

**EQUITY IN THE SOUTH AFRICAN LEGAL  
SYSTEM**

**A CRITICAL ETHNOGRAPHY**

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## **ABSTRACT**

This thesis focuses on the process of interpreting and the difficulties faced by interpreters in the Magistrates' Court in Grahamstown, South Africa. More particularly, the thesis seeks to establish whether the constitutional guarantee of language equity can be applied to the courts – given the numerous problems with interpreting. Respondents from different spheres of the legal profession were interviewed in order to ascertain their perspectives on the state of interpreting, problems that are encountered by interpreters and attitudes displayed by other members of the legal profession towards interpreters. The methodology used in the thesis is that of a critical ethnography. As such, the research also has a critical focus, seeking to determine the ideologies and interests of different participants in the legal process.

On the basis of the data collected, a number of conclusions are drawn. The first is that interpreting in South Africa is in trouble. The system of interpreting is beset by a number of different problems. This study describes four different types of problems that are faced by interpreters: linguistic problems, environmental problems, training and administrative issues, and poor status in the eyes of the other participants in the legal process. Together the cumulative effect of these problems is the undermining of the principle of equity in the justice system.

Finally, the thesis provides various practical and achievable solutions to the problems outlined above, specifically those faced by interpreters. The researcher also critically evaluates the efforts and motives of the Department of Justice and Constitutional Development.

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## **CHAPTER 1 – INTRODUCTION**

### **1.1 The Setting**

The historical city of Grahamstown is situated in the Eastern Cape Province of South Africa. Founded in 1812 by Colonel John Graham, Grahamstown served as military post for much of its early years. After the arrival of the 1820 Settlers, Grahamstown grew in importance, and for many years was considered to be the Cape's 'second city'. As such, Grahamstown was the only city, besides Cape Town, to host a session of the Cape Parliament. The city has a long and varied history, and has become an extremely culturally diverse centre.

Most Grahamstonians would tell a stranger that there are four things that define Grahamstown: the first is its numerous churches, the second is its established tradition as a centre of academic excellence and the third is the National Arts Festival. The fourth and, for my purposes, most important is that Grahamstown is the location of both the Eastern Cape High Court as well as a District Magistrates' Court.

Located on High Street, the lifeline of Grahamstown's central business district, the Magistrates' Court is an imposing, white and grey building. As one enters through the front doors, one is confronted by an array of security apparatus, including a metal detector, bag scanner and their attendant personnel. Once through the security, one enters into the administrative section of the Court. The offices of the Clerk of the Court, the Chief Magistrate and the Control Clerk are situated in this section. Passing through, one exits into a wide courtyard. Offices are situated all around this courtyard, and the open space is often a hive of activity, with robed lawyers and Magistrates, police and other miscellaneous personnel striding purposefully, or simply milling, around. Directly opposite the exit from the administrative section is the entrance to the courts.

Altogether there are 8 different courtrooms in the Magistrates' Court. Court A is commonly referred to as the 'Reception court', as it deals primarily with cases that are not yet ready to go to trial, bail applications etc. Courts B, C and E are used for criminal matters, including murder, robbery, rape and theft. Court D is mostly used for lesser criminal offences, such as traffic violations, and domestic violence and

maintenance cases. Court F is reserved for civil cases, and only operates on a Monday and Friday. In addition to these, there are two Regional courtrooms. Regional Court 1 operates on a permanent basis from Monday to Friday, whereas Regional Court two is used on a temporary basis as needed.

The courtroom itself is largely dominated by a large platform on which the Magistrate sits. On one side of the platform is a South African flag, and behind the Magistrate is the crest of the Justice Department. Directly below and in front of the Magistrate are the stenographer and the court orderly. To the left of these personnel is the prosecutor. To the right of the stenographer is the witness stand. The interpreter generally sits next to the witness. Defence counsel sit to the left of the prosecutor, but facing the Magistrate. Behind the Defence counsel is a further witness stand, and behind this are the public benches.

The typical court case will begin when the Magistrate walks into the court. Theoretically everyone else should be there before the Magistrate enters – but this does not always happen. The orderly will tell everyone to rise, and only when the Magistrate is seated may everyone else sit down. This is when the business of justice begins, and when the court interpreter comes into his/her own. The process of interpreting is dependent on which personnel speak which languages. Generally, the process of interpreting is fairly straightforward, and will only involve two languages. The lawyer or the prosecutor will ask a question, the interpreter relays that question to the witness, the witness answers and the interpreter relays that answer to the court. It can, however, become more complex than this – particularly where there are multiple defendants and different languages are used. If, for example, there are two defendants, one Xhosa speaking and the other Sotho speaking, the interpreter needs to translate each question into both languages, and then each response back into the language of the court.

## **1.2 Prior Research into Court Interpreting**

While writing my Honours dissertation, I had considered language policy issues to be important in education. However, an article by Kamwangamalu (2000) alerted me to the broader implications of the new language policy of South Africa. One aspect of his article in particular gave me much food for thought: the case of *Mthetwa v De*

*Bruin NO and Another 1998 3 BCLR 336 (N)*, where a Magistrate ruled that a Zulu accused could not be tried in Zulu, as this would throw the legal system into chaos. After reading the article, my interest was aroused. I felt that Grahamstown would be an ideal setting to investigate the issues raised by Kamwangamalu.

I have been struck by the relative dearth of material on the issue of court interpreting, and particularly on court interpreting in South Africa. This lack of prior research forced me to rely on a small number of authoritative voices, predominantly the work of Moeketsi (1999) and Kaschula (1995). The literature on court interpreting from an international perspective is similarly lacking, and as a result, I make extensive use of Colin & Morris (1996), who describe the experience of court interpreters in the United Kingdom. Thus, there were two reasons for my decision to investigate the issue of court interpreters in South Africa: the lack of literature on the subject and my proximity to a viable source of data.

### **1.3 Research Questions**

There are a number of areas that one could examine when researching language use in the court. Moeketsi (1999) focuses predominantly on issues of discourse and power. Kaschula (1995), on the other hand, examines more closely the terminological conflict between so-called 'European' languages and 'indigenous' African languages. I decided to focus on the broader policy issues surrounding language use in the court, focusing particularly on the notion of 'equity' as espoused in Section 6 of the Constitution (see Appendix A). In this regard, I developed four 'broad' research questions that underlie and give shape to this thesis, namely

1. What is the language policy of South Africa regarding the use of official languages in court?
2. Is this policy applied in the Magistrates' Court in Grahamstown?
3. If it is, is it applied equally?
4. If it is, is it applied equitably?

Governmental sources, particularly the Constitution and other legislative Acts, enabled me to answer the first three questions relatively easily. However, the notion of 'equity' remained difficult to answer. Considering that an overwhelming majority of participants in criminal cases in South Africa are black South Africans, I decided

examine the language policies, both past and present, of South Africa, paying particular attention to the language policy of the post-apartheid era. The most pertinent part of this section is an account of the language policy as it is applied in the Department of Justice and Constitutional Development (DJCD) and, in particular, the courts of South Africa. I outline the relevant legislation, and acquaint the reader with what (theoretically) takes place in the courts with particular emphasis on the legislative role of interpreters. The final section of the Literature Review provides an in-depth examination of interpreting, and interpreting in South Africa. I provide the reader with definitions of interpreting, showing, amongst others, how this process differs from translating and outlining different types of interpreting. Furthermore, I describe the particular skills that are required of interpreters. This section also details the training received by interpreters in South Africa. Finally, I describe the types of errors that could be made by interpreters.

