission made by Trabing (2002) that cultural differences have a heavy influence on an interpreter’s rendition. However a suggestion is given that sometimes it may be necessary for interpreters to resort to linguistic mechanisms such as seeking to define the term in question in order to render the target language equivalent and

meaningful. In his words Trabing states: “An interpreter may have to try [to] work in an explanation of something that is culturally very different...” “...from anything in the target language” (Trabing 2002:15). Duenas Gonzalez et al (1991) also suggest that it is nearly impossible for any interpreter to interpret using direct equivalents or cognates without engaging in any risk of seeking to convey a meaningless message. For them, it is vital for the interpreter to take into account every word used in the source language without compromising the semantic and syntactic structure of the target language.

Benita Moitheri Majeng J court (interpreter – quoted verbatim): Yes there are those times that you get across such things that you call crisis because sometimes when you are interpreting there are words maybe that you don’t understand or you understand it in a different way because of the different context and dialects that we have in the communities. All this is due to the fact that we live in different places, and because we don’t use the same words *per se* meaning because sometimes you as a witness or a speaker mentioning a certain word and then where you come from; that word means a certain thing and you give the understanding that you have of that word to whoever you are interpreting to and then somebody else who understands it in a different way speaks up. Then the crisis comes in - sometimes the attorney would get up and say that this is not what is being said then in that case the interpreter just needs to ask the speaker to explain (the one who mentioned the word) to explain what it is that the person meant then it gets cleared in that way.

Also Kaschula (1995) argues that most indigenous languages spoken today have borrowed heavily from European languages, in a variety of fields, and that such an exercise remains unsatisfactory and insufficient. Principal interpreter Mr Zizi says interpreters tend to lack lexical equivalents in scientific terms and mechanical terms, i.e. defining body parts or naming car parts. It would seem from the little evidence presented above; the submissions by Moeketsi (1999b) that in essence bilingualism cannot be regarded as a sufficient prerequisite for a skilled interpreter. Some of the confusing words which exist in the Nguni lexicon are the following:

1. *Kusasa*, held in isiXhosa to mean ‘morning’ while in isiZulu, it means ‘tomorrow’.
2. *Amadlozi* held to mean ‘semen’ in isiXhosa, while in isiZulu it means ‘ancestors’.
3. *Iqatha* held to mean an ‘ankle’ in isiXhosa, while in isiZulu it means ‘a piece of meat’.
4. *Ukugeza* held to mean ‘being silly’ in isiXhosa, while in isiZulu it means ‘to take a bath’.

Kaschula (1995) outlines other words which he submits are not in line with isiXhosa terms. For instance he submits that there is a lack of definite lexical equivalents for isiXhosa concepts such as *ukuthwala*, and *ukondla* in English which are simply defined as ‘abduction’ and ‘adoption’. From the respondents interviewed in this research, none stated with particularity that they had experienced difficulty with the interpretation of customary law terms from isiXhosa to English. What most respondents hinted at was that their interpretation exercises were always guarded and they attempted to remain sensitive to the fact that they were communicating across cultures as well as across languages. For many court interpreters this often requires a degree of description of cultural sensitivity, thus acknowledging the functionality of regional dialectal or dialectal differences in language. This may be inclusive of non-verbal differences, different attitudes towards time, and different forms of personal address, among others (Roy, 1993).

This would seem to suggest that an interpreter must not only be bilingual, but must be a bicultural specialist. For instance, it is considered rude for a young person to refer to an old person as telling lies. On many occasions, *isihlonipho* is used instead. One would here as a young person use “*Uyaphazama*” in English interpreted to mean “he is mistaken”. It is noticeable that African languages are rich in proverbs and in kinship terms. In many of them provision is made for the calling of the paternal uncle, or the maternal uncle using terms of respect. There is also a word for the eldest daughter and the eldest brother. Absence of these rich terms in the courtroom creates confusion (Moeketsi 1999b:8).

Therefore there is no doubt in this researcher’s mind that there are situations where race and culture are relevant and where the failure to take a person’s race or culture into account may amount or lead to an injustice. It must be submitted that the *hlonipha* custom observed by some black communities, where a young person is not permitted to look an older person or someone in authority in the eye must be taken into account. It is therefore crucial for presiding officers working in this Eastern Cape region to recognise this custom, so that they are able to guard against drawing unfavourable inferences, where there is a superficially understood demeanour of a witness, because of the cultural gap between the judicial officer and the witness (Dlodlo 1978:29).

Principal interpreter Mr Zizi (verbatim): For instance as I’ve said to you here in our location there are things that you cannot when for instance speaking here...the dialects are so important because if you don’t understand them you can mislead the court and you are forced to understand

them according to the environment and I don't know how can I put it. Our colleagues to go around in the community they must mix with the community...with the community in churches in all these places if they can be able to know these things because some old people are in those places whereby they will talk about trying to shape young people...even if they are calling for instance you've got **Into** the family **Nto** family their actually wives they don't call **Into** because they say it's now...**ngutat' omkhulu wefamily** (family elder or a grandfather). They start now to call what they call now *hlonipha* they will say **Yishi** and all those things need somebody who is really going around, who is broad minded and finally who can actually understand now you trying to say something if he is talking about **Yishi** and all those things.

In the Eastern Cape Province, where the majority of the population is black, especially the illiterate or semi-literate, found themselves at a disadvantage in that very often innocent behaviour can or may be construed unfavourably because of a misunderstanding arising from the interpretation of their evidence. For example, during the observation visits in Lusikisiki Regional Court, the court personnel had shared laughter after an illiterate Mpondo woman came before court for trial, the woman had addressed the prosecutor in the following terms “ *Zewuphi wena, Mtshutshisi xa kusenzek' onto?* ” (Interpreted to mean: Where were you, Mr Prosecutor, when that happened), the standard variety in isiXhosa being “ *Wawuphi wena, Mtshutshisi, xa kusenzeka loo nto?* ” From the observation it would seem that the joke was meant to portray the witness as illiterate, thereby the *Mpondo* variant intended to suggest that the unschooled woman sought to question even the court procedure that she was not familiar with. However, it is submitted if the isiXhosa variant was used, a different conclusion would have been reached.

In respect of language differences, it is submitted that the interpreter must always ensure that he discharges his duties as the “cultural broker” whose tasks include among other things the mediation of “ideas, laws, customs and symbolisms” (Wilson 1972:18). A further submission is made in this regard, that the exercise of the above task requires African interpreters who have appropriate language skills (often more so than the presiding judges and magistrates sitting on the bench). In the South African context, the obligation that the interpreter must give a product, full of complete equivalence, free of any modification, additions or deletions present a mere ideal situation that may be impossible to achieve. Similar situations have been held to exist in Malawi, where there seems to be heavy confusion between “*rape*” and the traditional practice of “*gwamula*”, which is held to refer to the “coming of age practice”. This happens in the event

where the boy breaks into the girls' shelter and makes all attempts to have sex with her without consent. Kishindo (2001) submits that where an interpreter is not aware of such practices, interpretation errors are inevitable. Other relative pointers worth noticing are based on the fact that most Nguni people engage in non-verbal signs, since they tend to use gesticulation in their speech.

Moeketsi (1992) observes what she calls *dexisadphatansma*, this can be seen as an act where one refers to imaginative pointing to abstract places or objects remains prevalent in Nguni communities in Africa. For Moeketsi, a witness finds it easy to point out a part of his body to indicate the wound or point at a scene. A further example relates to pointing out a colour, which he asserts that anything similar to the colour in the courtroom is pointed out by Nguni speakers (Moeketsi 1992:36). It is also observable that size, length and distance are described in terms of what is observable. For instance it is not strange to hear a person say that the person was tall as that policeman sitting next to the door. Fortunately the use of ideophones in the expression of intensity is known to both the English and Afrikaans, which serve as the languages of record (Moeketsi 1992:35). Also common is the use of polysemy, a number of terms used by speakers which often must be read from the context in which they are used. For instance the term “*ukubamba*” can be used to mean “to hold”, but again where a robbery has been committed, one can still say “*ukumba inkunzi*”, or where something is withheld. It is therefore necessary to have a non-rigid understanding of the word that is used.

Among notions related to language use is the use of legalese in the courtroom. Courtroom English is said to be very dense for an ordinary lay person. It can be seen as a pedantically measured dialect, where lawyers painstakingly calibrate every phrase into airtight legalese. The interpreter is required to interpret this obscure language. Meaning can be lost when words try to make the jump into another language. So too is a judge's decision under question where they often require interpreters to interpret verbatim. The idea that the interpreter ought to provide “verbatim” interpretation of proceedings seems to be a pervasive myth within the judiciary and its functionality. At the same time, the legal profession remains suspicious of the interpreters who seem to usurp the judicial function of interpreting the law, given the overwhelming idea that the term interpretation in legal usage be held to be a restricted process “that is performed intralingually, in the language of the relevant legal system, and which ought to be effected in

accordance with a number of rules and presumptions for determining the ‘true’ meaning” (Morris 1995:25-26).

Respondents interviewed in this research shared the notion that when it comes to interpretation of judgments, a majority of magistrates and judges shared the idea that interpreters ought to translate the judgment and not to interpret it, to give meaning to it. From the responses given, many interpreters say they have tended to disregard any instructions given from the bench by a judge or magistrate “not to interpret but to just translate the meaning word for word” or to “just translate word for word what they are saying,” but instead what they do is to attempt to convey the target language message from source language as precisely as they can with the limits of the languages grammar and syntax. Gonzalez (1991) adds that more needs to be done, more than just obtaining a ‘dynamic equivalence’, since the courtroom requires that the form and style of the message be regarded as equally important elements of meaning sought to be given” (Gonzalez et al 1991:16).

