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Interpreting Services in American Criminal Courts

A Violation of the Due Process Clause?

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TABLE OF CONTENTS

Conceptual Framework of the Study

Political development is generally recognized as including greater access by a growing number of individuals to public institutions. Political development is a continuum, with no fixed final objective. All nations are, in this sense, in varying stages of political development, and no nation has completed the process. At the subnational level the concept is particularly applicable to the agencies, organizations, and institutions that make up the system of criminal justice. One major area within this country's criminal justice system has been left exclusively in the hands of those facing the problem on an ad hoc basis: I am referring to the handling of individuals, be they victims, perpetrators, or witnesses of crimes, whose mother tongue is not English and who are unable to function in the language used by government. It would not be totally unfair to say that, until recently, criminal justice system practitioners and theoreticians have "looked the other way" while non-English speaking individuals surfaced all around them. Those who were directly faced with the language barrier, police officers in Brooklyn, probation officers in Boston, judges in Los Angeles, or correction personnel in Albuquerque, were left to their own individual devices materially and intellectually. Most of them, capable and honest people that they are, sought to resolve what they perceived as a collection of contradictions in accordance with their biases, imagination, resources, competitive demands, and immediate political environment.

Regardless of what students of the criminal justice system would prefer to believe, the linguistic barrier is no longer an issue found in a few sections of the United States. Careful observation indicates that even earlier in this century, when ports of entry and areas populated by foreign-born residents were identifiable, non-English speaking individuals came into contact with the

criminal justice system in a variety of regions. Whatever the history of the problem, the presence and mobility of non-English speaking individuals seems to have exploded. Our research shows that no state of the union and no region of the country has been exempted from the presence of non-English speaking individuals, whether as tourist, visiting businessmen, students, foreign governments personnel, or residents (legal or otherwise). There is also a sizeable number of individuals born within the United States or its dependent territories who speak English as an imperfect second language or not at all.

Nothing in their training has equipped criminal justice system officials to seek solutions to the linguistic gap; What is more, the social mores under which they operate reflect little sensitivity to this issue and less inclination to assume societal responsibility for its solution. Unfortunately, in the last decade or two widespread societal disagreements over bilingualism has spilled over into the criminal justice system. This spill-over appeared in many of our interviews with criminal justice system managers and with spokesmen for linguistic minorities. One extreme example of the depth of societal disagreement over this matter is the approval of a local provision in one of the sites included in this project, Dade County, which forbade the use of languages other than English in the transaction of official business.

The conflict over bilingualism in American society appears to revolve around public support and encouragement in the retention and upgrading of skills in languages other than English and of the cultures, habits and customs that accompany those languages. "Bilingual education" in Spanish, Hebrew, Chinese, Korean, or Vietnamese, has meant different things to different interested parties: For some groups, it has meant a transitional educational stage for individuals who wished to continue their formal education while they were

learning English. For other groups, it was a way to retain and improve their mother tongue or to return to the language of their elders. Some groups perceived "bilingual education" as a mechanism which would facilitate the entrance of some of their members into a teaching profession on the basis of their ethnic background. Certain sectors perceive bilingual school programs as a mechanism to discourage or deemphasize the learning of English and its use as the language of the United States.

The controversy over bilingualism, particularly but not solely in the field of education, has been and is reflected in our mass media. The exchanges have been quite evident in newspapers and general magazines. Editorials, news columns, in-depth reports, and communications from readers serve to show the extent of the controversy. Events in Canada, where separatist wishes of members of the French-speaking minority centered in Quebec Province appear to have been encouraged by a policy of bilingualism instituted by that country fourteen years ago, are followed closely by many Americans.[1] While United States government policies have fallen far short of Canada's, concerns of socio-political splits appear to have motivated many of those who entered the controversy. Organizations representing Hispanics and Chinese lobbyed at the federal and state levels to obtain enabling legislation and appropriate means to implement bilingualism in the educational system, and took school districts to court when they were reluctant to oblige. Bilingualism was enforced not only in major urban centers, but also in their suburbs and even in relatively small districts.[2]

The economic consequences of federal and state bilingual education policies in the United States have also been made clear by the mass media. The New York Times, a supporter of bilingual education, found that the program was being

"distorted" in New York City. It concluded that,

> Such distortion of a needed program stems in part from community pressures to find jobs for Hispanic teachers, even though their English may be poor, and a desire to retain a foreign language and culture as a means of building a political power base.[3]

The program was indeed successful in finding jobs for Spanish speaking teachers: At a time, in the late 1970s, when there was a surplus of individuals seeking teaching positions the public schools of New York City were trying to recruit 3,500 teachers able to offer mathematics, social sciences, and science in Spanish, as well as English as a second language. The school system, under federal court order to offer bilingual education programs, organized or sponsored crash courses in Spanish for its regular teaching staff; it also sent a recruiting team to Puerto Rico to interview and examine candidates. Another federal court order, this time in New Jersey, tempered this aspect of bilingual education by requiring teachers to have equal knowledge of English, thus diminishing the job-creating aspects of bilingual education.[4]

Spanish is the major second language, competing and co-existing with English. Hispanics, however, are not the only linguistic minority pressuring for bilingualism, and perhaps not even the most skillful in doing so. The original Supreme Court decision on the matter had to do with the rights of Chinese speaking children in San Francisco, who saw their desire to have special education in a second language supported. In fact, the activism of the Chinese community of San Francisco has been amply reflected in the press, in the political arena, and in the courts.[5] It should also be noticed that the issue of the existence of an official United States language was raised by an organization representing Portuguese speaking individuals in Rhode Island. In 1978 they quizzed then Vice-President Mondale about it and he asked the

Congressional Research Service to look into the matter:

> After three weeks of search and research, the Vice President replied through his staff assistant that 'we have not been able to find any law which states that English must be the official language of the United States.' In effect, there is no official language...[6]

In spite of the fact that there appears to be no statutory requirement mandating the use of a given language, or perhaps because of it, discussions on bilingualism have often exceeded the specific subject matter. Witness the lumping of political exchanges between United States and Mexico with the internal demands for bilingual programs in this country in one of the thousands of communications on the subject to newspaper editors.[7] As usual, some "converts" tried to show the sincerity and depth of their conversion by being, "more papal than the Pope:" An immigrant from El Salvador concludes that all types of bilingualism and linguistic assistance should be done away with, forcing Hispanics and others unable to speak English to "sink or swim." This type of reaction provides a good example of the enlargement of the public discussion that revolves around programs that some people see as intended to retain languages other than English, as well as a certain type of white collar employment, at public expense. This particular view, which appears to be widely shared in the United States, concludes that,

> What do I think should be done? I think that no Spanish translations should be made of anything. Except for one. Spanish translations should be made, and these distributed widely, detailing the availability of English courses throughout Hispanic communities. What if people don't bother to attend? Well, it's a free country.[8]

In brief, the argument made by those who support this view is that English classes are available and that English is the <u>de facto</u>, if not <u>de jure</u>, language of the United States. Those who do not learn it should assume responsibility for their failure and pay the price. We have discussed this controversy

at length and at the beginning of the study because the arguments against bilingualism and linguistic assistance for non-English speaking individuals, whatever their weight and validity, can not be implemented within the realm of the criminal justice system. When individuals unable to speak English, whether Hispanics or of any other ethnic background, reach the criminal justice system as victims, accused, or witnesses, it is too late to teach them English or to punish them. The basic constitutional guarantees and a general sense of fairness that is present in the common and statutory law adopted by this country and its political subdivisions are not reserved for those able to speak a given language. Our purpose in outlining societal disagreement on the subject of bilingualism and minority language education in the public schools of this country had the objective of distinguishing between a perfectly legitimate debate on cultural and educational policy and the victims and perpetrators of criminal law violations. It would be very nice if all those who present themselves or are brought before police agencies, the courts, or departments of corrections were able to speak and understand English. But many are not, and such linguistic disability can not and should not be held against them. If the suggestion made in the preceding quote were to be extended to the criminal justice system of the United States, the word "justice" would have to be deleted from its name.