Chapter Three describes the methodology used in the research and is divided into four main sections. Initially, I give a broad definition of paradigms, methodologies and methods and outline the broad paradigms, interpretive and critical, in which my research is situated. The second section of the chapter provides an overview of the methodologies that I have utilised in the research, focusing on ethnography and the main features of ethnographic research. I also describe critical ethnography, giving details of the ethos behind, as well as the main features of, critical ethnography. The third section of the chapter shows how my data was collected. Included is a discussion of how access was gained into the field, as well as to the participants in the research. I should point out here that, despite the fact that some of the participants allowed me to use their real names, I assigned **all** of the participants pseudonyms to protect their anonymity. I also describe the role of methods in research, paying particular attention to interviewing and observation, which were the primary and secondary methods used to collect data for this research. The final section of the chapter describes how the data was analysed subsequent to collection.

Chapter Four contains the discussion and analysis of the data. This discussion and analysis provides answers to, and discussion of, the research questions posed in Section 1.3. I begin by discussing why I chose interpreters, focussing on their vital role within the court system. I then begin answering each of the research questions in

turn. I start by examining the duties of interpreters and perceptions of the state of interpreting. Secondly, I discuss whether these duties are actually being performed – in other words, whether or not there are problems with the state of interpreting in South Africa. Thirdly, I identify and discuss 5 key types of problems that occur during interpreting: language factors, environmental factors, training, administration of interpreters and attitudes towards interpreters. Fourthly, I discuss measures being taken to address these problems, as well as solutions suggested by the respondents themselves. Fifthly, I critically examine the ideologies of those in the court system, with particular emphasis on whose interests are being served by maintaining the current system of interpreting in courts. It must also be noted that I support my analysis with excerpts from the transcripts of the interviews I conducted. The full transcripts of these interviews are provided in Appendix E.

In the fifth, and final, Chapter I conclude my thesis. I re-examine key issues that have arisen. This examination focuses on answering the most important research question, namely, whether the legal system is equitable. I provide and discuss a series of recommendations, based on the data collected. Additionally, I outline some of the perceived shortcomings of the research, particularly, in terms of the respondents, and some key areas that were not addressed. Finally, I suggest some avenues of future research into the topic of court interpreting.

## **CHAPTER TWO – LITERATURE REVIEW**

### **2.1 Introduction**

In 2001, a Language Co-ordination (LANGCO) workshop was held under the auspices of the National Language Service (NLS) in Johannesburg. Delegates from the Government, Hansard and the Pan South African Language Board (PANSALB) met to discuss the proposed language legislation of the Department of Arts, Culture Science and Technology, and how it would affect organs of state responsible for the implementation of language policy (LANGCO, 2001). One of the areas identified as needing attention was the administration of justice. Amongst other things, it was decided that "Court interpreting will need to be professionalised with proper accreditation/certification of people who act in court as interpreters. Unless this is done, miscarriage of justice will continue due to careless interpreting" (LANGCO, 2001).

There is, thus, a realisation in South Africa that the interpreting services offered in courts are in need of serious revision. There are a number of problems believed to afflict the current system of interpreting, lack of comprehensive training and linguistic problems are just two examples of these problems. This chapter seeks to examine the problems in court interpreting in the context of the entire legal system and, in greater detail, the role played by both government and the legal system in the current crisis in court interpreting. Firstly, the review examines language planning in South Africa. I detail what language planning is, and what the implementation of effective language planning strategies (or lack thereof) has done to solve the problems in court interpreting. Secondly, the review examines the language policy of South Africa. The broad language policy will be detailed in order to provide a context for policy issues in South Africa. However, the focus will be on the language policy as it is applied in the Department of Justice and Constitutional Development (DJCD), and, more precisely, the courts. Lastly, the review examines the court interpreters in South Africa. I detail the skills needed to be an interpreter, the training received by interpreters and common problems that occur in the courtrooms in South Africa.

## **2.2 Language Planning**

### **2.2.1 Introduction**

While the academic field that we, today, call 'language planning', is in its relative infancy, language planning as a practice has a long history. Since the Romans (and probably before), there have been numerous examples of informal language planning. During the period of the Roman Empire, the spread of Latin throughout the relatively vast conquests of the Empire was partially due to attempts by the Romans to teach Latin to the tribes and nations they had defeated (Kaplan & Baldauf, 1997).

In the South African context, it is difficult similarly to separate language planning from conquest, namely white, European domination of the indigenous cultures. Just as the Romans forced Latin onto conquered tribes, European colonisers forced their languages (successively Dutch, English and Afrikaans) onto the 'conquered' indigenous South African cultures. However, whilst language planning has been a tool for racial oppression in the past, it has an important role to play in the future of South Africa.

Language planning operates at many levels within a country. The purpose of this section is to examine the role of government in the language planning process, with particular emphasis on the courts of South Africa. In order to do this, I briefly need to describe what language planning is, and how it operates in a society. I also examine the practice of language planning in South Africa, paying close attention to how this has affected the judicial process. Finally, an examination is necessary of the evaluation, or review, process in South Africa to ascertain whether it is operating as it should.

### **2.2.2 What is Language Planning?**

Language planning refers to

...a body of ideas, laws, regulations (language policy), change rules, beliefs, and practices intended to achieve a planned change (or to stop change from happening) in the language use in one or more communities (Kaplan & Baldauf, 1997: 3).

Thus, language planning refers to deliberate change in the way a language functions; recommended by an organisation (or organisations) that has been given the authority

to do so (Jernudd & Das Gupta, 1971; Rubin, 1984). This implies that much of what passes as language planning is mandated by government, usually for political or economic reasons (Paulston, 1984; Tollefson, 1991). The widely held perception that language is a resource enables us to plan language as we would our economy or political agenda.

Language planning tends to occur most often at the national, or macro-level, and targets "populations which are, at least theoretically, distributed throughout the country" (Fishman, 1983: 41). Governments play a primary role in language planning because they generally have "the power to legislate and the ability to foster incentive structures...to enforce planning decisions" (Kaplan & Baldauf, 1997: 5). In South Africa, the role of government in language planning has been particularly crucial. Such an area of governmental intervention has been in the legal system, where the Department of Justice and Constitutional Development (DJCD) has stressed the need for equal access to justice for all South Africans (DJCD, 2000). This intervention has been made to bring the courts into line with the provisions of the Constitution of South Africa, which states that

...every person has the right to a fair trial which includes the right...to be tried in the language that the accused understands or, if that is not practicable, to have the proceedings interpreted in that language (Constitution of South Africa, Section 35 (3) (k)).

### **2.2.3 Language Planning in South Africa**

#### **2.2.3.1 Introduction**

Language planning in South Africa has, as mentioned in Section 2.2.1, been closely connected with oppression and hegemony. Successively, the Dutch, the English and the Afrikaners have all used language as a means to maintain their control over South Africa (Van Wyk, 1993). With the collapse of apartheid and the rise to power of the African National Congress (ANC) in 1994, it appeared, for the first time, that language could be divorced from its oppressive role in the history of South Africa. The guiding principle behind the language plan put forward by the ANC government, both before and after the collapse of apartheid, is that language is a right to which all South Africans are entitled (Heugh 1995; LANGTAG 1996).

With this in mind, the ANC expressed, in the 1996 Constitution, a commitment to a multilingual language policy, recognising not only English and Afrikaans as official languages, but also nine of the indigenous African languages (The Constitution, 1996 Chapter 1, 6[2]). While the 1996 Constitution provides a remarkably democratic language policy model, there remains doubt as to its practicability, and the ability of the government to enforce its principles. To date, there is little evidence that there has been any change in the linguistic *status quo* in South Africa (Kamwangamalu 2000: 53).

### **2.2.3.2 Language Planning and the Law**

Available literature on the function of language planning in the law is extremely difficult to find (Melinkoff, 1963; Van Wyk, 1993). Nevertheless, it is clear that the legal system in South Africa has been influenced by the language planning practices of the past. Moeketsi (1999) rightly points out that the primary mode of expression in the courts is through the medium of language. Similarly, Melinkoff refers to law as a "profession of words" (1963: vi). It is, thus, inevitable that the promotion of English and Afrikaans at the expense of the indigenous languages in South Africa has had negative consequences within the legal system. This is because a large majority of those involved in legal proceedings in South Africa are obliged to do so through the medium of a second language.