All this necessitates that the interpreter must have the ability to mediate between these two extremes, thus adopting a verbatim requirement of the legal record and the need to convey a meaningful message in the target language. This approach affords the interpreter the opportunity to be able to account for every word of the source language from the bench without attempting to compromise any syntactic and semantic structure of the target” (Gonzalez et al 1991:17). It must be submitted that any use of verbatim style requires that paralinguistic elements of hesitation, hedges, false starts and repetitions be conserved; and that the interpreter only needs to focus on conceptual units and not word for word concepts. Gonzalez et al (1991) points out that “the goal of a court interpreter is to enable the judge to react in the same manner to a non-English speaking witness as they do with one who speaks English. Also, the legal equivalent provided by the court interpreter is the record” (Gonzalez et al 1991:17).

In many occasions the interpreter must seek to convey the target language message in the legal register of the target language (Gonzalez et al 1991:16). In light of this assertion, the worrying factors are whether firstly in isiXhosa language, there exists a legal register that corresponds to the English or the Latin used by the court. Secondly, whether a legal register exists at all in the target language. Many of the interpreters in the region said that what they considered important for the purpose of interpretation was the ability to retain formality on what was being said, and

more importantly the content of what is being said to remain adequate. It must be submitted that language is inextricably linked to culture, and thus the manner that ideas come about is directly linked to culture, which means there cannot be an assumption that because a concept is existing in one culture that it will have equivalents found in another culture, so the interpreter uses a descriptive phrase to convey the idea adequately. For instance in common law jurisdiction like South Africa, the legal court personnel would find it easy to use the word arraignment in English. However an interpreter that has to interpret in another language would seek to give a long description in the absence of equivalence as follows “this is the initial appearance stage at which charges are read and a plea is entered.” As this research continues attempting to understand the legal process, it becomes increasingly apparent that the legal community’s perception of an ideal interpreter is outmoded.

5.9 Environmental factors in interpreting

In respect to environmental factors, the problems that interpreters face are multifaceted. This situation is characterised by bad or uncomfortable working conditions. A number of court interpreters complained that they suffered from fatigue in the scope of employment. No interpreter is likely to fulfil his or her ethical mandate if they are overworked. An overworked interpreter is unlikely to have the time, or energy to deliver a carefully guarded interpretation. Any use of an overworked interpreter, in the researcher’s opinion is likely to be the victim of haste and fatigue. It is submitted that interpretation should be seen as a highly intense, exhausting activity. Alfred Steer states that “you need a certain amount of absolutely iron nervous control, so that you can absolutely rely on the fact that you’re never going to stutter or stop, ever” (Gaskin 1990:38).

At every interval where the speed and the duration of interpretation increases, the fear of committing an error increases. Many scholars suggest that to cut down potential for error, interpreters ought to take intervals, switching every twenty minute. But in South African courts, each interpreter is assigned a courtroom and they have to interpret in that court for the whole duration of the court sitting (Gonzalez 1991:18). From the responses gathered in this research it has become apparent that even with experienced interpreters there is inevitable fatigue, because they sometimes falter because of sudden fatigue, sickness or the feeling of strong emotions. Some interpreters interviewed told the research of incidents where they broke down in court,

with no ability to continue and no substitute would be available, unless there is a court which is not sitting. Verbatim interview material in support of this follows below.

Prosecutor Gabingca Luyanda Sydney: Usually, there is that indulgence because... like for an example, I will make example between myself and the interpreter that I'm working with. We are sort of like close to each other, so every time there experiencing any problem, we come and whisper to say, ey, I need a 10 minutes break. So that is an indulgence because we want him to focus, we want him to give exactly what is being said and to give to the person or to the accused, to the witnesses to the crowd inside the court, to give a clear message to them. To convey the message clearly. Now if he says he's tired, he needs some five, ten minutes break, I will take that indulgence and inform the court that we need to take a five or ten minutes indulgence so that he can refresh and proceed.

Adv Matthew Mpahlwa: Now going to a situation; court interpreting fatigue, you have been interpreting in court and you feeling tired, what do you do?

Zenzo Mduzana: In our situation, we...I think it's still because we are new, we haven't asked for any adjournments. We hold on until the last minute. We try by all means, we try to call for water, to try supplement us. We get people advising us we should ask for adjournment even if it's for five minutes, but you see in a situation whereby everybody is undermining you. You feel that it's difficult to ask for an adjournment; you feel that I'm not the suitable person to ask for this, maybe the prosecutor has the authority or maybe an attorney can do that. As a court interpreter you just undermine yourself, then you say no, let me just hold on as exhausted as you are you just hold on until the last second.

Adv Matthew Mpahlwa: That fatigue or exhaustion, do you think then that can directly have an impact to affect your effectiveness of your interpretation?

Zenzo Mduzana: It does, it does, because I remember one time I was interpreting in a civil court case and it took me, I think it was five hours, I was exhausted but then...I was unconsciously like misinterpreting because I was unaware and I couldn't feel it, but the people around me could feel that I was no longer focused. So that also...it does take place, you don't feel it when it happens because the body is numb at the time. I think that also happens.

In line with the overworked interpreter, the functioning of the court is further made obscure by imperfect organisations, and the presentation of the bench's opinions containing language full of divisive content and temperamental in tone. In the light of all of this, a number of interpreters are

still undermined by some presiding officers and other court personnel, made to feel as “gum on the bottom of a shoe”, the one who is likely ignored for all practical purposes, but almost impossible to remove.

Adv Matthew Mpahlwa: Court interpreter fatigue, you’ve been interpreting for hours and you are tired, what do you do?

Nomvuyiso: Jah, ehh, let me make an example; it was Friday, on Friday the date was 30th of April. I started work on or about half-past 8 it was because the social worker, social workers were here before half-past 8. It was 8 o’clock that time. I’ve went to the magistrate talking with the magistrate and the magistrate was going, I must go by 10 o’clock, I have a personal problem at home. The magistrate, no I cannot go, because there is the domestic’s court sitting that day, and there was one magistrate to handle the maintenance court, the domestic court, the criminal court. So because the witnesses were here already I started maybe 8:15 or 8:20. And then I was from there until 12 o’clock and at 12 o’clock I went to the criminal court without any break, without tea time, without anything, until 3 o’clock and I began crying saying this was too much for me because I could not concentrate anymore, so I ended up losing my concentration.

The interpreting role is an exacting one, both mentally and physically. Therefore this necessitates awareness on the part of the presiding officer and other court actors, to always attempt to have a conducive working environment. It cannot be over emphasised that it is imperative that an interpreter must be mentally alert at all relevant material times. Studies relevant to this research indicate that there is anecdotal and unassailable evidence that where an interpreter performs a simultaneous performance in court; his performance deteriorates drastically after a short time of engagement in court. However from the respondent’s interviewed, they suggested that it was wise for an interpreter to inform the bench, soon as he or she believed that he could not provide interpretation due to fatigue. Many interpreters voiced the fact that many presiding officers do not even interrupt proceedings to give the interpreter a breather, but they are often forced to continue under the circumstances. Therefore there are often no safeguards to check against the accuracy of the court record. A critical task is therefore failed.

Adv Mpahlwa: How do you deal with court interpreter fatigue?

Stanley Thandisizwe Tyhatyha: Yes; I think that depends upon the rapport that you have established with the court officials in your court, like for instance you stay here then from 9 to 11 then at 11 we adjourn for tea time then from 12:45 we are on lunch then we are back until 13:45

.So at least it is upon the rapport that you have with the court officials then if you feel that today I am not feeling well you approach the prosecutor or write a note to the prosecutor then he will convey to or else if are in good terms with the magistrate then you can also write a short note to say that due to this and this I asking just 5 minutes adjournment or 10 minutes adjournment so that we can attend then to that problem.

Adv Mpahlwa: Some interpreters are even afraid to ask to go the toilet, especially your juniors.

Stanley Thandisizwe Tyhatyha: Yes; you know there is that thing I hate in most of our juniors when they are in court they don't feel free you know, I can say maybe there is a lack of confidence or lack of self-esteem.

The second problem identified concerns the lack of professionalism among interpreters. Unlike in other parts of the world, in South Africa, the majority court interpreters are African indigenous speakers, and are seen as suitably qualified to serve. As matters stand, there is no code or regulation that regulates the profession. The researcher's view derived from the observations done is that the court interpreters are still at a great loss in relation to their socio-juridical role, good practice and ethical standards required of court interpreters. As a result on many occasions their interaction with other court personnel tends to produce irritations and frictions which seem to heighten the emotions. The respondents in this research indicated that there were cases where as an interpreter, he seems himself as being unsatisfactory, being very incompetent, morally unfit and physical unfit by virtue of being drunk.

Interpreter 1:

Nompumelelo Dyumfana: Yes, there are interpreters who are letting us down really (manyan-nyan), most of them come here drunk and I'm thinking okay if...I'm wondering why, cause if it's something that is not in our job description. Most of them are males, the females, there's a few maybe drinking on weekends. Us females, we do not come to work on Monday drunk, and the males would come here drunk, so really I think people are judging us on that because we are not professional.

Interpreter 2:

Stanley Thandisizwe Tyhatyha: In this province then, I can say, interpreters then are paid peanuts. I can say so in most courts you'll find out that some of them they are called drunkards. This is because, when they go to court they often feel stressed and find themselves having to stay

in court from 9am until 1pm and to until 4pm talking, it's very stressful. Then you have to stay there the whole day knowing that at the end of the month's *mxm*, you are not being paid enough money. Well, I am not encouraging them to engage in such conduct of being drunk while they are in court, because there are people who don't understand English and now you are there and when they see that you are not performing professionally, you are now smelling alcohol, or you appear to be drunk, they start to say I don't trust this guy and this guy is unreliable. That also gives a bad reputation for your name. So once you are in court and a court official, they have things, you have to conduct in a proper way whereby people they say, I trust that guy. I trust that lady there.