Well-meaning individuals have tried to cease translating, at least into Spanish, by conducting criminal proceedings in Spanish. Although some of those who appeared to have raised this possibility indicated after additional queries that they were thinking of fully interpreted proceedings, others meant it. Gaye Tuchman has proposed that, in places such as New York City, where the pool of Spanish speaking individuals is large, criminal proceedings be conducted

in Spanish at the option of the defendant. If we were to accept Professor Tuchman's proposal, Spanish language proceedings might be appropriate in any judicial district where a critical mass is available. Basically this means a certain number of judges, attorneys, and court officials with the appropriate linguistic competence and a sufficient pool of Spanish speaking individuals subject to jury duty. Nor could such a policy be limited to Spanish. If the defendant were to opt for it and if the above conditions were present, any language could be chosen, although it must be recognized that the requirements listed above will not appear too often for languages other than Spanish. Yet, it may be possible to conduct judicial proceedings in Cantonese and other oriental languages in San Francisco and in French in certain parishes of southern Louisiana. We may discover that other linguistic minorities would qualify here and there.

Regardless of the availability of linguistically qualified participants, a determination clouded with endless secondary issues of its own, the concept of court proceedings conducted in other languages has to be tied to the actual nature such proceedings are likely to have. When language is tied to a given culture and set of values, as it appears to be the case with the linguistic minorities found in the United States, the proposal shows the likelihood of further complications. Let us face it: In the overwhelming majority of cases court proceedings conducted in a minority language will really mean that Spanish speaking defendants can choose to be tried by individuals of Puerto Rican background in Manhattan, by those of Cuban origin in Miami, and by those of Mexican ancestry in San Antonio; Chinese speaking defendants can determine to be tried by the Chinese community only. It is quite possible that, in certain types of violations of criminal law these minorities do not share the

nation's or the state's perception as to the criminality of the imputed act. This may very well be the case with events that occur within the family, such as child abuse or wife-beating. If the linguistic minority trying a non-English speaking defendant happens to be overwhelmingly poor, crimes against property may be seen in a different light, particularly if the victim does not belong to the same class and linguistic group. Professor Tuchman, in proposing Spanish language trials in New York City appears to have been upset by the experience of excluding from selection those potential jurors who knew some Spanish; she remarked:

> The main witness, the Dominican victim of the alleged crime, was to speak for several hours through an interpreter. Anyone who understood Spanish more than 'un poco' was dismissed from the panel. The jury was to be unfamiliar with the Spanish language and Hispanic culture... The jury was charged to assess the credibility of an interested witness from a foreign culture... without knowing the culture... Can there be a fair determination of the facts when key witnesses speak a 'body language' and hold world views that are alien to the jurors?[9]

A number of issues need to be raised here: To begin with, knowledge of a given language does not necessarily imply knowledge of the culture (assuming there is only one) that the language is supposed to represent. If anyone believes that Haitians or French Canadians are automatically part of French culture, he or she will be in for a major surprise. Secondly, I really can not get too excited about the value of "body language" in a criminal case; I very much prefer judicial decision-makers to rely on facts and law, and less on their sentimental reaction to the complaining witness, the defendant, or anybody else. Thirdly, the transfer from language to culture is too abrupt for my taste: Professor Tuchman begins by trying to bridge the language gap she witnessed, but in the same breath she also wants the criminal justice system to adjust to the cultural traits of linguistic minorities. In view of the role

played by case law in the American legal system, such adjustment, if it were to take place, will soon create a set of judicial decisions derived from Hispanic cases which might very well differ from decisions rendered in what we could call "regular" cases. This duality, multiplied by the number of linguistic minorities which could handle criminal cases in their own languages, would intensify the uncertainty of societal reaction to criminal offenses.

An even more serious consequence, in my view, is that the legal sanction to cultural diversity in the area of law enforcement is likely to maintain and intensify such diversity. Is this appropriate public policy? I think not. In fact, this issue and the on-going discussion over bilingual education serve to bring into focus the basic hypothesis of this study: The issues raised by non-English speaking individuals who come into contact with the criminal justice system have to be solved at the time of contact, regardless of the causes, reasons or background of such linguistic limitation. At the same time, such solution to the language barrier has to be neutral; that is to say, it should neither penalize those individuals nor should serve to encourage or strengthen this limitation. It is assumed here that the creation of special minority language criminal proceedings would be tantamount to the development of specialized parallel criminal justice systems with jurisdiction over Hispanics, Chinese, Vietnamese, Koreans, Portuguese, and other linguistic minorities which may be able to provide the critical mass implicit in the above-quoted suggestion. Besides the substantial administrative problems of such an endeavour, these special criminal justice systems are quite likely, under the guise of accounting for cultural differences, to diversify the implementation of criminal law. In fact, legal history provides us with a very good example: During the Roman Empire the presence of subjects from

territories conquested by the Roman legions who were considered unable to follow Roman law led to the creation of a separate set of judges. These judges, known as praetor peregrinus, which could be freely translated as "judge for visitors" or "judge for outsiders," promptly led to a separate system of law implementation and, later on, to a separate set of laws.[10]

The existence of large numbers of non-English speaking individuals in the United States is an ethnic fact. No one with a sense of fair play will argue that, when one of these individuals comes into contact with the criminal justice system and might be hampered to express himself or to understand what is happening, this linguistic barrier should or can be ignored. In fact, regardless of one's sense of fair play, it is unlikely that the due process of law and the right to cross-examine witnesses, protected by the sixth and fourteenth amendments to the United States Constitution can be met unless the linguistic limitation is bridged. But if the criminal justice system is forbidden from penalizing those who do not speak English, it is equally forbidden from encouraging or reinforcing bilingualism in the United States in the absence of a specific mandate to the contrary by the political branches of the government. I should like to suggest that criminal proceedings conducted in languages other than English may very well be construed as encouraging or reinforcing the use of those languages. It would also exclude from certain proceedings otherwise competent and qualified attorneys and criminal justice system personnel and leave these proceedings in the hands of those who happen to speak the language chosen by the defendant, if the method recommended by Professor Tuchman were to be applied. In the case of jury trials, the definition of "peers" would have to be drastically altered. What it all boils down to is that, in my view, constitutional guarantees and a sense

of fairness require that the language barrier not be an obstacle that diminishes the rights of a non-English speaking individual. The cultural context of different linguistic backgrounds probably can not be bridged; nor do I consider it feasible or even desirable that it be bridged within the criminal justice system.