Strydom (2001) points to three perspectives on the language debate in South African courts: language status, language and the administration of justice and language as the record in court. The first two are examined further in this section, while the last is more appropriately a policy issue, and is, therefore, dealt with in Section 2.3.

It is abundantly clear that language status plays a significant role in the legal system in South Africa. Bourdieu (1991) believes that status planning is a major factor in regulating power relations between languages and their speakers in society. Turi (1995: 111-117) states that the granting of official status to a language

...requires that the concerned language or languages should at least be used in the major spheres of the government's official operations, i.e. in legislative, executive and judicial matters.

Although the indigenous South African languages have received official status in the country and the courts, old language practices remain the same (Kamwangamalu, 2000). The role of interpreters in South Africa's courts is mainly to ensure that members of the Courts and Bar (predominantly English and/or Afrikaans speaking) are able to preside over cases involving predominantly black South African defendants and/or plaintiffs. In other words there is little, or no, affirmation of the languages of low status (a situation that is further exemplified by the languages of record in the courts – which is examined in Section 2.3).

The language and administration of justice brings a number of serious issues to light. The first revolves around what Haugen (1983) calls corpus planning. One of Haugen's (1983) distinct types of language planning activities, corpus planning refers to provisions made to modify the structure and/or lexicon of any given language. Under apartheid, African languages were under-developed in such a systematic fashion that many (if not all) lack the terminology to deal with modern Western concepts (Ridge, 1996: 31). As such, it remains extremely difficult for interpreters to give an exact interpretation of many legal concepts from one language to another, and vice versa.

Kaschula (1995: 9) remarks that "where people communicate across cultures...there are serious deficiencies resulting from linguistic and cultural prejudice". An example is the case of *Ukuthwala*, or abduction. Hutchison (1991: 699) describes the act of abduction as "an intentional act whereby a person is illegally carried off or kidnapped by force or deception". However, Kaschula (1994) points out that while unlawfulness is an essential element of abduction, *Ukuthwala* is traditionally lawful, and often the woman's parents give permission for the abduction to take place. Similar misunderstandings surround the terms *ukondla/ukukhulisa*, which are often taken to be the equivalent of 'adoption', whereas their English equivalents could be best interpreted as 'maintaining' or 'causing to grow' (Kaschula, 1995: 10). It is clear that some form of corpus planning needs to be instituted to overcome these cross-cultural and linguistic miscommunications.

A further problem highlighted by language and the administration of justice is that, once again, it is evident that language status plays a key role in South Africa's courts.

The Constitution (Section 2.1.2) states that every person is entitled to the right to be heard in his/her own language, or, if this is not possible, to have the court proceedings interpreted. The case of *Mithetwa vs De Bruin NO and Another 1998 (3) CCLR 336 (N)*, however, throws interesting light on the procedural inadequacies of the current system. The accused requested that the case be heard in his mother tongue, Zulu. However, due to the lack of mother tongue Zulu Magistrates, the court found that it would not be practicable for the accused to be heard in Zulu, stating that

... Section 35(3)(k) does not give an accused person the right to have a trial conducted in the language of his choice. Its provisions are perfectly plain, namely that he has the right to be tried in a language that he **understands** (my emphasis), or if that is not practicable, to have the proceedings interpreted in that language (*Mithetwa v De Bruin NO and Another 1998 (3) BCLR 336 (N)*). \*

The question that arises is whether or not a defendant speaking an indigenous South African language can receive a fair trial when proceedings are interpreted into his/her language of choice. It is obvious that interpretation, as it currently stands in South Africa, is by no means a guarantee of an unbiased trial. The assumption, under the law, that it does is misleading and dangerous.

#### 2.2.4 Evaluation

A crucial element of the language planning process is evaluation. Rubin (1971) points out that successful language planning necessarily entails continual evaluation and revision of the plan throughout the implementation phase of that plan. This sentiment is echoed by Kaplan & Baldauf (1997: 91), who state that "evaluation should occur at every stage of the language planning process". The implication is that evaluation, assessment and feedback are a vital component of the language planning process, and should be utilised at

...the initial planning or fact-finding phases, to gather information so that appropriate selection decisions can be made, and in the context of its implementation as well as the execution of the plan (Kaplan & Baldauf, 1997: 91).

The relative lack of research into how language and law interact is sufficient proof to show that this evaluation process has not been taken as seriously as it should by language planners in South Africa. The legal system is one of the most vital elements of a democratic system. If the participants within the system are not receiving the

kind of justice that they are entitled to by the Constitution, then language planners need to be brought in to address the problems (as mentioned above, as well as others).

### **2.2.5 Conclusion**

Language planning in the legal system of South Africa has a crucial role to play. It is a primary mechanism by which the inequalities of the past can be rectified. African languages have been historically under-developed, and, as such, are ill equipped to play a meaningful role in the transformation of the delivery of justice. The participants in the judicial process are most often the people who are denied, by that very process, justice in a language that they are comfortable with (and, by extension, a culture they are comfortable with). The terminological miscommunications referred to above are a serious impediment to both the fairness of the legal system and the perception of society about that system. This refers also to the relative status of the African languages in South Africa. If the judicial system relegates official languages to a relatively minor role (i.e. an interpreted language) the status of those languages will continue to suffer – both in the eyes of speakers of that language and non-speakers.

However, language planning is only one of the mechanisms that can be used to effect change in language use and/or status. Another such mechanism is language policy. Generally, language planning and language policy tend to operate together, with planning leading to policy. As such, a common misconception is that the two are alike, or even the same. As Section 2.3 will show, however, the two are distinct areas of study and focus.

## **2.3 Language Policy**

### **2.3.1 Introduction**

Like language planning, language policy has played an important role in South African history. For advocates of apartheid, it was a significant cog in the separate development policy. Conceived by Hendrik Verwoerd, separate development was designed to divide society "into racial and tribal groupings" (Benjamin, 1994: 97). The role of language in this policy was crucial, as "language was often the only basis on which Africans were classified into ethnic groups" (Benjamin 1994: 99). For those opposed to apartheid, the promotion of 'European' languages (and particularly

Afrikaans) over African languages became a key area of resistance (Hartshorne, 1995). This resistance was particularly evident in education, where the enforced use of Afrikaans in schools led to the 1976 Soweto riots (Hartshorne, 1995).

As indicated in Section 2.2.5, the distinction between language planning and language policy has often been blurred. The two terms are often used "both in the technical and in the popular literature, either interchangeably or in tandem" (Kaplan & Baldauf, 1997: xi). In reality, though, these two are distinct processes, and, as such, deserve separate study. This said, it must also be acknowledged that the two processes are often closely linked. A cyclical relationship exists between the two, with language planning leading to the formulation of language policy, which, in turn, is evaluated, leading to further language planning.

Kaplan & Baldauf (1997: xi) describe language policy as

...a body of ideas, laws, regulations, rules and practices intended to achieve the planned language change in the society, group or system. 'Language policy' may be realised at a number of different levels, from very formal language planning documents and pronouncement to informal statements of intent.

An important distinction between these 'levels' of language policy (formal and informal) is drawn by Peddie (1991), who argues that there are two broad categories of policy. The first is symbolic, and is designed to generate 'good feelings' towards change. The second is substantive, in that it articulates the specific steps needed to implement change. Wright (2002) uses similar categories to define the implementation of language policies, distinguishing between strong and weak implementation. Strong implementation, in South Africa, would refer to the practical implementation of all of the provisions of the language policy. Weak implementation would regard policy "primarily as an enabling mechanism, freeing the country's language dispensation from the biased policy framework of the past" (Wright, 2002: 162). This distinction, in the South African context, is important, as the implementation of language policy is a clear indicator as to whether the government is serious about redressing historical language imbalances.