Interpreter 3:

Fezeka Mbana: I'd rather think it's the stress of the job. Because we do not get counselling; we come across serious cases wherein we'll end-up crying as interpreter then after that nobody counsels nobody cares to interpreter whereas you've gone through a traumatic situation in court. Then I think that's the reason why some people engage in alcohol.

Interpreter 4:

Nomsa Judith Majeng: I have come across such interpreters even if they are not under the influence of alcohol or not high. Some interpreters seem to like the attention in Court and in particular the attention of the gallery, especially when it is full. They like to add things and you would find the gallery laughing and in court we are not joking, for a person to be in court it means that he has done something serious, and they crack jokes laughing at what is happening there. Another thing which frustrates interpreters is the fact that they are not paid well. Like me I've been a senior in making not in the pocket, we are many senior interpreters in the making because of our service and experience motivates us to wake up and do our job. The fact that some interpreters feel they are paid less, tends to make them go for the buzz because they are not satisfied financially but the service they deliver is more. In the case that I referred to earlier, the one interpreter was caught and told that this is your profession so you mustn't play with it, when you do your job you must make someone else wish to be like you one day, so if you continue acting in this fashion I don't think you are taking us in the right direction.

The general conclusion that can be derived from the above responses by interpreters seems to suggest that a majority of court interpreters have adopted a "devil-may care" attitude, this then

reflects badly on the functionality and the credibility of the court system as whole. Another factor mentioned is the crisis which is experienced daily by courts, where interpreters are absent themselves from work without due consideration and reportage. This brings to a halt the court roll of that particular court; hence each interpreter has a station without any standby interpreter being made available. Another view carried through by interpreters is that, most interpreters lack motivation because there are very few or no opportunities existing for the advancement of interpreting opportunities in South Africa. The suggestion put forward is that the Department must find it necessary to engage in a review of the appointment structures of interpreters.

Another environmental dilemma experienced by interpreters is that the rising expectations of what are expected of them is creating conflicting expectations amongst the court personnel. This section may be read with other chapters about the different perspectives that people have of court interpreters. All this is necessitated by the fact that the legal system today would prefer a court interpreter whose typical function is “faceless” and does not warrant any inquiry. The above is all founded on the thesis that the presumed transparency of the court interpreter in any court is supported by legal court personnel. The advancement of this scholarship is supported by a growing body of research, which has shown over the years that the interpreter does not function as such. As a result over the years various faces or images of what the interpreter should be have been identified and offered for academic consumption. (Morris 1993b:221-223). On the other hand, interpreters do not want to be seen as ‘lacking any intelligent interest in the proceedings’. They further object in being seen as individuals who simply have to be told that they “do not have to hear, just interpret” (Cardenas 2001:24). From the information gathered, it seems to suggest that the bone of contention is whether court interpreters ought to translate or interpret in many other occasions (Wadensjo 1998).

Adv. Matthew Mpahlwa (verbatim): What’s the distinction between translating and interpreting?

Nkululeko Baleni: Uhm, when interpreting you don’t have to interpret word by word but also not to summarise exactly but you have to say what is being said either party the accused or the magistrate or whoever.

Susan Berk-Seligson’s study around the 1980s showed that contrary to the legal system’s fundamental assumption, interpreters can be seen as “intrusive elements” in the legal proceedings, the view of which is inevitably affected by their involvement (Berk-Seligson 1990).

Sandra Hale (2004), presented a study based in Australian Courts, where she found pragmatic changes having an effect in the court interpreting process. Just after a decade, the interpretive scholarship saw the works of Mikkelson (2008), Herraiez & Rubio (2008), and Hale (2008) where they came up with evolving views and controversies that surrounded the role of the court interpreting exercise. They sought to work in a variety of law enforcement and legal settings.

Closer to home, Moeketsi (1999b) had observed that “the dismal performance of the interpreter is a result of poor training and lack of proper definition of the interpreter-role (Moeketsi 1999b:143). Over the years this absent definition of role of court interpreter, sanctioned the formulation of views and opinions on what the task of the interpreter should be. In the much cited jurisprudence on the matter, the case of *State v Naidoo*, Judge Williamson said : “It was surprising that in in relation to the courts of this country where interpretation of evidence and statements forms such an important and vital element in the placing before judicial officers and jurors evidence from so many persons who speak in tongues strange to the Court and jurors, that there appears to be no statutory provision, Rule of Court or Regulation governing the position of interpreter’s.” (*State v Naidoo* 1962(2) SA 631 AD).

The following case law, continued to explore the role of the interpreter in the South African context. In the case of *State v Mabona*, the court said the role of an interpreter “ought to be that of an impartial conveyer of the words of the maker of the statement, and not the interrogator of him”. It was the submission made by the judge that it was in the interest of justice that the interpreter is able to make independent enquiries, free of duress. In this case, the word “ought to” was read-in to mean what one would expect or would like to happen. What the learned judge omits to mention this time around is the fact that, no legislation is in existence, defining the role of the interpreter (*State v Mabona* 1973 (2) SA 14 AD). Later Judge Corbett J, in the matter of *State v Mpopo*, the learned judge was of the view that “a species of expert witness is telling the Court in a language understood by the Court (and by any recorder) what it is the witness is actually saying. What the expert or the interpreter tells the Court becomes the actual evidence in the case put before the Court and recorded” (*State v Mpopo* 1978 (2) SA 426 AD).

What one observes from the account given about is a description of the court interpreter, not a description giving a full account of the roles of an interpreter. What is certain and given from the description is that an interpreter is regarded as a chosen expert, whose pivotal task is to translate

(perhaps correctly put interpret) the words used by the witness into the languages of the Court. For the purposes of this research and this sub topic, the concluding regards given by Samuel Lebesse (2012) can be held to offer salutary summarisation of the subject matter and offers to scholars a window to explore the matter in future studies. He submits a suggestion on the task of the interpreter, giving it as follows: “The role of court interpreters shall be that of neutral, competent, and a professional facilitator of communication in the judicial process between court participants who do not speak the same language, by converting the meaning of the verbal and non-verbal communication of the speaker, in an understandable manner, into the language of the listener, whilst taking into account the cultural differences between these participants” (Lebesse 2012:356).

All the above necessitates that the interpreter is a person who has undertaken training both practically and theoretically, furthermore that he must exhibit the skill to interpret proficiently and expertly. In support of these assertions is Witter-Merithew & Johnson (2004), who assert that the profession of interpreting needs to be an established field of interpreting behaviour and oblige all practising interpreters to comply.

5.10 Are there any efforts made to remedy these problems?

From the information gained from the respondents, it is rather ironic to see that law as a profession is premised on words, yet denies the court interpreting of the complexities that are inherent in language. Perhaps this is because the above view or approach insists on achieving a perfect identity in the interpretation process between the source and target language (Robinson 1991:88). Another factor is that this tradition seems to enable the court system to function effectively as a monolingual setting; denying the source language. Often, the court holds that the individual language can and without difficulty be switched over into the language of proceedings without problems. From the research done here, in the following paragraphs this research project seeks to examine the expectations and remedies as proposed by interpreters regarding the notion of quality and what constitutes a successful interpretation.

From the survey of the information given herein, most respondents seemed to suggest that what was important to them was for an interpreter to show high concentration levels, as opposed to any complete rendition of the source speech at a given point in time. There is the contention

among respondents that judiciary interpreters are supposed to be taught to interpret all utterances without any distortion due to “addition, omission, explanation or level of paraphrasing. By doing that, the objective which is sought to be achieved, they submit, is that they have full command of all registers of their working languages, inclusive of legal arguments, and the legal jargon that is often used in colloquies between attorneys, and the unique style of speaking by law enforcement personnel.

Court Interpreter (Verbatim): Nomsa Judith Majeng:

Firstly, you must have good listening and concentration skills, you must understand different dialects, you must never take chances with languages those are very crucial because it can go down because of poor communication.

Migueluez (2001) describes the language used in court in the following terms: “The language used by expert witnesses and by attorneys when addressing the court, is often grammatically faulty, convoluted, imprecise, repetitive and lacking in coherence. Therefore, preparing vocabulary, while useful, will not guarantee success, given that the challenges in comprehending and interpreting expert testimony are not always strictly or even principally-lexical in nature.” (Migueluez 2001:4).

5.11 Breach of Oath of Office by interpreters

Firstly this section looks at incidences of breach of Oath of Office by court interpreters. This will also be done by discussing and analysing what has been said by the Courts in South Africa. An investigation was explored where a number of interpreters tend to breach their Oath by omission or by non-performance. Many of the respondents in this research both temporary and permanent interpreters indicated that they do not often take an oath before they resume any interpreting exercise. It is mandatory that before any interpreting exercise or any proceedings, those interpreters take an oath to interpret positively, well and truly, to interpret faithfully, to the best of their ability, without fear, favour or prejudice. A number of omissions were observed in court visits. Some ranged from misinterpretation or inaccurate interpretation of phrasing in court.