At the practical level, efforts to adapt criminal justice system performance to the "cultural" background of those who come into contact with it beyond what is currently being done will further diversity the criminal justice system response at a time when such diversity is challenged. "Cultural" specialization based on language may lead to a wider range of response not only in terms of sactions for the same criminal offense, but in terms of the determination of the criminality of certain types of behavior. Professor Tuchman's proposal in fact implies such additional diversity within the same geographic jurisdiction. Some observers may see this possibility as a positive change: I consider it a negative one. There are more than enough imponderables, deviations, and alternatives in the American criminal justice system as it is; the addition of "cultural" differences would further diminish the certainty of sanctions and of the identification of behavior deemed to be criminal. These proposed distinctions on the basis of linguistic differences would further divide the rendering of criminal justice on an equal basis. It is true, as the proponents of these criminal proceedings in minority languages suggest, that cultural and linguistic differences do exist in American society: But this study chooses the desirability of the criminal justice system playing a unifying role, and that criminal behavior and sanctions be the same for all those under its jurisdiction. The fact that there are other apsects that generate or encourage diversity with the United States appears to be poor

justification to add to it. Thus, the only appropriate solution appears to be to bridge the language barrier in the criminal justice system by having qualified interpreters readily available for use by all those individuals who do not trust their competence in the English language. The criminal justice system should not be and can not be the place where the pros and cons of bilingual education or the existence of an "official" language are raised. English is the language of the criminal justice system. There are individuals throughout this country who do not speak English and speak other tongues; when these individuals come into contact with the criminal justice system they must be able to communicate with it. Societal disagreements that have to do with the educational system, with the cultural background of certain groups, or with linguistic preferences, can not be settled within the context of the criminal justice system. Nor can the system be used to enforce any one point of view on linguistic matters.

The Bridging of the Language Barrier: Assumptions and Mechanisms

The following chapters will deal with the major issues found in specific sites; some of them appeared in more than one location as it could be expected. There were certain matters that were brought forth in every site; most of them have to do with the nature of interpreting and the meaning of expressions such as "qualified interpreter" and "quality of interpretation." The issue of quality was touched upon in every site, but the context within which this project has operated can best be presented at the outset. The purpose of our emphasis on "quality of interpretation" is readily apparent: Once the decision is made to bridge the language barrier in the criminal justice system through the provision of interpreting services, a major policy hurdle has been overcome

but a major administrative problem begins. It should be clear that, if the personnel chosen to perform this task can not carry it out effectively, the policy decision to provide interpreting services is worthless. This study subscribes to the view that there is no real difference in terms of meeting the constitutional guarantees of non-English speaking individuals between refusal to provide interpreting services and use of incompetent interpreters: In both cases defendants are denied due process of law and the opportunity to cross-examine witnesses and victims are denied access. We would like to suggest that, at least in some cases, the absence of any real efforts to seek qualified interpreters reflects lack of conviction toward the policy of providing such service. It would be useful to review at this point the arguments made by criminal justice system administrators in nearly all the sites to explain their feeble efforts in recruiting qualified personnel. None of the administrators interviewed accepted, and some specifically rejected, the possibility of having recruited unqualified personnel. But all of them were mindful of the problem and commented on it.

The first point made throughout the country by criminal justice system administrators, as well as by attorneys and interpreters, is that there is really no ready-made system to identify qualified interpreters. Expressions such as "Who knows what a qualified interpreter is" and "There are no standards to measure interpreters" surfaced in interviews as soon as the issue of quality was brushed. Criminal justice system administrators are correct in saying that, in the United States, there is no clear-cut pool of individuals identified in an authoritative manner as competent interpreters. The program under way at the federal level, discussed in a later chapter, constitute a limited attempt to fill this vacuum; however, it is so far limited only to

Spanish and the pool of certified interpreters is small and unevenly distributed. What must be emphasized here is that the absence of such a pool does not necessarily mean that no guidance is available in the interpreting market. It must also be said that, while most criminal justice system administrators seem to know about the federal programs, none indicated in our interviews thoughts of recruiting from the federal pool.

Interpreters have existed since human beings discovered that there were different languages on this earth. There is no shortage in most cities of agencies that offer to provide interpreting and translation services, although we know of no quality control mechanism that supervises their performance. In fact, as will be described later, some of the agencies doing business with the criminal justice system refused or were unable to provide evidence of competence. It is also true that very few institutions of higher education train interpreters and are willing to certify to their competence. These institutions, literally a handful, have very small teaching staffs. Often the program is land led by one or two individuals. The granting of interpreting degrees is left in the hands of instructors whose standards of quality and performance are not subject to the control of colleagues, at least within the institutions in question. Finally, some colleges and universities, sensing a "demand" for this type of credential, appear to be opening the doors of their evening or extension part-time faculties to entrepreneurs whose major qualification seems to be their ability to bring in the necessary number of students. It should be clearly stated that the writer subscribes to the view that, since nobody is born an interpreter, everyone who claims to be qualified to perform such tasks must document his or her qualifications or satisfy competence examinations prepared by individuals who can demonstrate their background and qualifications to

prepare those examinations. While the first interpreters did not have to meet the requirements outlined here, this professional endeavor is old enough and has a sufficient number of practitioners to expect a reasonable level of documentation of competence. The extreme shortage of educational institutions offering appropriate training makes it more difficult for interpreters who truly seek it. We must confess, however, that in our interviews we found very few individuals really interested in either earning credentials or upgrading their skills; those few who did wanted nothing more than a "quick fix," a nearly instantaneous acquisition of skills accompanied by the awarding of valid credentials.

The interpreters and criminal justice system administrators we interviewed were unanimous in ignoring the massive methodological background and human reservoir available in international organizations and in certain United States government agencies. Such ignorance could be attributed to distance in the case of some sites; but the policy of ignoring places such as the United Nations, the World Bank, the Organization of American States, the U.S. Department of State, the Central Intelligence Agency, the National Security Agency and a variety of organizations that obviously employ interpreting services as part of their daily operation by administrators in the New York City and Washington areas is difficult to justify. This inability to avail themselves of readily available resources to establish recruitment procedures that are likely to measure quality appears to suggest: (I) That criminal justice system administrators are really not convinced that they have the obligation to bridge the linguistic barrier faced by non-English speaking individuals that come into contact with their agencies; (II) That having been required to nevertheless bridge that barrier, they have done so in a highly formalistic

fashion, committing as little of their time, effort, and budget as possible; (III) That they have used, or made it possible for others to use, the ensuing positions for patronage, with the beneficiaries unable to meet objective requirements.

Even if the administrators interviewed did not know about organizations which regularly provided high-quality interpreting services, or were unwilling to contact them, help was available at nearby libraries. There is an adequate, although by no means abundant, bibliography that has to do with translation and interpretation. The materials available are not limited to scholarly study and theoretical works. From time to time, newspapers and magazines direct their readers' attention to this particular professional activity. Some of the articles take pleasure in pointing out the pitfalls of those doing the work, while other focus on employment opportunities. Even an occasional play calls out attention to the language barrier and its possible solutions.[11]

A few selected references should suffice to support this point: During the second half of 1979 New York Magazine published an interview with the then Chief of Interpretation Services at the United Nations. The interviewee took the opportunity to emphasize the skills, training, and background of those working in that capacity at the United Nations. A few months later MS published a lengthy piece describing the employment opportunities in the translation and interpretation fields. The author introduced and described different types of interpretation, the skills and background demanded by a variety of potential employers, compensation ranges at various professional levels, and sources of employment. In early 1982 The New York Times described and commented on the qualifications, demands, and compensation of a group of senior U.S. State

Department professionals, called "diplomatic interpreters".[12] It could be argued that the reach of these publications is limited either by geography or by class and sex; but it is not far fetched to assume that some court administrators responsible for providing interpreting services read them. It is also likely that other mass publications elsewhere in the country have circulated this type of information. Yet, in our extensive interviewing, which included areas where the above publications circulate widely, we did not find attorneys or criminal justice system personnel aware of the information reported in them. In fact, very few of those working as interpreters knew most of the rather basic items covered in the above pieces.