Central to the discussion of language policy in South Africa are the orientations of language as problem, language as a right, and language as a resource. The 'language

as a problem' orientation views the targets of language policy as a social problem to be identified and eradicated (Ruiz, 1984). 'Language as a right' orientations react against assimilation into dominant language groups, by reaffirming the right to linguistic identity (Ruiz, 1984). Language rights, not only in South Africa, but worldwide, have become a matter of concern in the face of the increasing threat of extinction due to the growth in popularity of world languages – such as English (Hornberger, 1998). The final orientation, 'language as resource', focuses on the potential social resource represented by diverse language communities (Ruiz, 1984). These last two orientations are important in South Africa, as I will show in Section 2.3.2.1.

The purpose of this section of the chapter (Section 2.3) is twofold. Firstly, it serves as an examination of the current South African language policy in general terms, as the governmental guidelines on language are an important indicator as to the manner in which the effects of apartheid are being addressed. Included is a discussion of what the policy is, and what 'type' of policy it appears to be (using Wright and Peddie's classifications). Such discussion will allow me to determine the exact nature of the South African language policy. The second purpose of Section 2.3 is to take a closer look at how this policy impacts on the courts in South Africa, particularly on language use in courts, the language of record and, finally, on how the policy affects interpreters in the courts, all of these issues being central to the research questions posed in Chapter 1.

## **2.3.2 Language Policy in South Africa**

### **2.3.2.1 Language Policy since 1994**

Since the dismantling of apartheid in the 1990s, one of the main focuses of the ANC government has been "the promotion of multilingualism, the development of the official languages, and respect for all languages used in the country" (Bengu, 1997). What is of particular interest in this statement is the emphasis on the development of the official languages, and the respect for all languages in South Africa. With regard to the research questions outlined in Chapter 1, I am particularly interested in the development of all the official languages to meet the needs of the justice system.

On the 12<sup>th</sup> December 1995, the Minister of Arts, Culture, Science and Technology, Dr Ben Ngubane, established a Language Plan Task Group (LANGTAG), whose purpose would be devising a national language policy for South Africa (LANGTAG, 1996a). The establishment of this group was a reaction to widespread concern over the tendency towards unilingualism in South Africa. As such, one of the key tasks of the group was the establishment of a "macro-framework within which the drafting of a national language plan can be conceptualised and operationalised" (LANGTAG, 1996b: 8). The final report was presented to the Minister on the 8<sup>th</sup> August 1996. One of the fundamental concepts identified by LANGTAG was that language in South Africa should be viewed as a right (a view which is supported in the constitution), and both an economic and social resource.

Section 6 of the Constitution of South Africa (see Appendix A) sets out the language policy for South Africa. As opposed to the apartheid language policy, eleven official languages are acknowledged in the Constitution (Sepedi, Sesotho, Setswana, siSwati, Tshivenda, Xitsonga, Afrikaans, English, isiNdebele, isiXhosa and isiZulu). In addition, the Constitution states that "all official languages must enjoy parity of esteem and must be treated equitably" (The Constitution, 1996, Section 6[4]). Taken at face value, then, the Constitution apparently lays the foundation for correcting the historic disadvantages inflicted upon black South African languages. However, as Kamwangamalu (2000) notes, this is far from being an actuality in practice, as I shall show in Section 2.3.2.2.

#### **2.3.2.2 What's in a Word?**

While the language policy, as set out in the Constitution, is, without doubt, remarkably democratic, questions remain regarding the practical implementation of the provisions of the policy. The main question revolves around the use of language in the policy. The Constitution purports to rectify the "...historically diminished use and status of the indigenous languages of our people" (The Constitution of South Africa, 1996, Section 6[2]). However, the document is replete with grey areas – which, in essence, dilute its intended effect. It is to the most important of these that I now turn.

Possibly the most problematic area is Section 6(3)(a) (The Constitution of South Africa), which, in its entirety, reads:

The national government and provincial governments may use any particular official languages for the purposes of government, taking into account usage, practicality, expense, regional circumstances and the balance of the needs and preferences of the population as a whole or in the province concerned; but the national government and each provincial government must use at least two official languages.

As the Constitution has not specified which languages should be used, "both provincial and national governments have tacitly opted for...English and Afrikaans as the languages of administration" (Kamwangamalu, 2000: 53). A survey, conducted by Pandor (1995), shows that, in 1994, 87% of all speeches made in Parliament were in English. In addition, English is being proposed as the sole language for Hansard, the Parliamentary historical record (Kamwangamalu, 2000). This trend is affirmed in other areas under control of the government, such as the government broadcaster (Kamwangamalu, 2000), the armed forces (De Klerk & Barkhuizen, 1998) and the courts (Kamwangamalu, 2000). In terms of Section 6(5), a Pan South African Language Board (PANSALB) has been developed to "promote, and create conditions for, the development and use of" languages in South Africa. To date, however, PANSALB has struggled to fulfil its brief. This is largely due to the fact that, legislatively, its powers are negligible, and, in effect, it serves a monitoring and advisory purpose (Webb, 2002).

For the purposes of my thesis, an important question to arise from Section 6(4) is the use, and perceptions, of the term 'equitable'. When LANGTAG delivered its final report, it went to some lengths to distinguish between 'equity' and 'equality' (LANGTAG, 1996). By their definition, 'equity' refers to "...fairness, justice and reasonableness", whereas "equality implies that two or more languages are equal with reference to function or rank" (LANGTAG, 1996: 45). The report further states that the term "'reasonableness' in the notion of equity will not be used as a means of excluding people from linguistically accessible services" (LANGTAG, 1996: 45). However, this exclusion is precisely what has happened to African languages in areas such as government, education, security services and, most importantly for this research, the administration of justice (Kamwangamalu, 2000: 54-57).

The obvious conclusion to be drawn is that the government is not serious about rectifying the imbalances of the past. The use of vague and ambiguous terminology (such as 'practicality', 'equity') in Section 6 of the Constitution and, hence, the creation of loopholes would appear to suggest that the government, itself, has acknowledged that language equality cannot be achieved in South Africa. However, in accordance with Peddie's typology of language policies, it is apparent that South Africa has opted for a symbolic language policy, seeking officially to empower the previously disadvantaged languages. Similarly, according to Wright's typology, South Africa has decided on a weak implementation of its language policy. Such an approach is not uncommon in countries with numerous languages (Cameroon, India, Indonesia and the Philippines), and represents the reality that any particular language might not be acceptable to every sphere of society (Kaplan & Baldauf, 1997: 16).

### **2.3.2.3 Implementation of the Language Policy**

While, as stated in Section 2.2.3.1, the language policy is an extraordinary blueprint for the pursuit of multilingualism in South Africa, there remains doubt as to the ability of the government to implement the specific provisions (Alexander, 2001; Strydom, 2001). Since independence in 1994, national institutions have found it extremely difficult to implement the language policy (the reasons for which will be examined below). The result has been the continued use of the bilingual (English and Afrikaans) policy of the past, or a wholesale shift to English (Du Plessis, 2001). This has resulted in a situation where South Africa is still moving "towards a new language policy" – after nearly ten years of democracy (Mkhulisi, 2000).

Two reasons have been advanced to explain this apparent lack of progress on the language issue. The first is that the implementation of multilingualism, with the use of all the official languages, is too expensive to launch and maintain (Alexander, 2001). There is a kernel of truth to such an argument. As shown in 2.2.3.2, the African languages, in many spheres, might not be immediately capable of adequately expressing the wide variety of modern social, economic and political concepts. This is because, under apartheid, African languages were kept in a very traditional and rural form (Maake, 1994; Ridge 1996). As such, African languages were largely treated as 'classical' (or remote) foreign languages (Ridge, 1996: 31).