Although a number of interpreters insisted that it was sufficient to take oath upon appointment and never again, and further submitted that this breach of an Oath of Office in terms of Rule

68(1) of the Magistrate Court Act 44 of 1944 as amended, were mere omissions and not serious enough to warrant a breach or cause prejudice to the accused person. Some scholars have come to term such breach as a “low-risk” omission (Pym 2008). It is rather disturbing to hear such views from interpreters, because the carefully worded Form W181 by the Justice Department seems to place a heavy obligation on interpreters to be both legally and ethically bound to provide quality service every time they enter proceedings. It would seem that if the Oath is not taken before every proceeding resumes, a court interpreter whose interpretation is inconsistent with the Oath cannot then be regarded as punishable in terms of the law. This omission act does also open doors to a number of unscrupulous court interpreters who then exploit the loopholes apparent in the system, to intentionally misinterpret the evidence in order to influence the outcome of proceedings (Guinsberg 1993:599-603), Moeketsi 1999a:124). Some freelance or part time interpreters were of the opinion that it was sufficient to have the Oath taken by the presiding officer in writing at the beginning of the period in which they are employed (Stander 1990:84). In the case of *S v Ndala* 1996 (2) SACR 218 (C), the court hearing the review was concerned with the use of an unsworn interpreter under the Magistrates Court Rule 68. This matter had been referred to for review in the High Court. In examining the swearing in provisions, the court said it appeared mandatory to swear in an interpreter and that if an interpreter has not been duly sworn in, then he or she would be unable to administer the oath to any witness to be called as contemplated in s 165 of the Criminal Procedure Act. In essence this suggests that any evidence given by an accused or a witness cannot be used as evidence. The court further echoed that there would be an additional problem of the interpretation conducted and given truly and correctly by someone who is said to be “conscience bound” to interpret in this way. Giving its final pronouncement on the matter the Court held that the irregularity could not be permitted and hence that the proceedings should be set aside. Justice Van Deventer further refused to sanction a procedure suggested by the magistrate, where upon the evidence would be played back to and certified as correct by an official court interpreter, especially where the evidence was not admissible because the interpreter at the trial had not been sworn in and had administered the oath to the witnesses.

In other case of *Siyotula v State*, the Court concerned itself with the irregularity resulting in interpreting. The interpreter had not been sworn in and hence was not competent to interpret. The Court had held that his administration of the oath to the accused was irregular, thus suggesting that the accused’s evidence was not sworn evidence. At first the Court was of the view that all

the evidence should be disregarded, hence there was a clear case authority to do as envisaged in *S v Naidoo* 1962 (2) SA 625 (A). In both the cases of *Ndala* and *Siyotula*, the court reinforced the principles as set out in authorities, firstly that there was neither unfairness nor miscarriage of justice if the irregularity is amended without prejudice to the parties. This clarity of thought was in line with *S v Sibeko* (unreported, SECLD, Case No CC 26/98). In the *Sibeko* case, the state witness, who was Zulu speaking had been interpreting through a medium of an unsworn interpreter. In this case Kroon J had been of the view that the evidence was inadmissible and that it ought to have been struck from the record.

He had further ordered that the evidence of the witness should recommence *de novo* through an official interpreter or any *ad hoc* interpreter specially sworn in for the purposes of trial. It was held by the court that the approach adopted above was a practical and sensible method of dealing with an irregularity that had arisen in the course of the trial, and all this provided that a solution could not possibly have resulted without prejudice either to the prosecution or the defence.

In the case of *S v Kester* 1996 (1) SACR 461 (B), where the court was concerned with the undefended accused's first appearance in court until end trial, the court said:

“...it is the duty of a judicial officer to diligently, deliberately and painstakingly explain the rights of an unrepresented accused and to ensure and confirm that it was understood. This duty should not be delegated to an interpreter, but it is the duty of the presiding officer.”

Other scholars have explained that the safety-guard for the provisions of proper interpretation services rests on the judicial officer. Mikkelson explained it as follows: “there are still many officials, including judges and attorneys, who do not understand the role of the interpreter and expect him or her to carry out functions that are someone's responsibility” (Mikkelson 1998:1). Therefore it must be submitted that they cannot always be seen as all-round intermediaries carrying out a number of varied and diverse functions.

Quite apart from not being sworn in, the conduct of a court interpreter may render the matter reviewable in terms of the Criminal Procedure Act 51 of 1977 and the Magistrates Court Rules. There has been growing concerns highlighted by a number of reports from which indicate that the South African court rolls are overburdened and inadequate interpretive services are aggravated by that situation. Some have suggested that the root problem lies with the quality of the interpretations especially in criminal cases where evidence of a technical nature is often not

interpreted accurately and correctly. Reports by the South African Translator's Union and the report from the Law Society of the Northern Provinces bare testimony to this.

A recent highly publicised case in the Eastern Cape High Court in Port Elizabeth is an example, where 16 State witnesses had to be recalled because the interpretation which had been offered had been very poor. From investigating this matter, it was held that the three accused, all isiXhosa speaking before Court had complained about the quality of court interpretation of state witnesses. After the complaint was lodged, the chief interpreter had been called in to intervene and his findings were that not only was the interpretation of evidence not up to standard, but the witness had not been sworn in properly by the interpreter. It must be further submitted that it is not the task of the interpreter to administer the oath and this does not fall within the ambit of the court interpreter's duties (Erasmus 2009).

A number of issues relating to quality of interpreting were discussed with respondents, and they all seemed to agree that quality assessment should commence upon the employment consideration, thus ensuring that the best person is employed as a court interpreter. Some respondents indicated that for part-time or temporary interpreters an informal approach to employment was used, this involved a brief moment between the interpreter and the chief interpreter, then after the new interpreter is paired with a senior interpreter for a specific period. Central to the issue of quality assurance, a number of scholars are of the view that it should be approached from a systemic view i.e. court interpreting (Kalina 2005:769); (Verhoef 2007:9). Some scholars advocate for a revised or a totally a new philosophy, a system that will provide practical methods to ensure that a quality interpreting service is rendered in such a way that firstly, the needs of all court actors are consistently met, and secondly that there is a mission for continuous improvement in every aspect of the service to be achieved (Wille 1992:15) (Jeffries et al 1992:15). The proposition is a *Perfect Interpreting Practice*, which the scholar Joseph Juran describes as a "total breakthrough", meaning that it should be seen as a "decisive movement to new, higher levels of performance (Wille 1992:24). The PIP (Perfect Interpreting Practice) proposals will be dealt with in detail in the Recommendations chapter to follow.

Another suggestion for quality assurance is that interpreters should belong to a professional body or association with in turn sets the standards of measures with which their members are to perform to (Robinson 1994:97). However almost 90% of the respondent's in this research

indicated that they did not belong to any professional organisation which regulated their working environment. Belonging to a professional organisation would aid and would provide court interpreters with an opportunity for life-long learning. Such organisations would see to it that conferences and workshops are organised for members to update and upgrade their knowledge. Furthermore apart from any normative purpose, belonging to a professional organisation will ease manageability, thus at all times there would be continuous assessment with the aims at verifying whether quality goals have been achieved.

The professional interpreter association would also enhance the functionality by providing orientation and establishing the basis for action routines. By doing that, compliance with the standards of court interpreting would be considered to allow conclusions about the quality of the Justice Department, its activities, processes and outcomes which would be assessed against the standards. All the above would paradoxically have some counterproductive effects, since the standards would be more precisely defined and in addition, the actors would be bound to such standards and further dispossessed of a greater degree of autonomy as all important decisions are already pre-determined for an interpretive practice.

Some scholars such as Stake (2004) envisage case standard-based evaluations; enabling comparative purposes which provide evidence whether certain goals have been met or proposing a basis for accreditation procedures. However for a proper functionality of this approach, defined standards fulfilling the interpreting function must be restricted to aspects that can be easily ascertainable and measurable (Stake 2004:23). On the other hand it can be recognised that this has a potential of creating some problems, potentially overlooking aspects that might be equally important but are also more difficult to assess (Lueger & Vettori 2007).

If the Justice Department wishes to claim that they conform to the requirements for high-quality interpreting service, support for such claims may be invoked by formulating and implementing quality standards, thus making their quality efforts visible to the general public. All such standards would be aimed at fulfilling an accountability function that ensures transparency and demonstrate what is being done in order to legitimate public trust. Furthermore, on the downside, leaning towards externally accepted success factors and best practices may very well lead to increased levels of standardisation and homogenisation within the professional interpreting community. By doing that, the Department can be said to be meeting accountability standards.

Another element would be to develop standards as descriptions of good practice, such good practice standards are usually procedure-oriented, and in contrast to any broad-objectives-standards since they focus on the question, how to achieve a particular aims.

In this study, numerous accounts of incomplete and inaccurate interpretations were observed in proceedings across the province. For instance in the East London Magistrate Court where the presiding officer had questioned the accused on whether he had a lawyer or not, the court interpreter not only interpreted the magistrate's question but he further added to tell the accused his rights "you have a right to find your own lawyer, or you can elect to make an application for a state funded lawyer from the Legal Aid Board". The interpreter here takes it upon himself to avoid any miscarriage of justice that may rise from not telling the person his rights. In many courts observed in the province, presiding officers cared less in correcting the interpreter on doing what he is not suppose to do. Speaking of accuracy, Gile (1991) views accuracy as associated with the product oriented perspective and focuses primarily on the interpretation as 'faithful image', while Jones (1998) asserts that accuracy be seen from a perspective of exact or faithful reproduction of the original discourse. From the above, it can be said that accuracy relates to the aspect of discourse which could be explained as comprehensible. Hale (2004) says a number of scholars have adopted different views on the importance of maintaining accuracy, thus suggesting on one hand there are those scholars who believe in maintaining accuracy of propositional content along with liberties to change style and register (Barsky,1996).

On the other, there are those who are for literal verbatim interpretation (Benmaman 2000) (Hewitt 1995:200). In this research, interpreters were asked if they could clarify issues regarding their participation in court dialogue. When the frequency of the responses were worked out of all those interviewed, 15% returned a rating of strongly agree that clarifications are necessary in a court interpretative exercise, and 75% returning a rating of agree. There seems to be consensus that interpreters do see a need to clarify issues to litigants when carrying out their scope of employment.