Had our curious criminal justice system administrator gone to the library, he would have found a greater variety of sources: Conference Interpreting would have told him that recognized interpreting school, found in European universitities, require that their student spend the first two academic years taking introductory courses in a variety of subjects and languages, in order to acquire terminology. Once this stage is completed, the second half of their academic career is spent learning interpreting skills and practicing them under the supervision of experienced professionals. Ms. Langley provides evidence of the strenuous selection process and emphasizes that, in simultaneous interpretation, performance usually begins to deteriorate after twenty minutes. She emphasizes that,

> ...There are, however, many people in the world who speak two languages, sometimes three or more, but who are not interpreters and who should not be interpreters. It is as laughable to think of becoming an interpreter without the required language knowledge as it is to think of becoming a pianist without any hands, but the possession of ten fingers no more makes a concert pianist than the knowledge of several languages makes an interpreter.[13]

The administrator of our story might also have profited from looking at Your Future in Translating and Interpreting. This book, intended for those who hope to earn a living as interpreters and translators, contains a number of common sense insights. The author indicates the interpreting requires a perfect ear, immediate understanding of the phrase or idiom to be interpreted, and ability to find the appropriate counterpart in the other language at once. Commenting on a topic that became important during our field research, and which we discuss later in this chapter, he reminds the reader that in consecutive interpretation, attitude can be important because listeners tend to try and read the interpreter's expression, as well as that of the original speaker, to see what lies behind the actual words. The author emphasizes the importance of a university education and of a broad vocabulary and knowledge of sentence structure.[14]

The volume Translation: Applications and Research, although emphasizing translation as opposed to interpretation, might have been more to the point in our hypothetical case. After directing the reader's attention to the encyclopedic knowledge required of professionals in this field, reference is made to comments transmitted by a lawyer who practices in Hawaii. According to this information problems have arisen because the interpreters fail to behave as "faithful echoes" of the defendants; they take it upon themselves to present the communications as they (the interpreters) feel will be most acceptable to the court. Since in most cases no one else can understand both languages, no supervision exists.[15] One of the contributors to this book indicates, at a more sophisticated level that may have major applicability to the criminal justice system, that,

> ...In general, it is expected that the greater the linguistic dominance the more likely an interpreter will identify with the speakers of the dominant language, rather than with clients speaking his "other" language.[16]

Further guidance could have been found in a collection of papers published in the volume Aspects of Translation. One of the co-authors discusses what is perhaps the most difficult type of interpretation, known in the trade as the long consecutive. This type of interpretation should be very useful in a variety of stages within the criminal justice process. He concludes that,

> ...Consecutive interpretation of lengthy statements, then, is only possible if one is capable of noting down the main words, phrases, and ideas in abridged or symbolical form. These signs or symbols eliminate everything which is not of the essence of meaning. Memory--and practice--do the rest.

Later on, in comparing consecutive with simultaneous interpretation, he advises the reader that,

> ...The basic problems are the same; the 'phenomenal' problems are more acute. Your intellection of the speech need not be so thorough, but your response to words must be still quicker than before -- the speaker speaks, and you are speaking too. If memory plays little part, neither does the personal element in the reconstruction of the speech. Your sentence must, of necessity, follow the pattern of those which the speaker has pronounced...Great nimbleness is called for to guide the innermost mind through this syntactical maze while at the same time, it is engaged upon the work of word-translation. Listening intently, translating half-unconsciously, consciously intervening to redress the forms and balances of syntax, touching up, putting in fillers--these are some of the demands of simultaneous interpretation.[17]

Reference should be made here to a few studies or judicial and criminal justice system linguistic problems that have been made, most of them dealing with specific jurisdictions. These studies, mostly reports commissioned by specific agencies or by interested parties, present rather static views of the issues involved. They tend to rely on what is there at the time of each study: Existing legal precedents, criminal justice system procedures then in effect,

administrative structures that deal or are responsible for dealing with the problem, possible conflict of interest, and existing personnel policies. One such report, now fourteen years old, reviews practices in the appointment of judicial interpreters throughout the country. It recommends that,

> ...all states, regardless of whether its interpreters are temporarily appoint or permanently employed by the court, should require its interpreters to qualify by some minimum standards in an attempt to upgrade the interpretative skills necessary to insure a litigant a just trial...In conclusion, one might suggest that the interpreter for the foreign-born, as well as for the handicapped, performs an irreplaceable service in the judicial process--one which has often been ignored but one which is consistently made use of. For those states which frequently have need for the services and can afford it, an official and permanent interpreter for certain courts may prove to be a successful alternative to insure adequate translations and to prevent possible miscarriages of justice. For those states which choose to retain the temporary selection of interpreters, and for the Federal Courts, a stringent standard of qualifications is a necessity in order to continue to recruit the skilled, and root out the inadequate from the judicial system. In addition, compensation for an interpreter's services most certainly should be made commensurate with the skill which is necessary, if the recruitment of high grade interpreters is to be made a reality in every circumstance. Only when each court incorporates such protections, will we be assured that court interpretation will continue to fill its all important role in the administration of justice at a consistently high level.[18]

Pima County, which includes the city of Tucson, in the state of Arizona commissioned a study of its Superior Court interpreting services concentrating on its criminal cases. The report describes the efforts of these conducting the study and discusses the legal aspects of the problem, the existing situation in the jurisdiction under study, and recommends certain steps to improve it. At one point, it identifies the project as "the first known effort to systematically improve language services throughout the criminal justice process."[19] After providing definitions and a legal framework that

are open to disagreement, the report acknowledges the political considerations which affect the issue under study.

> It is both impractical and unusual for organizations to focus limited resources on special problem-solving efforts, particularly problems that impinge not on the maintenance of the organization or its members, but on a peculiarly troublesome but uninfluencial clientele.[20]

The authors make reference to structured and systematic observations in Tucson, Newark, Ventura, and Los Angeles in order to support their view that the criminal justice system disregards the special problems of non-English speaking individudals, which the study equalizes with Spanish-speaking defendants. In their area of concentration, Pima County, they observed that the criminal justice system was providing interpreting assistance to a maximum of fifty per cent of those requiring it.[21] The report goes on to present a useful description of the interpretative skills to service the defendant required at various stages of the criminal justice process. It also provides a brief test that could be used to determine if a Hispanic defendant lacks sufficient knowledge of the English language. Although those familiar with professional interpretation could quarrel with the report's skill requirements and with the proposed test, the information and ideas contained in this text would have been useful to criminal justice system administrators, attorneys, and interpreters. Although Pima County was not a primary site, we visited the state courts six years after the study was conducted. In our interviews with the court administrator and with the full-time interpreter neither of them made reference to this report and it was readily apparent that most of the recommendations had been ignored and that little had changed in the ensuing years.[22] This in spite of the fact that linguistic assistance was often made

available and that those who provided whatever limited assistance there was, lacked qualifications.

> Persons who interpret, even at the trial state of the process, are not professional interpreters. The present interpreters are actually self-taught English and Spanish speaking employees who also officially serve the court as law librarians (2), bailiff (1), or court clerk (1)... English-Spanish speaking employees who provide language services do so without having been properly selected for their linguistic competence and without any supervision over the quality of their language services.[23]

It should be emphasized that the report is most effective in providing administrative guidance to the Pima County criminal justice system in the organization of interpreting services; suggestions are made to identify and recruit individuals with different levels of competence to provide interpreting services at different stages of the criminal justice process. In theory, these different steps would encourage those hired to better themselves in order to earn promotions. However, the report shows a shortage of expertise as to the nature of professional interpretation. There is confusion as to the different modes of interpretation and the set of qualifications appers to be intended to facilitate the employment of "local bilinguals", an issue which we discuss extensively later in this chapter.[24] Nevertheless, there is ample information in this report to make it possible for criminal justice system administrators, judges, attorneys, and interpretators to evaluate the services provided in their jurisdictions.