Given this, it would be reasonable to assume that the corpus planning strategies needed to modernise these languages could be prohibitive. However, as Alexander (2001: 118) argues, there has been little research into the economic question, and, as such, there is "no authoritative basis for the claim that a multilingual language policy is 'costly', 'unaffordable', etc.". Recent research by Webb (2002) suggests that implementation of the language policy could be very expensive. A report commissioned by the Department of Arts, Culture, Science and Technology suggested that the cost of translating government publications into one additional language (i.e. Xhosa) would amount to about R43 million (Webb, 2002: 130). A counter-argument is that the political, social and economic costs of **not** implementing multilingualism could be even more expensive. For example, the benefits of a multilingual work force might outweigh the costs of achieving this multilingualism (Webb, 2002).

The second reason advanced to explain the apparent lack of progress in implementing the new language policy is that there is no political will on the part of the government to implement the new language policy (Du Plessis, 2001). There is no doubt that the growing dominance of English (and the concurrent sidelining of other South African languages) has been a result of "tacit government acquiescence in the face of considerable linguistic diversity" (Reagan, 2001: 63).

This, according to Reagan (2001), can be ascribed to two main factors. The first, and probably most politically important, is that the pressure **for** English comes, not only from within the government, but from the people. This is evident in all spheres of life, and there has been "a strong tendency among both urban and rural Africans to opt for English as the preferred official language" (Ridge, 1996: 18). A survey conducted by Kellas (1994) showed this preference for English, with more than 80% of respondents in favour of English as the preferred official language. The second factor to explain the lack of progress is that the current policy is too vague and ambiguous.

This ambiguity is manifested in two ways. Firstly, the policy is ambiguous in terms of how it is worded (as discussed in Section 2.3.2.2). Secondly, the policy is ambiguous in terms of the governmental guidelines for the implementation of the policy in central areas of the government's operations (see Section 2.3.2.2) for example, legislative, executive and judicial areas (Strydom, 2001: 108). As a result,

institutional inertia has continued to favour the use of English and Afrikaans (Ridge, 1996).

### **2.3.3 Language Policy in Justice**

Under apartheid, the only two official languages used in South Africa were English and Afrikaans. This bilingual language policy (as legislated by sections 35, 89, 90, 91 and 99 of The Republic of South Africa Constitution Act, No. 100 of 1983) dictated the language policy of national, provincial and local authorities (Schuring, 1993). The influence of this policy was most profoundly felt in the education system, but also affected the judicial system (Ridge, 1996). With the demise of apartheid, the language policies of the past have given way to a more inclusive language policy – one that recognises all the eleven official languages in South Africa. In terms of the scope of the research questions, I therefore need to examine whether and how the new language policy has affected the judicial system.

#### **2.3.3.1 Department of Justice**

In 2000, the Department of Justice and Constitutional Development (DJCD) published 'Justice Vision 2000', a draft Strategic Plan outlining a preliminary framework for transforming the administration of justice in South Africa. The chief goal of the plan is to "transform the administration of justice and to create a system which is cheaper, simple, more effective, efficient and generally fair" than under apartheid (DJCD, 2000).

One of the main challenges identified by the Strategic Plan is thus the need to improve access to justice for all South Africans (DJCD, 2000: Section 2.4.2). Consequently, one of the key areas of transformation is seen to be the provision of justice "regardless of economic status, culture or any other qualification" (DJCD, 2000: Section 2.4.2). A key goal in terms of transformation in this area has been identified as being the use of the "first language of end users of the justice system", to be achieved by removing "barriers to justice, such as language impediments" (DJCD, 2000: Section 2.4.2).

#### **2.3.3.2 Language Policy in the Court**

When examining language use in the courts, it is quickly apparent that this is regulated and applied far more rigorously than in other national bodies (such as

Parliament and the Defence Force for example). Language use and language rights in the court are a matter of legislation and statute, as opposed to the guidelines laid down by policy. As such, I would expect the focus on transformation in the justice system to be one of the few areas where a South African language policy will have the intended effect. For the purposes of the research goals outlined in Chapter 1, in my examination of language use in the courts, I focus on three specific areas; language use and rights in the court system, the use of interpreters, and the debate surrounding the language of court record.

The first area, language use in the court, is provided for in the Constitution, which states that every accused person has the right "to be tried in a language that the accused person understands or, if that is not practicable, to have the proceedings interpreted in that language" (Section 35 [3][k]). As such, the courts are obliged to provide for all of the languages in South Africa (not necessarily only those designated as official languages). Once again, at first glance, this legislation appears to correspond to the provisions of the government's language policy. However, it is noticeable that the emphasis falls on the "*understanding* (my italics) of a particular language, and not on the mother-tongue preference of the accused" (Strydom, 2001: 109). It would appear to be self-evident that understanding a language is not necessarily synonymous with being competent in that language (as discussed in Section 2.2.3.2).

Current practice in South African courts, as inherited from the previous regime, is that English and/or Afrikaans are the languages used on a daily basis in the courts (Moeketsi, 1999; Strydom, 2001). This is understandable, as well as legislatively proper, given that it would be unrealistic to expect that all participants in the legal process will be able to communicate in a wide variety of languages (Porogo, 2001). However, it would be simplistic to argue that this situation adheres to the *spirit* of multilingualism envisaged by the language policy (Strydom, 2001), where the promotion of multilingualism is a key concept. The predominant use of English and Afrikaans manifestly does not aid in the promotion and development of the African languages of South Africa.

The second area that we need to examine is the use of interpreters in South African courts. The significant legislation, in this respect, is Section 6 of the Magistrates' Court Act (1944), which states that

(1) Either of the official languages may be used at any stage of the proceedings in any court and the evidence shall be recorded in the language so used.

(2) If, in a criminal case, evidence is given in a language with which the accused is not in the opinion of the court sufficiently conversant, a competent interpreter shall be called by the court to translate such evidence into a language with which the accused professes or appears to the court to be sufficiently conversant, irrespective of whether the language in which the evidence is given, is one of the official languages or of whether the representative of the accused is conversant with the language used in the evidence or not.

The case of *S v Ngubane 1995 (2) SA 811 (TRD)* serves to illustrate the effectiveness of the policy. During the trial, it became apparent that the interpreter used was not proficient in Zulu, the language spoken by the accused. The matter was submitted on review, and it was found that

...the accused has been denied of his fundamental right enshrined in s 25(3)(i) of the Constitution of South Africa Act 200 of 1993, which states that

'Every accused person shall have the right to a fair trial, which shall include the right...

(1) To be tried in a language which he or she understands, or, failing this, to have the proceedings interpreted to him or her.

Thus, the law is clear on the issue of language use in the court, as well as the use of interpreters where language rights could be infringed. However, in my opinion, it remains a dangerous misconception that interpreting is an acceptable substitute for the use of a specific language (such as Zulu) in court. As mentioned earlier (Section 2.2.3.2), there are simply too many inadequacies inherent in the interpreting of evidence in court to ensure that all end users of the legal system receive equality of justice. Interpreting is not a precise business, and inaccuracies in interpretation and the lack of intercultural cognates (particularly in terms of judicial concepts), amongst others, can interfere in the interpreting process (Kaschula, 1995).

The third area, as far as language policy in the courts is concerned, is the question of the language of record. Under apartheid, the bilingual policy of English and

Afrikaans was followed with regard to the court record (Schuring, 1993). Today, despite the new language legislation, the languages of record remain the same. However, the *status quo* (English and Afrikaans) has been questioned recently. The position of Afrikaans, as a language of record, has been questioned in government circles (Du Plessis, 2001; Porogo, 2001; Strydom, 2001). This, potentially, is further evidence that South Africa is becoming a monolingual country, with English as the main language.