In many cases both presiding officers and the accused fall victim to these errors of inaccuracy. In the case of *S v Mpata* 1990(2) SACR 175 (NC), the court reinforced the need for quality interpretation services. The court said incomplete explanation made by the interpreter did affect the accused's rights and amounted to an irregularity which necessitated a setting aside of a

conviction and sentence if the accused was convicted. During the period of research, it was observed that only accused who are financially stable, are able to take their matters for review or appeal for an irregularity arising from the hearing. The majority of people who appeared in criminal courts were neither familiar with the procedure or rules of the court, let alone be in a position to afford a lawyer.

In many cases observed, a number of inaccurate interpretations resulted from demonstration of distances and sizes in court which tend to alter the evidence given. Such acts tend to have major repercussions which may impact negatively on the demeanour of a given witness in that during trial he may be confronted with the issues of wrong distances and sizes. For instance it was observed that during cross-examinations that such alterations of evidence may give rise to a deviation from essential evidence and that such deviation may lead to evidence being declared unreliable (Lebesse 2011:350). It seems it can help in this instance in raising quality awareness and empowering interpreters. This is to say quality standards can also help direct the attention of institutional actors or seniors towards quality-relevant aspects of their daily work and interactions, thus asking them to re-consider these aspects in their actions and decision making processes. From the aforesaid; it is evident that the establishment of quality standards can provoke a multitude of differing and opposite effects, thus encouraging individuals and institutional engagement for quality development.

There has been very heavy scholarly debate about what could constitute accurate interpretation, some have suggested that caution should be taken when literal interpretation is given, since it may not adequately convey the sense of the message. “Interpreters are obligated to apply their best skills and judgment to preserve faithfully the meaning of what is said in court, including the style or register of speech. Verbatim, “word for word” or literal oral interpretations are not appropriate when they distort the meaning of the source language,” (Hewitt 1995:200). Brennan (1999) says that the power disparities in the court settings cannot be ignored. The concern here is raised not with the aim of promoting a more active role of the interpreter but to evaluate the interactions that take place in the legal setting. Another, important aspect about this type of research is that more studies have been prevalent in countries with historical oppression such as South Africa (Moeketsi 1999).

In her research observations, Brennan (1999) discovers that other scholars have made conclusions about standards of accuracy for both proceedings interpretation and witness interpretations (Mikkelsen, 1998, 1999). In her research, she is quick to assert that in many cases the main aim of proceedings interpretation is a provision to ensure that the accused hears what is being said, but noticeably there is no expectation that the accused respond or participate actively in the process. In many court proceedings, the interpretation is carried out in simultaneous mode. While witness interpreting is performed in the consecutive mode, and can be seen as dialogue interpreting that has been studied by researchers with a sociolinguistic approach (Wadensjö 1998; Jacobsen 2003; Roy 1989).

Biel (2008) proposes that quality assurance in interpreting should be looked at through two lenses: this being interpretation competence and the interpreter's competence. For her, interpretation competence looks at the interpreter's ability to interpret to the required and measured standard, while interpreter's competence may be said to refer to the interpreter's ability to function efficiently as a professional. This is one aspect which seemed ignored by the Justice Department in evaluating interpreters. As the court interpreting profession has developed over time and in other countries as well, principles have been adopted to govern the functionality of interpreters in the judiciary setting. The *Grotius* project sponsored by the European Union stated, "Without competent, qualified and experienced legal translators and interpreters there cannot be an effective and fair legal process across languages and cultures. ... Reliable standards of communication across languages are therefore an essential pre-requisite to deal effectively with this increasing number of occasions when there is no adequate shared language or mutual understanding of legal systems and processes" (Hertog, 2001:11-12). These principles or standards vary somewhat from country to country, but they all have certain universal features.

The establishment of a new court interpreter's professional organisation can also lead to the enhancement of understanding of the interpreting profession, and can further create robust standards that reflect a more nuanced perspective of how interpreters should be conducting themselves. Lessons can be learnt from the United Nations, where a National Council of Interpreting in Health Care commissioned an "environmental scan" of interpreter standards of practice around the world in view of developing national standards for the United States, which is dated late 2005 (NCIHC 2005). What can be derived from the reading of the scan is that, Marjory Bancroft, who authored it says that "Documents about ethics or conduct serve to

regulate interpreter behaviour and address issues of “right and wrong”; whereas, standards of practice typically offer practical strategies to promote quality interpreting” (Bancroft 2005:vii). The interpreter association can do more by providing practical examples to situations which apply. They may also link each standard to a related principle contained in the Code of Ethics, which may appear in a separate document. Interpreters in the legal setting would benefit from a similarly comprehensive set of standards to accompany their codes of ethics. The role conflicts encountered by interpreters as they struggle with competing expectations for accuracy, impartiality, and invisibility have made it clear that ethical decision-making is not a mere mechanical process of applying rules or formulae but is, in fact, a treacherous journey fraught with peril. Perhaps this may be due to court interpreting being a Cinderella, thus being an unglamorous girl who is only of late developing a degree of appeal.

It must be submitted however, that any rigorous review of professional codes applicable to a situation should go back to setting fundamentals. That necessitates a re-look into the main ethical traditions that were held and are still held to constitute the foundation of modern codes. These codes have been further used over time to capture our moral intuitions of all interpreters. The inherent limitations in envisaged interpreter ethics could be said to belong in three categories. The first one being the grey areas in which reality falls “in between” ethical tenets, obscuring their interpretation and applicability, the second finds its way in situations where different tenets are held to conflict or may be foreseen to lead to divergent conclusions and thirdly, biasness, made as a conclusion of the state of affairs. For the purposes of this study, professional responsibility cannot be held to imply “rocking the boat”, but can simply be seen as an assurance measure seeking compliance with established regulations more than merely “elevating behaviour” (Cheney et al 2010:153).

In this research, it was observed that today’s South African ordinary court interpreter practice without any guidance or revised supervisory codes. They continue to be treated as ad hoc outsiders to the judicial process, thus literally denying them any professional discretion as participants in the proceedings. Perhaps the absence of a professional body adds to such consequences. Scholars such as Dean and Pollack (2001) and Witter-Merithew and Johnson (2004) have turned their attention to the stress this creates for practitioners and the confusion that is sown among consumers of interpreting services. Fortunately, they have also applied work being done in other fields to help interpreters sort out the conflicting demands and engage in

more productive problem-solving. For example, Hoza (2003) explores the difference between ethical decisions and moral temptations, pointing out that sometimes interpreters face clear-cut right vs. wrong decisions (e.g., a defendant offers a “reward” after being acquitted in a criminal case), but often the decisions are right vs. right, as in the case of a conflict between the duty to interpret the message faithfully and completely, and the duty to refrain from expressing opinions. It is the latter type of dilemma that creates the most stress for interpreters and requires the most expertise to resolve.

In an effort to address evolving ideas and controversies surrounding the role of the interpreter, some professional associations have re-examined their standards of practice with a view to more accurately reflecting what interpreters are actually doing (and should be doing) in the field and to provide more meaningful guidance to practitioners. A good example of this thoughtful approach can be seen in the revised Code of Professional Conduct recently adopted by the National Association of the Deaf (NAD) and the Registry of Interpreters for the Deaf (RID) in the United States, after extensive consultations and research over a four-year period. The revision committee examined hundreds of ethics codes from other professions, studied journal articles and consulted specialists, and the resulting draft was submitted to both practicing interpreters and consumers of their services for detailed feedback (Shuey-Morgan, 2005).

The introduction to the revised NAD-RID code states, “It is the obligation of every interpreter to exercise judgment, employ critical thinking, apply the benefits of practical experience, and reflect on past actions in the practice of their profession” (RID, 2005). To help interpreters apply the principles set forth in the code, it introduces the concept of the “reasonable interpreter standard” as a way to “broaden interpreters’ thinking about the choices they make.” A reasonable interpreter is defined as “an interpreter who is appropriately educated, informed, capable, aware of professional standards, and fair-minded” (Shuey-Morgan, 2005). We also learn from other parts of the world like in California, where court interpreter is expected uphold and adhere to the high standards of the profession, as anchored by guides found in the Court Interpreter Code of Ethics of KST CR. This code contains obligations concerning the quality of interpreting, thus allowing for “execute the act in quality as best as possible, and that from the view of skill, proficiency, as well as language” (The Professional Standards and Ethics for California Court Interpreters 2008:30). This code goes further to require the interpreter to create a climate that promotes working conditions. All this is done to ensure that the right to interpreting is served. It

is interesting to find in this code that a further step is taken to ensure quality delivery, it clearly states that an interpreter is obliged to ask “for a break whenever (they) feel that fatigue is soon likely to interfere in their operations and with their accurate delivery. It is further said doing such is in everyone’s best interest (The Professional Standards and Ethics for California Court Interpreters 2008:33). Another basic condition created by this code is that the interpreter should be audible at all material times, for any proper interpretation to take cause. It reads as follows:

“Part of proper working conditions for the court interpreter is the ability to hear everything in the courtroom. If someone is speaking too fast or too softly, if attorneys are facing away from you so that they are unintelligible, if parties are speaking over each other, or if there is constant interference such as loud noise audible in the courtroom, ask for the court’s assistance so that the situation can be remedied” (The Professional Standards and Ethics for California Court Interpreters, 2008:34).

It must be submitted also that there are differing views about the evaluation of quality of interpreters. According to Verhoef (2007) there can never be any objective measurement of quality, and this is due to a lack of discernible standards (Verhoef 2007:8). However for the purposes of this research, this may not be essential to evaluate in detail as the importance of the interpreter is beyond question.