Another official publication that might be useful to interested individuals within the criminal justice system is the manual produced by the State of Nevada; it is addressed to those called upon to provide linguistic assistance to Spanish speaking individuals. The report is basically a "how to be an interpreter" publication, but it contains useful items regarding the

qualifications of those being sought and how their work should be performed, particularly in the courtroom. Unfortunately, when the authors attempt to provide Spanish versions of criminal proce-s terminology they make a number of errors and resort to vague renditions, non existent spanish words are introduced, they resort to wrong renditions, and their knowledge of Spanish grammar appear weak. Some of the rules for criminal justice system interpreters are rather basic; nevertheless, administrators could use them to measure the behavior of their personnel.[25]

We have described some of the materials that could be found in a fairly specialized library in order to provide evidence of our claim that the field of interpretation is not a "no-man's land" in the United States.[26] We do not necessarily agree with everyone of the works listed, nor do we believe that every contribution is applicable to the criminal justice system. This and other works would have led criminal justice system administrators into the real problems associated with elimination of the language gap. The available material would have provided a starting point, a variety of informed options in the selection of the methodology to be employed in attempting to solve, sincerely and honestly, the particular problems faced by non-English speaking individuals who come into contact with systems and management.

Linguistic Demands of the Criminal Justice System

Another issue raised by attorneys, judges, court personnel is the nature of the linguistic skills required in order to bridge the language barrier. In brief, it is argued that criminal justice system interpreters need, first and foremost, to know the particular "dialect" spoken by non-English speaking

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minorities subject to the immediate jurisdiction of the particular criminal justice sustem being surveyed. This argument was raised in everyone of the primary sites included in this study, as well as in occasional "sites of convenience". It is, therefore, appropriate to deal with this objection in a general way which should be applicable to all areas of the United States.

Firstly, this argument was raised primarily in connection with the Spanish language: No individual interviewed claimed that there were any regional or local differences between languages such as Russian, Hugarian, Japanese, or Korean, as spoken in Los Angeles, New York, or Chicago. A few individudals indicated problems between Chinese dialects, but these linguistic differences were traced to the regional origin of the individual in China. Similar differences were noticed between French and Creole, spoken in Haiti. In the case of Spanish, however, those interviewed claimed to have identified a large variety of local versions based not only on the country of origin of the non-English speaking individudal, but also on the region where he came into contact with the criminal justice system. Thus, it was argued, even if national standards of interpreting competence existed, they would not take into account the type of Spanish spoken in San Antonio, or Los Angeles, or Chicago, or Miami. Curiously, this argument was raised by a variety of individuals, many of whom volunteered that they had no knowledge of any of the various versions of the language in question. Secondly, it has to be indicated at the outset that many of those who articulate the views of linguistic minorities see the different agencies that make up the criminal justice system as a highly politicized sector of the government. Therefore, job opportunities, particularly in white collar positions, are demanded by these spokesmen on

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behalf of their constitutents as the group's share of the governmental pie. Naturally, jobs that require certain linguistic skills sppear to give each of these linguistic minorities an absolute advantage. The emphasis on localisms and "dialects" becomes quite useful in legitimately excluding "outside" competition. Finally, the importance of localisms and the "dialects" serve to disguise or downgrade educational or methodological deficiencies that members of local linguistic minorities may be saddled with.

The first issue that we must face here is whether those terminological differences exist and, if so, how important they really are in the context of bridging the language gap in the criminal justice system. Let us begin by saying that, technically, the Spanish language is a single one, closely managed by the Royal Spanish Academy. When reference was made to this fact, individuals in a number of different sites pointed out that linguistic assistance could not be provided by interpreters who spoke "Castilian" Spanish, or by those using terminology right out of Don Quijote. This type of comment, coming as it often did from individuals lacking knowledge of Spanish linguistics, or sometimes of the Spanish-language, has to be charitably charged to their ignorance; uncharitably, to an attempt to cover up patronage. What they mean by "Castilian" Spanish is not currently spoken even in the region of Spain which gave it the name. The manner of speaking found in Don Quijote can only be found in classic Spanish literature of that period. If one pursues this claim further, one discovers that what they had in mind is a learned professor who walks out of his ivory tower to interpret a conversation between a police officer and a Spanish speaking suspect. There may be very good reasons for professors of Spanish not to qualify as competent interpreters, but these reasons have

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little to do with formal Seventeenth Century Spanish. Transactions within the criminal justice system occur at many linguistic levels, from the highly formal objection by an attorney or reading of the "Miranda" rights to an accused to the highly informal interrogation of a poorly educated witness by a police officer. A competent interpreter, ideally, has to be able to handle this wide range of levels; a professional interpreter should possess a broad vocabulary and should be able to adjust to various linguistic levels. Amateurs, on the other hand, are likely to be quite difficult outside a very narrow range. The stereotype of the professor is perceived as being limited to "formal" Spanish and unable to handle the "informal" or "colloquial" or "regional" expressions normally used by those who come into contact with the criminal justice system.

In fact, expedite the return of the professoriate to their ivory tower, let us remind everyone that many of the modern Spanish language novels use a great deal of "informal", and even "slang" expressions. It is more likely that the professor brought up by so many interviewees was thrown off by the same deficiencies that caused the demise of most practicing interpreters who took the federal court interpreters examination: Lack of appropriate interpreting skills and ignorance of professional criminal justice terminology. In any case, criminal justice system interpreting and teaching of languages and literatures are two different occupations which require different knowledge and skills. To place the locally-recruited minority group member in competition with the Castilian-speaking professor is to create a false option. Neither of them may be capable to provide a sufficiently accurate rendering of what non-English speaking individuals need and are entitled to know to meet the requirements of the sixth and fourteenth amendments to the United States Constitution.

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The statement made above regarding the management of the Spanish language by the Royal Academy should be qualified. Management and uniformity of a language can only exist at the formal level. That is to say, among those individuals who pay attention to the "correct" use of a language. In any society there are human beings without the lack of knowledge, the intelligence, or the will to follow linguistic rules. Deviations occur in any language, and to say that there is an institution which is widely entrusted with maintaining uniformity is not to claim that uniformity is always and everywhere implemented. Since we are focusing on Spanish, it should be metioned at this point that there is among many Hispanics a factor that encourages them to speak their language correctly: Appropriate use of Spanish is an important determinant of class membership. Thus, nearly all those who possess some knowledge of formal Spanish make an effort to use it, particularly when dealing with those in authority. In fact, in an effort to be socially upgraded in the eyes of their audience, cases of hypercorrection are not uncommon. Nevertheless, there are Hispanics, in the United States and elsewhere, who do not possess the minimum vocabulary and knowledge of grammar needed to communicate in formal Spanish; in this, they are no different from their counterparts whose native language is English, French, or any other. These individuals, when living in an environment in which another language, such as English, is commonly spoken, tend to combine and mix the two in some sort of border patois. In the United States the "border" and the "Spanglish" it generates have extended to most large and middle size urban centers, as well as to many rural areas where Spanish-speaking laborers are employed. What administrators and representatives of linguistic minorities are telling us is that knowledge of that regional patois is essential to interpret in the criminal justice system. They are also

telling us that familiarity with the particular patois should take precedent over any other knowledge or skill required of interpreters. The implication of their claim, occasionally articulated, is the most Hispanics who come into contact with the criminal justice system speak and understand local "Spanglish" but not formal Spanish.