The issue of the language of record is especially important in that it highlights an apparent unwillingness, on the part of the government, to commit itself unilaterally to the provisions of the new language policy. Naudé (1999) reports that the Minister of Justice had proposed that it might be more cost-effective to use English only as the language of record. It was argued that the use of English and Afrikaans as the sole language of record was unconstitutional, the use of all eleven languages impractical, and, thus, the best solution would be to promote English as the sole language of record (*Die Volksblad* 22/03/2000). The outcry that greeted this announcement by Afrikaans speakers and the Afrikaans media has resulted in Afrikaans being retained as one of the languages of record.

A disturbing feature of the language of record issue is the scope of the arguments expressed by all the participants. The parameters of the issue have centred on the removal of Afrikaans as a language of record, and the promotion of English as the sole language of record. Advocates and opponents of an English only language of record have not even touched on the enhancement of the status of African languages by including them as languages of record (Du Plessis, 2001). The apparent implication is that the downgrading of Afrikaans, as a language of record, is somehow more important than the commitment to elevate the status and extend the use of the historically diminished languages of South Africa (Du Plessis, 2001).

#### **2.3.4 Conclusion**

When examining the language policy situation in South Africa, it becomes clear that there is no easy, or, for that matter, mutually acceptable solution to the problems currently experienced in implementing the new policy. In essence, the language policy lines are divided between those who practice the letter of the law (in terms of

the specific provisions of Section 6 of the Constitution), and those who argue for adherence to the spirit of the constitution. In the case of *S v Matomela 1998 (3) BCLR 339 (CC)*, the proceedings of the court were entirely in Xhosa as no interpreter was available, and all the parties were fluent in the language. However, this case was automatically taken on review, where the presiding judge agreed with the decision taken by the Magistrate, but warned that with an increased frequency of these types of cases, economic and practical problems would arise as a consequence.

In terms of my research goals (as explained in Chapter 1), the apparent non-implementation of the language policy could have serious implications. It would appear that even the legal profession is in a state of flux regarding the new language policy. While it is constitutionally bound to practice the provisions of the language policy, there would appear to be misgivings about the practical implementation of the provisions. In the courts, the letter of the law is followed, the letter that includes many of the same terminological qualifications (as examined in Section 2.3.2.2) left in the general language policy. The questions posed within this thesis will allow me to examine the actual effects of the language policy situation on the provision of justice in South Africa.

## **2.4 Court Interpreters in South Africa**

### **2.4.1 Introduction**

Just as language planning has been practiced for centuries (see Section 2.2.1), so too does interpreting have a long history. For as long as humankind has spoken different languages, interpreters have been needed to ensure that communication between different language groups takes place (Gerver & Sinaiko, 1978). The history of court interpreting, on the other hand, dates back to the first recorded instance in 1808 (Grabau & Williamson, 1985). The most significant growth, however, of court interpreting can be traced to the end of World War Two, and the Nuremburg Trials (Moeketsi, 1999). The increasingly multicultural and multilingual nature of the world today, has made court interpreting an essential part of modern legal systems.

Because of the different cultures and languages existing in South Africa, interpreting has been, and remains, an important skill. This skill became even more important after the arrival of European settlers in South Africa (Moeketsi, 2000). As a

profession, court interpreting in South Africa can be traced back to the end of the nineteenth century. Amongst the first interpreters used in a South African court was Sol Plaatje, one of the founder members of the ANC (Moeketsi, 1999). In South Africa, largely due to the use of the foreign European languages, court interpreting has also been the province of black South Africans. The main reason for this is that very few white South Africans have learnt one (or more) of the indigenous African languages, whereas black South Africans have been forced to learn the 'European' languages, English and Afrikaans. The status of English and Afrikaans as the official languages of the court makes the court interpreter an indispensable part of the legal machinery.

This section of the chapter examines various aspects of court interpreting in South Africa. I begin by describing the difference between interpreting and translation, as these two terms are often used interchangeably. They do not, however, necessarily describe the same process. There are also different modes of interpreting that need to be described, as certain modes are more effective in courtroom situations than others. I also examine the qualities that are required of interpreters, their training and the duties that they perform within the legal system. Finally, in this section I identify areas where one would expect to find interpreter errors and mistakes.

#### **2.4.2 What is Interpreting?**

As mentioned earlier (in Section 2.4.1) the terms 'interpreting' and 'translating' have often been used interchangeably. This is not really surprising, as on a broad level, both refer to the same thing. Both, for example, are involved in the process of transferring meaning from one language into another (Wadensjö, 1998). As such, interpreting is often seen as a form of translation. However a close analysis of the types of activities, that these two terms describe, reveals a number of differences.

The most important distinction that can be made between the two terms is in the nature of the texts that are involved in this transfer. Translation can be used in a narrow sense to refer to the transfer of a written text in one language to a written text in another language (Colin & Morris, 1996; Moeketsi, 1999). Thus, for example, the process of translation in a courtroom would refer to the transfer of documentary evidence from one language to another. Interpreting, on the other hand, refers to "the

oral transfer of meaning between languages" (Colin & Morris, 1996: 16). In other words, interpreting seeks to facilitate communication between people who cannot speak each other's language, or understand each other's cultures (Moeketsi, 1999). Therefore, although the two might be related, practitioners of both would normally work in different environments, and require different skills.

A second difference between the two terms is that interpreting is often seen as being the 'poor relative' of translation in that translation is seen as a profession, whereas interpreting is often viewed as a craft. Translation has a long and established history, particularly in the fields of literature, history and science (Wadensjö, 1998). As such, there is a comprehensive theoretical canon describing best practice and standards. Interpreting, on the other hand, has only recently become a subject of study. Wadensjö (1998: xiv) points out that in the literature pertaining to interpreting, most references are relatively recent, and tend to refer to "policy and practice issues arising in key professions such as medicine, the law, diplomacy, or to matters concerning accreditation and professional development".

There are two main styles, or 'modes' of interpreting, namely consecutive and simultaneous interpreting (Colin & Morris, 1996). Consecutive interpreting takes place when the interpreter provides the interpretation after the original. Thus, the interpreter waits until the speaker has said a few sentences or phrases before providing an interpretation into the target language (Edwards, 1995). Obviously, for this type of interpreting to be successful, the interpreter needs to have a good memory, or must be able to control the length of utterances provided by the witness (Moeketsi, 1999). One of the advantages of this type of interpreting is that the interpreter can take notes on what is being said. A disadvantage is that this type of interpreting can be extremely time-consuming.

Simultaneous interpreting, by contrast, involves the almost instantaneous interpretation of the message. Ideally, the interpreter remains a phrase or two behind the speaker. The process of simultaneous interpretation is, as can be imagined, more complex than consecutive interpreting because the interpreter is listening, processing and interpreting at the same time (Moeketsi, 1999). An obvious advantage of using the simultaneous approach is that it is much less time-consuming. It also (with the aid

of electronic aids) allows a number of people to listen to the interpretation at the same time. A disadvantage to this style of interpreting is that it is most effectively used in conjunction with electronic aids. In South Africa, this style of interpreting is therefore not an option.

### 2.4.3 Skills Required for Interpreting

It would appear obvious that to be an interpreter requires above average linguistic skills. It is important to determine the specific type of language skills. Colin & Morris (1996: 16) differentiate between active competence and passive competence. Active competence refers to the ability to "use (my emphasis) by writing or speaking it", whereas passive competence refers to the ability to "understand (my emphasis) a written or spoken text well" (Colin & Morris, 1996: 19). The type of competence necessary, whether active or passive, will depend on whether the interpreter is interpreting into one language or many. In South Africa, for example, many languages may be used in court, so active competence is a necessity.