5.12 Conclusion

The drive of this research has been to analysis the conduct of interpreters in South African courtrooms. This therefore necessitated a structured analysis as outlined in the primary goals of this research. This chapter is set to provide answers to the questions posed at the outset of this research project. The designed research questions were aimed at giving a broader understanding of what an interpreter does, as a result in this research it emerged that the only main actors who are most concerned about the service they deliver is themselves. From participants, there was ready acceptance that any mis-interpretation can in fact lead to serious jeopardy for the administration of justice. It was further observed what the other difficulties are that confront interpreters during the course of their duties in the workplace. Some are unqualified interpreters, they tend to do their duties in a manner which can be seen to constitute a conflict of interest, hence some people appearing with them are either relatives or known to them. With fear of doing wrong, interpreters do further their understanding in the course of employment and often attempt

to remedy ambiguous interpretation, they seek to help an accused person or a person to disambiguate, and clarify their responses to the court. This tends not to sit well with some lawyers, who generally are concerned with soliciting only certain or uncertain versions from the accused or witness in conducting their cases. It does become apparent in the study that other court actors besides interpreters themselves do not seek to appreciate and understand the complexity of court interpreting. Charges of unprofessionalism against this profession are not unwarranted; hence from responses gathered, some interpreters were more committed than others. Some interpreters became court interpreters just for a living, others cry foul because of lack of motivation and poor salaries. Another issue raised relates to the court interpreting management, who appear not to care about the current circumstances, there is a continued worrying lack of urgency on the part of the Department of Justice to address this issue. Interpreters themselves in this study present recommendations to undo the current shortcomings as identified in this study. The Department further does not ensure against the recruitment of unqualified people for the job, and the environment in which interpreters function in goes unexposed by the Department. Some interpreters suggest the Department has a vested interest in maintaining the current status quo, if such status quo continues to be maintained because if the Department is inept in requiring interpreters to improve their standards, the Department would have to pay higher salaries. From the data gathered, it is evident that the training offered by the Department is not sufficient, and furthermore more efforts have to be embarked upon to ensure that interpreters receive comprehensive and professional training.

The continued *laissez faire* attitude by interpreters and their conduct is disturbing and needs to be dealt with by the Department. Now underneath the layer of apparent competence, there lie a number of grave technical and organisational issues that undermine the image of interpreters in South Africa, as well as the justice system. The data collected addressed this issue, and it was emphasised that in the analysis a professional association was necessary for the protection of the position of any profession. The discussion around professionalism was linked to the idea of having accredited court interpreters. As matters stand, in the Republic of South Africa interpreters do not have to be accredited to render court interpreting. In writing this chapter, heavy focus has been given on a number of different aspects of court interpreting, this analysis has been guided by the limited literature from the likes of Moeketsi (1992,1999a,199b,1999c,2000), being one of the prolific authors and researchers on the subject in South Africa. The chapter that follows provides a general conclusion to the study.

CHAPTER 6

CONCLUSION AND RECOMMENDATIONS

6.1 Conclusion and recommendations

In preceding chapters the focus has been to isolate shortcomings identified in this study of court interpreting in South Africa, in addition providing recommendations to address such. A major aspect regarding the question of interpreting quality was regarding the recruitment and the induction of interpreters. The data revealed that interpreters were simply made to pair up with an experienced interpreter for at least a week and observe, then the following week they were on their own. There is no doubt that quality of interpreting services was compromised because of such an approach. Furthermore it was observed that it may be necessary that interpreters and other court actors have a clear understanding of the role of the court interpreter. This is to avoid the unwarranted delineation of roles, which can lead to irregularities. From the literature review and data collected it is clear that the primary mediator between the South African criminal, civil legal system is the court interpreter. Therefore any *laissez faire* attitude can in fact lead to erosion of the fairness in South African courts. Also in this research a number of practical and achievable recommendations have been given. It must be submitted that the approach of implementing them is to start with the most urgent interventions, such as ensuring and setting up courses for the re-training of interpreters. From the data collected it was apparent that the six weeks beginner's course and the advanced course were patently insufficient. Furthermore a call for the establishment of an interpreter organisation or association, thus being a national body that will look into the interests of all interpreters in the country is necessary. The national association would go a long way in administering the profession and providing the necessary support to interpreters. Furthermore the language boards in South Africa need to through corpus planning ensure that the lack of terminological equivalences, especially in the South African legal system

does not stand in the way of justice. At present, the South African courts continue to tolerate shoddy interpreting. This is a factor signalling to the Department of Justice that there may well be a need for massive re-skilling, restructuring and reformulation of the court interpretation system in the South African courts. There can be no doubt that this needs to be continued in the following areas. (1) Policy debates about the language of record and equity in the court (2) The power and the status of interpreters in court structures (3) Irregularities from language errors in interpreting, caused by difficulties in cultural transfer of meaning in the courtroom. This is caused when customs and traditions are involved. The analysis of the data in this research has shown that despite the provision of chapter 2 section 34(3)(k) of the South African Constitution, which attempts to enforce language rights in the courtroom, the South African interpreting practices are far from being ideal, and the Department is directly responsible for maintenance of the laws, but does very little, if anything to ensure that citizenry is not disadvantaged under the law.

The data analysis in respect to training was centred around both prior employment and in-service training of court interpreters. The data presented in this study was not encouraging. From the data presented, it seemed that there was no formal recognition that court interpreters required specialised interdisciplinary knowledge to enhance their effectiveness. An overall view carried by the respondents was that there was generally a poor training of court interpreters in South Africa; hence some chose to ridicule it calling it “*sphaza* training”. *Sphaza* is a term with a wide frequency in urban areas and certain *Nguni* rural areas. This term is commonly used as a qualificative as in *sphaza*-shop to imply an unlicensed shop trading on a very small scale. It must be submitted that the term *sphaza* is made up of *Nguni* phonemes, and often its etymology cannot be established.

The term can be held to mean that the training that interpreters received is artificial, insignificant and highly superficial. The respondents in this research have attributed the inefficiency of the course to two main causes of action, firstly that the general lack of insight in the interpreting process has led to the profession being understood and seen as only a process of linguistic transfer from one source language to another (Moeketsi 1999a:135). The second factor is due to historical characterisation of the role of the interpreter as an agent of the judicial system, who is unworthy of respect, they must simply tell the accused what the order is. In essence what has been berated in this study is the non-availability or absence of human resource experts that tend

to jeopardise the quality of the job selection process. Some interpreters share the notion that the Justice College of South Africa is not well staffed and equipped to provide suitable training for interpreters. Some said the period of training came very late or was very short with only one or two weeks of attendance to training in the beginner's course.

The findings presented in this research are supported by Hertog and Lotriet (1997) where they noted that apart from the six weeks training offered by the Department of Justice, there was no other formal training available in the field of legal interpreting. Their research further showed that every interpreter, simply by the very act of interpreting, any code, language and culture switching, tends to affect the transfer of meaning. Much research in this area of court interpreting leads to the realisation that there is a need for more co-ordinated training initiatives. There is a further need that the Department of Justice increases its efforts in co-ordinating a comprehensive training programs. Due to lack of proper training Mikkelson (1996) alleges that the current court interpreting is characterised by lack of standards for practice and training, disorganisation and a continued disunity among practitioners. The lack of training also leads to a major confusion about the proper definition and protection of court interpreters.

It must be borne in mind that a candidate who applies for a court interpreting job is undertaking a language instruction in a specialised environment. Therefore this would necessitate that the individual exhibit a great understanding of the law and of proper legal terminology to the task. And furthermore to have a strong foundation in the languages they would interpret from and to. Interpreters observed in this research came from different backgrounds which may necessitate different revision of the skills. For example some interpreters who come from a conference interpreting background may need not to enter into the basic training course but would simply need orientation to the specific demand of court interpreting. Others can be translators, who have focused on legal text related matters in their background. These people may simply need skills in oral interpreting. Some may even have done proper legal terminology creation, thus they would simply need the developing some interpreting skills. It is also observed that the majority of the interpreters coming into the profession were novices, purely because they were new in what they were doing. This category of individuals may not have any knowledge of the field, but they too bring the desire and enthusiasm to the field, with the aim of obtaining proper instructions to become excellent interpreters. It is the argument made here that each of the above recruits would require a slightly different training from the other.

Even if the said individuals are able to master the interpretation art, there must be provision made by the Department of Justice for a certification exam. This exam can be used to guarantee quality language co-ordination of the said interpreter. The test could be entrusted to a group of professionals representing different fields, thus testing the law, translating and interpreting. By doing that, the Department would be ensuring that the certification process is domain-referenced and has its objectives clearly stated.

Another lacking requirement observed concerns the stages of procedure in both criminal and civil proceedings. These should always be explained in as much detail as possible, no assumption should be made that the candidates are already aware. This assumption makes provision and allows for re-enforcement of correct information to candidates, thereby eliminating any room for mis-information that may be the result of guessing work or not knowing who to ask or what to ask. This may include judicial process from arrest, charge stage, bail, trial, and judgment and sentence stage. Most importantly is that a clear indication should be given of how the interpreter functions in all these stages.