To our knowledge, no one has tested this proposition. We clearly recognize that testing it would require resources that exceeded this project. It was clear, however, that those who proclaimed the major role played by local patois had not tried, and indeed were not interested in trying, to ascertain their claim. There is, however, a relatively easy method of approximating the linguistic level which prevails in the communities that employ languages other than English in the United States: it is to monitor the type of language, in our project Spanish and in a few cases Italian, employed by the mass media available to these communities. We reviewed newspapers and magazines sold in the various sites, and listen to radio and television stations broadcasting regularly in Spanish and, when available, Italian. We also spoke with members of these linguistic communities in their native language and, more importantly, tried to listen in when they were talking with friends and relatives.

Our findings, limited as they are, are at variance with the claims made by administrators and representatives of linguistic minorities. In nearly all the sites studies we found some Spanish language newspapers edited in the United States and a variety of newspapers. magazines and books published in Puerto Rico, Mexico, Spain and in selected South American countries. The American publications employed some local "Spanglish" terms, although the bulk of the paper was written in standard Spanish. The newspapers and magazines

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imported from Spanish speaking countries were written in standard to formal Spanish; some of them included a few expressions customarily used in their respective countries and uncommong elsewhere. The books, as books everywhere, employed the level and quality of Spanish chosen by their authors to suit the situation presented to the reader. Italian language materials found in cities such as New York and Boston were written in standard to formal language regardless of place of publication. Newspapers, magazines, and some books were available not only in specialized stores, but also in food marts, variety stores, soda counters, coffee shops, and a number of similar places in Hispanic and Italian neighborhoods. We observed and purchased such publications in San Antonio, Los Angeles, New York, Miami, the District of Columbia, Philadelphia, Chicago, Phoenix, Tucson, Boston, as well as along the Mexican border. What should be remembered of our surveys is that avaialble materials included publications produced in the United States and those imported from Spanish speaking countries.

Our monitoring of radio and television broadcasts led to similar results: there were local radio Spanish language stations in all the sites included in the study. Locations near Mexico and Miami also received foreign long wave radio signals. Stations located in Mexico, as well as those found in southern Arizona, New Mexico, and Texas broadcast advertisement and local news from both sides of the border. A number of the sites included in the study also had local Spanish language television stations, many of which now belong to the Spanish Television Network. Existing technology makes it easy for these stations to rely on programs produced in Spain or in major Latin American countries, particularly Mexico and Argentina. Newscasts and variety progams

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are now transmitted live from Mexico daily; the rest of most prime time programs arrives in videotape. Major sport events, such as international soccer matches, are also broadcast either live or a few hours later, to adjust to time differentials. What we would like to emphasize about the result of our survey is that a variety of accents and terminologies are communicated to Spanish speakers in this country through the mass media, and particularly through radio and tele vision. It could be argued that Hispanics living in the United States have access through the mass media to a much greater variety of pronounciations, accents, vocabulary, and usages than residents of any one Spanish speaking country.

Advertisers have recognized this "internationalization" of the Spanish spoken within the confines of this country much faster than criminal justice system officials. After a major survey conducted by an independent firm, market research frim, it was decided that commercials to be shown in Spanish language television stations in the United States were to be produced in Spain or Mexico in order to make sure that "the proper Spanish language" was being used. A similar policy was followed when a major manufacturer of Spanish brandy and wine decided on an advertising campaign in Spanish that included television, newspapers, and billboards.[27] Not unrelated to what we are describing here is the success of programs to teach Spanish, particularly reading and writing, to Hispanics in Major American urban centers.[28]

There are similar mass media sources available in Korean, Japanese, Italian, Portuguese, and Chinese; there may be other languagues represented, but we are not aware of them. We have not included in our listing films, because access to them by members of linguistic minorities is more difficult

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to estimate. We found theatres showing exclusively Spanish language films in all our major sites. To our knowledge, all Spanish language commercial films are imported, mostly from Mexico, Argentina, and Spain. As in all films, the level of language employed varied according to the character. Some of the sites also had theatres which showed Chinese and Indian films. We do not include productions from European countries with major movie industries, such as Italy, France, and Germany, because their products are available as a matter of course.

The argument being presented here is that administrators and other interested individuals have grossly underestimated the linguistic level of the non-English speaking individuals with whom they have to deal. Surely there are among them persons with limited vocabulary, low level of comprehension, lack of grammatical training, or who rely on local patois. The situation does not differ substantially from that of those whose native language is English. By making the assumption that nearly all non-English speaking individuals fall in this category judges, criminal justice system administrators, practicing attorneys and interpreters validate the claims of representatives of local linguistic minorities, as well as their recruitment practices. If, on the other hand, the range of linguistic ability in Spanish and in the other languages is as wide as we have indicated, then the major justification for demanding and accepting the recruitment of "local bilinguals" disappears. To settle this question a discussion of the appropriate duties and responsibilities of the criminal justice system interpreter is needed.

The function of the interpreter in the criminal justice system appears simple enough: he repeats in the foreign language that which is said in English for the benefit of the witness or accused, and states in English that

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which either of them says in his or her tongue. Unfortunately, the conversion process is not that simple: besides the matter of knowledge of equivalent terminology in at least two language, which we will bring up later, there is the matter of appropriate interpreting technique and of conserving the original level of language. It should be said at this point that very few of the criminal justice system interpreters we interviewed, and almost none of their administrative supervisors, were familiar with the various interpreting techniques commonly used by professional interpreters. Some of those who recognized the names nevertheless lacked concrete knowledge of their meaning. The overwhelming majority of interpreters we observed could have used training in the appropriate application of the interpreting techniques they did use. The issue we are considering here, selection and recruitment of qualified individudals, is also affected by the perception of the interpreter's role: if one perceives the interpreter as a member of the criminal justice system personnel, then the emphasis is on accuracy, on precision, on comprehensiveness, in terms of what is being said and the mode in which it is being said. We discover in our interviews that a large number of administrators, judges, and defense attorneys expected the interpreter to become the liaison between the non-English speaking individuals, which they saw as alien to the criminal justice system in the full sense of the word, and them. Many interpreters, probably a majority of those interviewed, also saw themselves as performing such a function. The validity of the "adaptation role" as necessary to fulfill the requirement of a fair trail, as well as the guarantees outlined in the Sixth and Fourteenth Amendments to the U.S. Constitution, is strongly questioned in this study. In fact, the implementation of such "adaptation role" often runs counter to the

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need for accuracy. Interpreters indicated to us that they consider it part of their duty to simplify and outline court proceedings for individuals who, in the interpreters' judgement, would not understand an accurate rendering. In the opposite direction, they took it upon themselves to polisy, embellish and improve upon statements made by non-English speaking individuals which, in their opinion, were uncouth or offensive. Interpreters also stated that they felt it was important for them to explain to the individuals in question, and often to their non-English speaking relatives, what was going on, particularly in court, in the hope of putting them more at ease. Administrators and some judges confirmed that this was done, and most of them favored this intermediation or "adaptation role". Following that line of reasoning, it makes some sense to seek "local bilinguals" who are likely to have a better personal knowledge of those located within the jurisdiction of a particular criminal justice system.