It is essential for any interpreter to be at least bilingual and, in South Africa, often multilingual. Thus, the interpreter needs to have the ability to communicate in at least two languages, his/her first language and another. Moeketsi (1999) argues, however, that being bilingual is not necessarily sufficient. She believes that the interpreter

...must be able to process the two languages such that the reconstructed message in the target language is essentially the same as that in the source language. He therefore needs to be a language expert, not of one language only, but of his working languages (Moeketsi, 1999: 101).

Being a 'language expert' would entail knowing all forms of the language. The interpreter needs to be able to interpret competently standard and non-standard varieties, formal and non-formal varieties and also the different sociolects within the language (Moeketsi, 1999). In addition, the interpreter needs to keep up to date with changes within the language and its varieties. As well as understanding the different varieties of their languages, interpreters also need to understand the language of the law. 'Legalese', as this is often called, is almost a language in itself, and is often difficult for the layperson to comprehend.

A competent interpreter should also have a good knowledge of the specific cultural patterns and habits associated with the languages s/he speaks (Colin & Morris, 1996). As mentioned in Section 2.2.3.2, there are a number of cultural expressions that are not easily transferable into another language such as kinship terms, address forms and taboo expressions amongst others (Moeketsi, 1999). The interpreter needs also to be able to explain different cultural practices. Other extra-linguistic features identified as being important for interpreters are that they must be articulate, have a clear voice, good hearing and the confidence to express themselves in a situation which is often tense (Colin & Morris, 1996; Moeketsi, 1999).

#### **2.4.4 Interpreter Training in South Africa**

Historically, court interpreter training has not been of a very high standard in South Africa (Moeketsi, 1999). However, the lack of training in South Africa reflects a more international lack of structured and comprehensive training programmes for court interpreters. Studies from countries such as America (Dunnigan & Downing, 1995) and Canada (Gonzales, Vásques & Mikkelson, 1991) show that the South African situation is far from atypical. Part of the problem is related to the perception that interpreting is not a profession *per se*, but a craft. The lack of professionalism has meant that it is only recently that theoretical attention is being paid to standards and training.

The major qualification for any applicant for a post as an interpreter in South Africa appears to be the ability to speak a variety of languages (up to a Grade Twelve level of proficiency). All candidates are given language proficiency tests that are usually conducted by an interpreter. If successful, the applicant is then appointed for a probation period of twelve months (Mahlangu, 1992). Initially, the successful applicant is given a 2-3 week orientation program, under the supervision of a principal. Formal training only occurs after the principal is satisfied that the interpreter has received sufficient exposure to the job.

This formal training consists of two weeks theoretical training at Justice College in Pretoria, followed by two weeks of practical training (Moeketsi, 1999). The training course consists of elementary lectures on Criminal Law, Criminal Procedure, Civil Procedure and Latin (Mahlangu, 1992). The bulk of the course, however, is taken up

with lectures on court interpreting. Once the course is finished, the interpreter is deployed to a court in South Africa. After the training has been completed the interpreter is monitored by his/her principal and offered guidance with regard to problems that arise. Approximately once every two years the interpreter will be observed by a State Inspector (Mahlangu, 1992).

While this might appear to be sufficient training in the art of court interpreting, there are a number of aspects of the training that require further investigation. The first aspect that needs to be examined is that there are interpreters within the system who, after a number of years of interpreting, have not yet received this training (Moeketsi, 1999). The second aspect that needs to be examined more closely is that there is no exit examination for the course, and interpreters receive no certificate to show that they have successfully completed the course (Moeketsi, 1999). The absence of any guarantee that the interpreter has coped with the content must seriously undermine the validity of the course. An additional concern is that with no examination to pass, there is a possibility that interpreters might not take the course seriously. The third aspect that remains a concern is that, as mentioned in Section 2.4.3, merely being bilingual is no guarantee of being a successful interpreter.

In 1997, an initiative was launched to improve the training of court interpreters, the level of service that they would be able to offer, the status of the profession and to educate those officers of the law who worked with interpreters (Inggs, 1998). A number of academic institutions, The Department of Justice, interpreter unions and Justice College, formed a committee to "develop a nationally recognised course which court interpreters could follow while remaining in the employ of the Department of Justice" (Inggs, 1998). The three-year University Diploma in Legal Translation and Interpreting was launched in 1998, with over 200 court interpreters registered countrywide. The course contains a curriculum that includes Interpreting and Translation, Interpreting Practice, Introduction to Law, and Language Enhancement (Inggs, 1998).

In 1999, a spokesperson for the Department of Justice and Constitutional Development issued a statement, saying that a diploma in Legal Interpreting had been developed and that this Diploma was presently being presented at various Universities

and Technikons throughout South Africa (Ngomane, 1999). There is no feedback in the literature regarding the relative success (or failure) of this Diploma. One assumes that all new interpreters have received this Diploma, and that the Department of Justice is also committed to ensuring that practicing interpreters are also given the opportunity to attend the course.

#### 2.4.5 Interpreter Errors

Although none of the literature deals specifically with the types of mistakes made by interpreters, it is acknowledged that there are a number of types of language errors that occur in interpretation (Kaschula, 1995; LANGCO, 2001; Moeketsi, 1999). The first such area is in terms of cultural differences that might hinder interpreter effectiveness. As outlined in 2.2.3.2, there are a number of conceptual terms that are not readily transferable from one language to another. Kaschula (1995) outlines a few Xhosa terms, *ukuthwala* and *ukondla*, that are not the same as their English counterparts, 'abduction' and 'adoption'. This problem does not exist solely in South Africa. In Malawi, Kishindo (2001) refers to confusion between 'rape' and the traditional practice of *gwamula*, which is a 'coming of age' practice whereby a boy will break into a girl's dwelling and have sex with her without her prior consent. In cases where interpreters are unaware of these cultural practices, we could expect interpreter errors.

The second type of error that we would expect to find is misinterpretation. A study conducted by Moeketsi (1999) found a number of cases of misinterpretation, both inadvertent and intentional – when trying to escape a stressful situation. Inadvertent misinterpretations, while not acceptable, are at least understandable. The case of *S v Baloyi* is an example of an inadvertent misinterpretation. At the beginning of the case, the Magistrate informed the accused that he was able to engage an attorney to assist him or conduct his defence. The following exchange took place:

COURT:	...Is that understandable Mr Baloyi, talk please.
ACCUSED:	Yes your worship.
COURT:	And you election is sir?
ACCUSED:	I have an attorney your worship.
COURT:	What are the names of your attorney please? Ja talk please. Is he going to conduct the proceedings on his own or he is going to secure the services of an attorney Mr Interpreter?
INTERPRETER:	He is going to conduct his own defence your worship.

In this case, the accused tried to inform the court that he wished to be represented by an attorney, whereas the interpreter informed the Magistrate that he wished to conduct his own defence. Intentional misinterpretations, on the other hand, are inexcusable and point to a distinct lack of training.

#### **2.4.6 Conclusion**

It is clear that interpreting is not an easy job. The interpreter, unlike the translator, requires a comprehensive understanding of a number of linguistic and extra-linguistic skills. Not only does the interpreter need to possess competence in all of his/her languages, s/he also needs to understand the cultural traits associated with those languages. The interpreter also works in an environment where there is no time to reflect on the transfer from one language to another. Interpreting is either a simultaneous process, or, at the very least, a process that takes place immediately after the preceding speech act. It is also evident that despite the training programme instituted by the Department of Justice, greater effort needs to be made to ensure that interpreters receive comprehensive and professional training. Whether the solution to problems found in the courts today lies in the newly instituted Diploma in Legal Translation and Interpreting also remains to be seen.

In the following chapter I describe the methodological underpinnings of my research. In particular I describe and discuss the methodologies of ethnography and critical ethnography. I also describe how I gained access into the research setting, introduce the participants, and describe how the data was collected and, subsequently, analysed.