There are universities which have already developed a curriculum for court interpreting practice. Stander (1990) says any existing attempts to train court interpreters have proved feeble over time, as they are ineffective. She cites efforts by the Technikon of the Republic of South Africa to introduce a diploma for court interpreting that was discouraged by the Department of Justice, holding the idea that such an exercise can never be afforded funds from the department, and hence was too expensive (Stander 1990:3). The Department further shared the view that the curriculum development was inappropriate. Late the same year, that saw the University of Witwatersrand introducing a new Post-Graduate diploma in Translation and Interpretation. To date the diploma is still offered. However the diploma is said to be much focused on translation studies rather than interpreting studies (Moeketsi 1999a:136). Another effort was by the then University of Port Elizabeth which discontinued the course 15 years ago. Around early 2000, the University of South Africa (UNISA) introduced a BA Degree in court interpreting, which also was discontinued in 2009 because of a poor response from court interpreters or from the Department of Justice to send in trainees. To date, the researcher was able to gather that the following institutions conduct training, the Durban University of Technology, Tshwane University of Technology, University of Pretoria, and University of Free State. At these

institutions the levels of study range from National Diploma up to Doctorate level. A number of scholars have seconded the idea of professionalisation of the court interpreting exercises based on the sociology of professions in that it emphasises traits in occupations, such as training, wages, accreditation, working conditions and code of ethics and professional organisations. All these serve as transformation mechanisms into well-defined professions (Tseng 1992; Abbot 1988). Foley (2005) further argues that professionalisation can also be viewed as a process beyond which an occupations internal traits involves creating boundaries so as to achieve power and control, thus for example, training and knowledge of court interpreting may lead to the entry in the professional practice in the job market. What should be encouraged is the establishment of training courses for the launching of professional organisations (Wadensjoo 2007; Pochhacker 2004; Seguinot 2008).

In an attempt to outlaw the practices of inadequate interpreting and thus further secure quality and safeguard the interests of all consumers of court interpreting, it is important that a clear career structure for court interpreters be established. This can only begin if standardised assessments are performed; and a core national curriculum for interpreter training is established. This will demand alongside language competencies, interpreting skills and a further understanding of theory and ethics. Furthermore this can be expanded with a requirement that interpreters are required to undergo refresher training every five years. By doing that, it would be ensured that the threshold of safety to practice is raised in the court interpreting, furthermore the barriers between the old and the new broken down by a process of retraining. This opportunity may well offer cross-fertilisation of experience and fresh perspectives to issues which confront the workplace. By so doing, the retraining exercise would now become a further career development. All the above would see the ability of the profession to effectively regulate its members. This is where in South Africa we can begin to see an emergence of national court interpreters association. It would even have the ability to increase its lobbying power, thereby rendering the voice for the profession. It would emerge as powerful tool to create a positive force for change in the profession. By that happening, the profession will be encouraged to realign itself in anticipation for any future developments in the profession.

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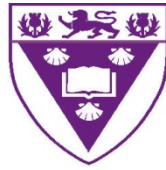
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APPENDIX: A



RHODES UNIVERSITY

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LETTER OF INTRODUCTION – COURT AUTHORITY

School Language Studies: African Language Studies Section

Humanities Faculty

Rhodes University

18 April 2013

Dear Sir/Madam,

I am currently doing my Masters Degree research in the field of legal interpreting at Rhodes University, Grahamstown. The research is regarded as being of critical importance for the practice of court interpreting in South Africa – firstly as it relates to the human language rights of role players in court proceedings, but also more generally to the human language rights of role players who cannot speak the court's language of record. My research thesis topic is looking at how languages are used in Eastern Cape courtrooms, particularly in cases taken for review process. I am isolating and analysing instances where language inconsistencies, particularly in interpreting and translating from African languages into English and Afrikaans, contribute to miscommunication and even possibly to incorrect judgements based on cultural and linguistic misunderstandings.

I would like to seek your permission to observe proceedings in open court sessions in your court. My main interest in observation is to observe court interpreting process in the courtroom. You would be required to provide a written consent that will include your signature, date and initials to verify that you understand and agree to my request. Please rest assured that all information will be treated confidentially and whatever information collected during the observation will be treated anonymously. Furthermore, it is important that you are aware that the study has been approved by the Higher Education Committee at Rhodes University. Kindly take note that you can also direct all queries with regard to this research to me or my supervisor and Head of Department Professor Russell Kaschula, email: r.kaschula@ru.ac.za.

If you like to contact me directly please do not hesitate to do so on 073 5915104 or via e-mail at advocatemm@yahoo.com , or g07m1226@campus.ru.ac.za .

Sincerely yours

APPENDIX B



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COURT INTEPRETERS QUESTIONNAIRE

Please type or write clearly.

Name: _____

Address: _____

Phone: Cell: _____

Language (s) you feel qualified to interpret in: _____

■ GENERAL EDUCATIONAL BACKGROUND

1. DETAILED BIOGRAPHICAL INFORMATION

INDICATE YOUR RESPONSE BY CROSSING THE APPROPRIATE BLOCK

1.1 Sex

| | |
|--------|--|
| Male | |
| Female | |

1.2. Age

| | | | | | | | | | | | | | | | |
|----------------|--|----------------|--|----------------|--|----------------|--|----------------|--|----------------|--|----------------|--|-------------|--|
| 21-21 Years | | 26-30 Years | | 31-35 Years | | 36-40 Years | | 41-45 Years | | 46-50 Years | | 51-55 Years | | 55 Years | |
|----------------|--|----------------|--|----------------|--|----------------|--|----------------|--|----------------|--|----------------|--|-------------|--|

1.3 Nationality

| | |
|-------------------|--|
| South African | |
| Non South African | |

1.4. If you are non-South African, please indicate your nationality in the box below.

| |
|--|
| |
|--|

1.5. Are you a college / University graduate?

| | |
|---|--|
| Matric/ Secondary school leaving certificate | |
| Post-Secondary school certificate (please specify the academic field you studied) | |
| Diploma (please specify the academic field you qualified as diploma holder) | |
| Degree (please specify field of specialization if any) | |

1.6 LANGUAGE BACKGROUND

| | |
|-----------|--|
| ENGLISH | |
| AFRIKAANS | |
| ISIXHOSA | |
| ISIZULU | |
| | |

| | |
|------------|--|
| ISINDEBELE | |
| SEPEDI | |
| SESOTHO | |
| SISWATI | |
| XITSHONGA | |
| SETSWANA | |
| TSHIVENDA | |

2.1 Apart from your mother tongue, indicate other language or languages you speak and write in the box below.

| |
|--|
| |
| |
| |
| |
| |

2.2. Did you study any or some of these languages at school?

| | |
|-----|--|
| Yes | |
| No | |

2.3. To what extent did you study the language or languages at school?

| | |
|------------------------|--|
| Primary School level | |
| Secondary School level | |
| | |

2.4. From and to what languages do you interpret?

| Language combinations | Indicate with a cross | Specify if applicable |
|-----------------------|-----------------------|-----------------------|
| IsiXhosa to English | | |
| IsiXhosa to Afrikaans | | |
| IsiZulu to English | | |
| IsiZulu to Afrikaans | | |
| Sesotho to English | | |
| Sesotho to Afrikaans | | |
| Or any other language | | |
| | | |

2.5. How many languages do you interpret from and to?

| | |
|------------------------|--|
| One language | |
| Two languages | |
| Four languages | |
| Five or more languages | |

2.6. If you did not study any of the languages you interpret at school, how did you acquire the usage of the language?

| | |
|--|--|
| Once lived in the community where the language is spoken | |
| The language is your mother tongue | |
| Self-education | |

2.7. Does the language or do the languages you interpret have regional dialects?

| | |
|-----|--|
| Yes | |
| No | |

2.8. If you answered “yes” do you understand all the dialects?

| | |
|-----|--|
| Yes | |
| No | |

3. EMPLOYMENT AND TRAINING

3.1 How many years have you been working as an interpreter in the court?

| | |
|--------------------|--|
| Less than 2 years | |
| 2 to 5 years | |
| 6 to 10 years | |
| 11 to 15 years | |
| 16 to 20 years | |
| More than 20 years | |

3.2 Are you a permanently or temporarily employed interpreter?

| | |
|----------------------|--|
| Permanently employed | |
| Temporally employed | |

3.3 How did you learn of the position?

| | |
|-------------------------------|--|
| Through news and media | |
| Advert | |
| From a friend | |
| From a practicing interpreter | |
| Through personal enquiry | |
| Other means (please specify) | |

3.4 What were the educational requirements stated when you were applying for the job?
Please list the requirements in the space provided below.

.....
.....

3.5 What were other requirements besides educational requirements? Please list the requirements in the space provided below.

.....

3.6 Were you interviewed for the job?

| | |
|-----|--|
| Yes | |
| No | |

3.7 Was the interview oral or written?

| | |
|---------|--|
| Oral | |
| Written | |
| Both | |

3.8 Do you know whether other candidates were interviewed for the job?

| | |
|-----|--|
| Yes | |
| No | |

3.9 Describe briefly what happened or what you were told to do the first and second day at work. Please use the space provided below.

.....