If the interpreters interviewed had received the appropriate professional training they would know that the "daptation role" contradicts the expectation of accuracy, precision, and neutrality which are essential to the performance of their true task. If the criminal justice system interpreter is successful in the "adaptation role", he or she would provide the non-English speaking individuals with services not available to English speaking defendant and witnesses of equivalent intelligence and education. If the interpreter errs in any part of his or her "adaptation role", the non-English speaking individuals will be missled as to the proceedings in which he is participating; other participants, such as police officers, probation personnel, judges, and jurors, will hear remarks that, at the very least, will convey an inaccurate level of

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sophistication of the non-English speaking participant. The picture of an interpreter who, in his effort to "adapt" provides erroneous information to a non-English speaking defendant is not difficult to visualize; some attorneys and judges specifically mentioned this concern. The possibility of placing the non-English speaking individual in an advantageous position vis-a-vis his or her English speaking counterpart is often ignored. Some criminal justice system administrators and representatives of linguistic minorities actually called for it, arguing that it was necessary to make up for the language barrier and for the total ignorance of the procedures in which these individuals might be involved. If one accepts this argument, then again it makes some sense to recruit interpreters and other bilingual personnel from among local linguistic minority groups, since they are more likely to be aware what their fellow members need and would like to know.

This report rejects the concept of the "adaptation role" outright and without qualifications. Firstly, fair criminal justice system proceedings require, in the case of non-English speaking individuals, that the language barrier be accurately bridged; that the situation be as similar as humanly possible to that faced by the same individual but without the linguistic disability. Level of education, mental ability to understand the proceedings, knowledge of what is happening, up to and including a short course in American criminal justice system procedures, should be in the hands of senior police officers, judges, attorneys, and corrections personnel. They may need interpreting services to communicate with the non-English speaking individual; but the provision of this type of information should be available to all those who need it, and not only to members of linguistic minorities who happen to be

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provided with interpreting services. More importantly, the information should be provided by persons who are recognized as knowledgeable and not by those whose involvement is prompted by their supposed linguistic prowess.

Interpreters and criminal justice system administrators know or should know what has been said in the preceeding paragraph; our observations and interviews indicate that they nevertheless seek in the first case and encourage in the second the "adaptation role" in order to discourage those being served from complaining or raising questions about the actual availability and quality of interpreting services made available to them. Interpreters, and particularly the ones we interviewed, know that most challenge to their performance are likely to come from the defense. Lacking confidence in their qualifications and in the process employed to recruit them, interpreters make it a point to make themselves known to defense attorneys and to non-English speaking defendants and their families. They consider it in their interest to save time and aggravation to all concerned; their "adaptation role" achieves that, but often at the expense of accuracy, precision, and equality of treatment. Criminal justice system administrators, besieged by complaints and challenges from all sides, encourage and support the "adaptation role" because it is likely to facilitate their own jobs and do away with criticisms on linguistic grounds. Interpreters and bilingual personnel recruited from within active local groups also satisfy the political needs of "ethnic patronage" and, hopefully, gives linguistic minorities a stake in the local criminal justice system.

This study was develop on the premise that there is no substitute for accuracy and precision, which is to say for the highest level of professional competence if the rights of the individuals under study are not going to be

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jeopardize by their linguistic deficiency. Non-English speaking individuals who come into contact with the criminal justice system are entitled to equality of treatment; most of them appear to seek equality and nothing else. Their linguistic deficiency does not entitle them to priviledged assistance and linguistic babyseating. It is our view that, if they were aware of the possibility of trading off precise interpretation for soothing and periferal assistance, they would reject the transaction. The dimension of this implicit trade-off comes into full view when we remember the level of terminology employed in the criminal justice system; this matter was raised earlier, but its discussion was postponed.

Different stages within the criminal justice process call for different linguistic levels. Exchanges between police officers, witnesses, and suspects are conducted informally; words need not be precise and meanings, shades, and implications can be clarified. If something is not understood, there is often times for questions and for the use of different ways to say the same thing. Furthermore, as we have discovered in our field research, at the investigation stage police and government attorneys prefer to rely on their bilingual staff, and only resort to interpreters when the linguistic capability is not available in-house. There is a matter of confidentiality involved here; recruitment of these individuals has to conform to the policies of each agency. Even so, the matter of statements made by non-English speaking individuals that were later introduced in court, when interpreted by in-house personnel, raises issues that will be discussed in future chapters. It is if and when a case reaches the judicial stage that the question of recruitment becomes of major relevancy. In a study conducted some years ago Professor Roseann Duenas Gonzalez found that transactions conducted in Arizona criminal courts took

place using English terminology that she measured as requiring at least fourteen years of education; that is, at least the completion of two years of college.[29] Naturally, this study measured criminal cases conducted in the English language; in the case of interpreters working in criminal courts, the finding means that those who have completed two years of college in English language institutions would be barely understanding what is going on. However, in order to accurately and precisely render judicial transactions into another language, they would have to have reached at least an equivalent linguistic level in the other language. Professor Duenas Gonzalez points out that,

> The attorney has at his disposal the entire English language. Characteristics of the strategy of persuation used in legal discourse, the attorney chooses his words carefully. The sophistication used of connotation is absolutely vital. He can color the picture he paints with the words he chooses to use and the parts of events which he chooses to emphasize or minimize . He can deliberately choose to be ambiguous in hope of being misinterpreted, resulting in development of a possible advantage for his client.[30]

Another student of linguistic exchanges in "legalese" has called attention to the historical background of its terminology and usage, which requires knowledge of the various periods in which the history of the English language is divided.[31] Professor Duenas Gonzalez advises us that,

> The language of the court is an agreed-upon communication code for those who work within the system. Attempts at liberalization have met with opposition because the formality suits the purpose of judges and attorneys; satisfies their need for consistency in expression; and adds to the mystique of black-robed judges, wood-panelled courtrooms, and elevated witness boxes.[32]

Interpreters who pretend to perform competently in this environment would have to know the specialized legal and other professional terminology employed in criminal cases. This is a major difficulty; English language professional

terminology often has a precise set of equivalents in other tongues. At the trial stage, when each word and sentence can have an effect in the outcome of the case, room for clarification of what is really meant is limited.

Once the presence of different levels of language at different stages of the criminal justice process is acknowledged, one of the major arguments employed by those interviewed to justify reliance on "local bilinguals" loses validity. Obviously, the ideal criminal justice system interpreter will have an education beyond the second year of college in two or more languages; he will be familiar with legal, medical, and other professional and technical terminology; and he will also be able to handle everyday expressions widely employed within the immediate jurisdiction of the criminal justice system he serves. But those of us who have been engaged in recruitment know that ideal types seldom appear. If something has to give, we find it very unusual that criminal justice system administrators, attorneys, and the interpreters themselves are attracted to those familiar with regional patois at the expense of factors that are essential to the accurate and precise rendering of criminal proceedings. One would think that an individual who has acquired the education and the technical terminology needed to perform effectively in the most difficult stages of the criminal justice process will also be familiar with the minority language slang of the region. If he is not, a professional interpreter would make it a point to acquire the necessary terminology to round-up his or her skills. On the other hand, we would like to suggest that it will be very difficult, if not impossible, for an individual who does not have the necessary educational background and the needed technical terminology in English and in the minority language, to acquire them within a reasonable time.

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Regarding interpreting methodology, while it can be learned by anybody, there has to be someone available to teach it. In addition, wide gaps in terminology render the knowledge of professional interpreting techniques useless. These skills generally are available as a package: those who possess the professional terminology are also likely to possess proper interpreting techniques. Some of the criminal justice system interpreters we interviewed emphasized the difficulty they were having in locating places that would train them in either techniques of specialized terminology in the minority language.

What this lengthy discussion boils down to is that the issue of street language versus ivory tower purity is a false one. Neither the professional interpreter nor the "local bilingual" will be likely to resort to esoteric jargon, nor will the ivory tower professor. The real issue, the one from which most of our interviewees stayed away, is who, among alternatives, is more likely to eliminate the language barrier of non-English speaking individuals who come into contact with the criminal justice system; and who might be unable to insure owing to these individual owing to his or her methodological and linguistic shortcomings, equal access to the criminal justice system, as well as the more specific guarantees contained in the Sixth and Fourteenth Amendments to the U.S. Constitution. We have addressed this question in each of our field research sites.

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Footnotes

1. The media has discussed at length separatism and linguistic differences in Canada; see, for instance, The New York Times, December 25, 1978, p. 9 and October 5, 1981, p. 2-A.

2. See, for instance, the bilingual programs mandated in the Patchogue-Medford and Brentwood school districts of Long Island, as reported in The New York Times, July 29, 1979, p. 27. For the socio-political implications of bilingualism in the schools of Colorado, see The New York Times, March 1, 1980, p. 6.

3. The New York Times, March 4, 1978, p. 20.

4. As reported by Fred M. Hechinger in The New York Times, May 20, 1980, p. C-1.

5. The case in question was Lau v. Nichols, 414 U.S. 563 (1974). For a report of the activities of the Chinese community of San Francisco see The Wall Street Journal November 4, 1975, p. 44.

6. Letter to the editor of The New York Times, written by Manuel Luciano De Silva, president of Portuguese-American Communications, Inc., of Bristol, R.I. and published on December 11, 1978, p. A-22.

7. In the letter written by Steve Teitelbaum and published in The New York Times on February 25, 1979, p. 16-E.

8. Mauricio Molina, "Less Spanish Please," The New York Times, March 12, 1980, p. A-27. For a reply based on ethnic and cultural arguments see the letter written by Efrain Barradas and published in the same newspaper on March 25, 1980, p. A-18.

9. Gaye Tuchman, "Let's Hold Trials Here in Spanish," The New York Times, August 28, 1979, p. A-17.

10. For details of these two types of judges and their consequences for the legal system see A. Arthur Schiller, Roman Law: Mechanisms of Development (The Hague, Paris, New York: Mouton, 1978) pp. 402-403 and 537-541; Wolfang Kunkel, An Introduction to Roman Legal and Constitutional History, 1st. ed. (Oxford, England: Clarendon Press, 1966), pp. 72-91, or 2nd ed. (1973), pp. 64-94; and Barry Nicholas, An Introduction to Roman Law (Oxford, England: Clarendon Press, 1962), pp. 19-28.

11. A recent example of the subject on stage is the play "Translations" by Brian Friel.

12. The articles in question appeared in The New York Magazine, September 3, 1979, p. 76; MS, November 1979, pp. 96-108; and The New York Times, February 1, 1982, p. A-12.

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13. Patricia E. Longley, Conference Interpreting (London: Pitman, 1968), p. 51. The comments paraphrased in the text are from pp. 42-44 and 53. On this subject it is also useful to consult J. Adenis, "The Conference Translator," in The Incorporated Linguist, October 1968, pp. 83-86. For a more comprehensive analysis see Henri Charles Barik, "A Study of Simultaneous Interpretation," (Ph.D. dissertation, University of North Carolina, 1969); some of his comments appear also in Barik, "A Look at Simultaneous Interpretation," Language Sciences, 26:35-36.

14. J. F. Hendry, Your Future in Translating and Interpreting (New York: Richard Rosen Press, 1969), specially pp. 15-16 and 27. Along the same lines the reader could consult Ian F. Finley, Languages Services in Industry (London: Lockwood, 1973) and Frederick Fuller, A Handbook for Translators (with Special Reference to International Conference Translation (Gerrards Cross, England: C. Smythe, 1973).

15. Richard W. Brislin (ed.), Translation: Applications and Research (New York: Gardner Press, 1976). The comments are paraphrased from the contribution by Brislin, pp. 2 and 31-31.

16. Contribution by R. Bruce W. Anderson, in Brislin (ed.), op. cit., p. 213. Along the same lines see Robert Brainerd Ekvall, Faithful Echo (New York: Twayne Publishers, 1960).

17. Contribution by R. Glemet in A. D. Booth and others, Aspects of Translation (London: Secker and Warburg, 1958), pp. 116 and 120.

18. Byron W. Daynes, "The Court Interpreter" (Report No. 21, The American Judicature Society, August 1968), pp. 3 and 10. As it will become obvious, we find recommendations of this type extremely vague in relation to the gravity of the problem. Nevertheless, there is enough in reports like this one to incite the intellectual curiosity of the reader.

19. "Final Report on the Superior Court Justice System Interpreter-Model Development Project" (Prepared for Pima County Superior Court, 1976), p. 9.

20. Ibid., p. 39.

21. Ibid., pp. 40-41. Peter Lopez, one of the principal investigator, had previously published with Refugio Rodriguez a review of the situation. See their "Interpreters' Effect on Quality of Justice of Non-English Speaking Americans" (Denver, Colorado: Institute for Court Management, 1973). Mr. Rodriguez, in turn, had prepared a report on his observations as an intern in Newark, New Jersey; see his "Newark Municipal Court: Present Existing Situation of Court Interpreters and Language Services" unpublished manuscript (Denver, Colorado: Institute for Court Management, 1972). See also Peter S. Lopez, "Justice System Interpreter Certification Task Force Report" (Denver, Colorado and Los Angeles: Institute for Court Management and National Conference of Christians and Jews, 1973).

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22. "Final Report on the Superior Court Justice System Interpreter-Model Development Project," pp. 53-61.

23. Ibid., pp. 67-68 and 78.

24. The authors confuse aspects of long consecutive and simultaneous interpretation in ibid., p. 140; they also expect interpreters to identify "dialects." The matter of Spanish "dialects" appears elsewhere in the report; see for instance p. 119. The report also calls for an interpreting staff with "awareness of the areas of which may cause conflicts..." p. 119); and with the "ability to judge a client's approximate educational level and linguistic patterns and adjust one's interpreting accordingly..." (p. 120). As we discuss later in this chapter, criminal justice system administrators appear to have retained or shared these arguments.

25. Larry Luna and Adalberto Meneses, "Spanish Manual for Court Interpreters" (Las Vegas, Nevada: Interpreter-Translator Project, September 1976).

26. We have avoided the discussion of more esoteric studies of translation and interpretation, such as H. Winthrop, "A Proposed Mode and Procedure for Studying Message Distortion in Translation," Linguistics, 22:98-112, 1966; L. Stevens, "The Principle of Linguistic Equality in Judicial Proceedings and in the Interpretation of Plurilingual Instruments..." Northwestern Law Review, 62:701-734, 1967; R. Brislin, "Back-Translation for Cross-Cultural Research," Journal of Cross-Cultural Psychology, 1:185-206, 1970; L. Galantiere, "On Translators and Translating," American Scholar, 40:435-445, 1951; J. Holmes and others, The Nature of Translation (The Hague: Mouton, 1970); E. Nida, Toward a Science of Translating (Leiden: E. J. Brill, 1964); E. Nida and C. Taber, The Theory and Practice of Translation (Leiden: E. J. Brill, 1969); and B. Raffel, The Forked Tongue: A Study of the Translation Process (The Hague: Mouton, 1971). We have also avoided including reference to relevant works in languages other than English.

27. See The New York Times, September 18, 1979, p. D-16, and July 22, 1981, p. D-17.

28. For an example see The New York Times, October 7, 1979, p. 74.

29. Roseann Duenas Gonzalez, "The Design and Validation of an Evaluative Procedure to Diagnose the English Aural-Oral Competency of a Spanish-Speaking Person in the Justice System," (Ph.D. dissertation, The University of Arizona, 1977) pp. 76-77.

30. Ibid., p. 76.

31. David Mellinkoff, The Language of the Law, (Boston: Little, Brown and Company, 1963) as cited in ibid, p. 70.

32 Op. Cit., p. 70.