3. 10 Were you given any form of training when you were employed?

| | |
|-----|--|
| No | |
| Yes | |

3.11 Were you given professional code of conduct and ethical principles of interpreting when you were employed or at any stage since you have been working as an interpreter?

| | |
|-----|--|
| Yes | |
| No | |

3.12 Have you been given any form of in-service training since you were employed?

| | |
|-----|--|
| Yes | |
| No | |

3.12.1 If you answered 'yes' how long have you been working before you were sent to training? Please write your answer in the box.

| |
|--|
| |
|--|

3.13 Have you attended since you began working an interpreter any self-sponsored professional seminar, workshop and conference?

| | |
|-----|--|
| Yes | |
| No | |

3.13 Have you been sponsored by your employ to attend a professional seminar, workshop and conference?

| | |
|-----|--|
| Yes | |
| No | |

4. CASE PREPARATION AND ROLE IN COURT

4.1 Are you always given as much information as possible in advance regarding the nature of the interpreting assignment before your first court appearance?

| | |
|-----|--|
| Yes | |
| No | |

4.1.1 If you answered 'yes' how early are you given these details?

| | |
|------------|--|
| One day | |
| Two days | |
| Three days | |
| Four days | |
| Five days | |
| Six days | |
| Seven days | |

4.2 Is there a provision that allows you to determine language ability of the accused or the person for whom you are interpreting?

| | |
|-----|--|
| Yes | |
| No | |

4.2.1 If your answer is 'yes' how early is this done?

| | |
|------------|--|
| One day | |
| Two days | |
| Three days | |
| Four days | |
| Five days | |
| Six days | |
| Seven days | |

4.3 When you are told about an interpreting assignment to interpret, are you asked whether you are competent to handle the assignment?

| | |
|-----|--|
| Yes | |
| No | |

4.4 Have you rejected any interpreting assignment because you feel you cannot perform at the professional level required?

| | |
|-----|--|
| Yes | |
| No | |

4.5 Do you do any preparation to familiarize yourself at home, or during recess for your interpreting assignment?

| | |
|-----|--|
| Yes | |
| No | |

4.5.1 If you answered 'yes' what preparation do you normally do?

| | |
|---|--|
| Compiling probable terminologies | |
| Studying literature about The nature of the case | |
| All of the above | |
| Other (please Specify) | |

4.6 Is this above encouraged by your supervisor?

| | |
|-----|--|
| Yes | |
| No | |

4.7 Do you or any designated authority in the court explain the role of the interpreter to the accused or other parties having in the interest case before the trial process begin?

| | |
|-----|--|
| Yes | |
| No | |

4.8 How many interpreters are assigned to an interpreting assignment? Please state your answer in the box below.

| |
|--|
| |
|--|

4.9 What other role do you play perform in the court besides interpreting? Please state this role briefly in the space provided below.

.....

4.10 Have you ever been involved in an interpreting assignment in which your friend or relative is the accused?

| | |
|-----|--|
| Yes | |
| No | |

4.11 Has there been a case where the accused or his or her relative has made contact with you prior court appearance or in-between court appearance?

| | |
|-----|--|
| Yes | |
| No | |

4.12 Have you at anytime felt that the accused right is being infringed upon and decided to assist in any way you can?

| | |
|-----|--|
| Yes | |
| No | |

4.12.1 If you answered 'yes' what kind of assistance did you render? Please briefly explain in the space provided below.

.....

.....

4.12 Has there been an interpreting assignment that you started and did not complete?

| | |
|-----|--|
| Yes | |
| No | |

4.13 If you answered 'yes' why did you not complete the assignment? Please state your answer in the space provided below.

.....

.....

4.14 How early are you expected to inform your supervisor that you would not be available for the interpreting assignment you have been working on? Please state your answer in the space provided below.

.....

.....

4.15 Do you know of the procedure that is used to appoint another interpreter to take over a case?

| | |
|-----|--|
| Yes | |
| No | |

4.15.1 If you answered 'yes' what procedure is followed to appoint another interpreter? Please state the answer in the space provided below.

.....
.....

4.16 On what grounds do you take a break during the interpreting process? Please state your answer below.

.....

4.17 Do you sometimes realize there is error in your interpretation?

| | |
|-----|--|
| Yes | |
| No | |

4.17.1 If you answered 'yes' do you correct the error?

| | |
|-----|--|
| Yes | |
| No | |

4.18 Has there been any form of evaluation of your work as an interpreter?

| | |
|-----|--|
| Yes | |
| No | |

4.18.1 If you answered 'yes' were you told of the result of the evaluation?

| | |
|-----|--|
| Yes | |
| No | |

4.19 Is there a routine test-run of the interpreting tool such as microphone?

| | |
|-----|--|
| Yes | |
| No | |

4.20 Do you translate documents as an interpreter in the court?

| | |
|-----|--|
| Yes | |
| No | |

4.20.1 If you answered 'yes' are you provided the document in advance to familiarise yourself with the content?

| | |
|-----|--|
| Yes | |
| No | |

5. GENERAL

5.1 Are you a member of an interpreting-related professional association?

| | |
|-----|--|
| Yes | |
| No | |

5.2 If you answered 'yes' does the association have a code of ethics you must comply with?

| | |
|-----|--|
| Yes | |
| No | |

5.3 Do you do other work besides interpreting?

| | |
|-----|--|
| Yes | |
| No | |

5.4 Do you have previous work experience as an interpreter or related job?

| | |
|-----|--|
| Yes | |
| No | |

5.5 Is there any court that is particularly difficult to work in as an interpreter?

| | |
|-----|--|
| Yes | |
| No | |

5.5.1 If you answered 'yes' why is the court difficult to work in as an interpreter? Please state your answer in the space provided below.

.....

5.6 Are you a member of any ethnic-based organisation in South Africa?

| | |
|-----|--|
| Yes | |
| No | |

5.6.1 If you answered 'yes' please state the name of the association in the box below

| |
|--|
| |
|--|

APPENDIX C



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MAGISTRATES AND JUDGES QUESTIONNAIRE

Please type or write clearly.

Name: _____

Court : _____

Contact Detail: _____

1. What is the role of the Judge or the magistrate in ensuring the availability of court interpreter for an accused that does not understand the two main languages (English or Afrikaans) of the court?

.....
.....
.....
.....
.....

2. How do you determine if an accused, witness or the plaintiff needs the services of a court interpreter?

.....
.....
.....
.....

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.....
.....

3. Who is chiefly responsible in determining the need for a court interpreter for an accused person or witness?

.....
.....
.....
.....
.....

4. If you are not involved in the process, do you as a magistrate or judge ensure the interpreter for an accused appearing in your court is competent? If you do, how?

.....
.....
.....
.....
.....

5. Do you ensure that the role of interpreter is explained to other participants such as the attorney, witness in court?

.....
.....
.....
.....
.....

6. Is the interpreter allowed to briefly interview the accused person or witness in order to be familiar with his or her speech patterns, proficiency and other language abilities?

.....
.....
.....
.....
.....

7. How often do you handle the need for interpreting in cases involving foreign African immigrants?

.....
.....
.....
.....
.....

8. Which countries are most of the accused foreign African immigrants from ?

.....
.....
.....
.....
.....

9. Is there a regulation guiding the number of minutes an interpreter can interpret before he is relieved or takes a break from the exercise?

.....
.....
.....

.....

.....

- 10.** Do you believe it is possible for an interpreter to interpret from source language to target language word for word without distortion and reflecting cultural nuances of the source in the target language?

.....

.....

.....

.....

.....

- 11.** Do you use assessor during trial of cases?

.....

.....

.....

.....

.....

- 12.** If you do, how often?

.....

.....

.....

.....

.....

- 13.** Are there any compelling reasons for you to use assessors?

.....

...

.....

...

.....
...
.....
...

14. Have you experienced a situation where an attorney or a prosecutor would choose to conduct direct – and cross examination in any of the indigenous languages?

.....
.....
.....
.....
.....

15. If so, how often?

.....
...
.....
...
.....
...
.....
...

16. If you do, does it present a communication challenge to the court such as getting an interpreter to bridge the communication divide? Or please describe the challenge(s) below.

.....
.....
.....
.....
.....

17. How do you handle the challenge?

.....
...
.....
...
.....
...
.....
...

18. What is your overall impression of court interpreters within the Eastern Cape jurisdiction?

.....
...
.....
...
.....
...
.....
...

19. What is your overall impression of South African court interpreters?

.....
.....
.....
.....
.....

APPENDIX D



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SENIOR PROSECUTORS & ATTORNEY'S QUESTIONNAIRE

Please type or write clearly.

Name: _____

Court Address: _____

Contact Details: _____

INDICATE YOUR RESPONSE BY CROSSING THE APPROPRIATE BLOCK

1. Have you ever had a problem of language during your attorney-client briefing with any of your clients?

| | |
|-----|--|
| Yes | |
| No | |

1.2. If you do, how do you address this language problem?

.....

.....

.....

.....

.....

.....

.....

1.3 How often do you handle cases involving a client (who has inability to speak and understand any of the main languages used in the court?

| | |
|---------------------|--|
| Yes, always | |
| Yes, but not always | |
| No | |

1.4. Are you satisfied with the service of court interpreters you have met during court proceedings you are involved “?

| | |
|--------------------|--|
| Yes, satisfied | |
| Not very satisfied | |
| No, not satisfied | |

1.5. Do you believe it is possible for an interpreter to interpret from source language to target language word for word, without distortion and reflecting cultural nuances of the source in the target language?

| | |
|-----|--|
| Yes | |
| No | |

1.6. Have you as an attorney or a prosecutor noticed error made by interpreter during court proceedings?

| | |
|-----|--|
| Yes | |
| No | |

1.7. If yes, is your answer to the question above, how did you bring it to the attention of the magistrate?

.....

.....

.....

.....

.....

.....

.....

1.8 What is your mother tongue?

| | |
|------------|--|
| ENGLISH | |
| AFRIKAANS | |
| ISIXHOSA | |
| ISIZULU | |
| ISINDEBELE | |
| SEPEDI | |
| SESOTHO | |
| SISWATI | |
| XITSHONGA | |
| SETSWANA | |

| | |
|-----------|--|
| TSHIVENDA | |
|-----------|--|

1.9. If your mother tongue is not English or Afrikaans but is one of the official languages, do you sometimes or always conduct cross and direct examination in your mother tongue?

| | |
|---------------------|--|
| Yes, always | |
| Yes, but not always | |
| No | |

1.10.If 'yes' is your answer to the question above, does any principals in the court (a magistrate or a prosecutor) require the service of an interpreter to understand you ?

| |
|--|
| |
|--|

1.11. What do you think is the role of court interpreter in the courtroom?

.....

.....

.....

.....

.....

.....

1.12. What is your overall impression of interpreters within the Eastern Cape jurisdiction?

.....

.....

.....

.....

.....

.....

1.13. What is your overall impression of interpreters in South Africa?

.....
.....
.....
.....
.....