## **CHAPTER 3 – RESEARCH METHODOLOGY**

### **3.1 Introduction**

Research, according to Bassey (1995: 2) is "systematic, critical and self-critical enquiry which aims to contribute to the advancement of knowledge". To these features of research we may add that research takes place in society, and, as such, that the researcher will conduct the research according to his/her beliefs about the world. This chapter aims to place my research within the parameters specified above. As such, the chapter opens by examining both the interpretive and critical paradigms, since it is within them that the research is located. Within these paradigms, there are different methodologies that are used by researchers. My focus in the ensuing account is on the ethnographic method, and, more particularly, critical ethnography. I examine the ideologies behind these methodologies, as well as the principles that guide the researcher in each of these spheres. Finally, I describe the research process through which the data was collected and analysed.

### **3.2 Research Paradigms**

#### **3.2.1 Paradigms, Methodologies and Methods**

Our understanding of the term 'paradigm' in research stems from Kuhn's (1962: 103) definition, namely "the source of methods, problem field, and the standards of solution accepted by any mature scientific field at any given time". Guba (1990: 17) defines a paradigm as a "basic set of beliefs that guide action". In other words, a paradigm defines the worldview of the researcher, and how this worldview guides the research. It is important to clarify what paradigm/s one is working within because it/they identify how one's research question/s are to be asked and answered (Durrheim, 1999). According to Denzin & Lincoln (1999), a paradigm consists of three elements, epistemology, ontology and methodology. Epistemology refers to the relationship between the enquirer and the known (Denzin & Lincoln, 1999). I have adopted a typically qualitative epistemology (Creswell, 1994) by minimising the distance between the sample and myself. Ontology refers to how the researcher views reality (Denzin & Lincoln, 1999). In my research, my ontological assumptions have been predominantly constructed by the individuals I have researched. The final element is methodology, which defines how we gain our knowledge about the world

(Denzin & Lincoln, 1999). The methodology I have chosen is a critical ethnography, and I explain this methodology in greater depth in Section 3.3.

To return to the differences between paradigms, methodologies and methods: a distinction can be drawn between paradigm and methodology in that a paradigm generally consists of some kind of methodology, which, in conjunction with an epistemology and ontology, will serve to focus the research within that paradigm. A methodology, thus, can be seen as an overall 'strategic' plan for a piece of research. Each methodology will include a number of methods, which are the basic tools and techniques used to conduct the research (Guba & Lincoln, 1989). Thus, the word 'paradigm' is an umbrella term and includes a diverse array of methodologies and methods. It is important to note, that paradigms, methodologies and methods are not meant to act as prescriptive agents in research. This is evident in my research, as I have made use of elements from both the critical and interpretative paradigms.

Research is generally of two kinds, qualitative and quantitative (Creswell, 1994). Qualitative research is characterised by investigations into the "meanings, concepts, definitions, characteristics, metaphors, symbols and descriptions of things" (Berg, 1998: 3) whereas quantitative research is characterised by counts and measures of collected data. However, the two are not incompatible and the researcher might make use of either qualitative or quantitative research – or both. Each of these basic schools can be appropriately utilised within any of the research paradigms. My research makes use of both quantitative and qualitative elements. However, the bulk of the research is qualitative in nature.

In the following sections I focus more specifically on the interpretive and critical paradigms since these two paradigms inform the particular methodology that I utilise, namely critical ethnography. Within the methodology of critical ethnography, I discuss (in Sections 3.4.3 and 3.4.4) the various methods, including interviews and observation, which are used both to elicit data and to analyse it.

### **3.2.2 The Interpretive Paradigm**

The interpretive paradigm, also called the symbolic, hermeneutic, constructivist or micro-ethnographic paradigm (Popkewitz, 1984; Schwandt, 1994), seeks to

"understand phenomena and to interpret meaning within the social and cultural context of the natural setting" (Cantrell, 1993). Researchers within the interpretive paradigm seek to "enter into the world of another, to empathise, experience their worldview, and convey this to others" (Goldenberg 1992: 9). Interpretivists believe that reality can only exist within the context of a mental construct, and, because facts are value-bound, any inquiry must also, of a necessity, be value-bound (Guba, 1990). Thus, there can be no objectivity in research, as the subjective interpretation of the researcher will always stand in the way. During the course of my research, I became aware of a sympathy within myself towards court interpreters which threatened to prejudice my analysis of the data. As a consequence, I was forced consciously to distance myself from them – a state that was extremely difficult to achieve at first.

### 3.2.3 The Critical Paradigm

The interpretivist and critical paradigms share many of the same tenets. Like interpretivism, critical research rejects the positivist notion that inquiry can be value-free (Guba, 1990). However, they differ in one crucial area. While interpretivists seek understanding and interpretation, critical research also seeks to emancipate through the questioning of ideologies (Cantrell, 1993). Critical theorists view the world as being 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).

In terms of the critical perspective, therefore, events are understood to occur within both a social and economic context, and the goal of research is to "eliminate false consciousness and energise and facilitate transformation" (Guba, 1990: 25). It must be noted that my research is not totally critical. In general, my aim is to explore the attitudes towards interpreting in the courts. However, as my research questions show (see Chapter 1), I also investigate the relationships between the various participants, as well as whose interests are served by maintaining the *status quo* of interpreters within the court system, and to that extent, my study is a critical one

### **3.3 Research Methodology**

As explained in Section 3.2.1, 'methodology' refers to the way in which we gain knowledge about the world. Methodology, thus, is viewed as "the interface between methodic practice, substantive theory and epistemological underpinnings" (Harvey, 1990: 1). As such, the methodology employed by a researcher will make explicit the "presuppositions that inform the knowledge that is generated by the enquiry" (Harvey, 1990:1-2). In this study I situate my research within an ethnographic methodology, as this allowed me to explore the setting of the research in a more naturalistic fashion. The leeway offered by ethnography (as explained below in Section 3.3.1) gave me greater latitude in both the collection and analysis of data. However, I also used some of the elements of a critical ethnographic methodology, as I also wanted to explore the ideologies behind the attitudes expressed by the participants. Both ethnography and critical ethnography will now be examined in greater depth.

#### **3.3.1 Ethnography**

Modern ethnography arose, at the beginning of the twentieth century, as a method employed by anthropologists to collect data firsthand. The term 'ethnography', however, is not easily definable. Some researchers use 'ethnography' as the label for a paradigm, whereas others use 'ethnography' as the label for a method that they use when and where it is required (Atkinson & Hammersley, 1994). Others view ethnography as a point of view, or a stance, which is the result of "looking in particular ways at particular phenomena and reporting on them in particular ways" (Scollon, 1998: 276).

Generally speaking, an ethnography is a piece of research in which a culture, or social group, is observed in a natural setting over a period of time (Creswell, 1994). The process of research is flexible, allowing the researcher to adapt to specific conditions in the field. As mentioned above (Section 3.3), the variety of methods used in ethnographic research was beneficial to my research. While gathering my data, for instance, I became aware that I would not be able to make use of participant-observation as a primary data collection method. Therefore I was forced to make use of interviews instead.

As the term is difficult to define, ethnography has come to refer to any form of social research that exhibits certain features. The essential feature is that the researcher is able to describe the construction of social realities and their meanings. The practice places the researcher in the middle of what they study, allowing them to examine the world of the researched on a first-hand basis (Berg, 1998). Atkinson & Hammersley, (1994) identify four features of ethnography. The first feature is that ethnographic research should place focus on investigating the "nature of particular social phenomena, rather than setting out to test hypotheses about them" (Atkinson & Hammersley, 1994: 248). As such, ethnographic research seeks to describe a particular context, and its participants, rather than prove (or disprove) theoretical assumptions about that context.

Similarly, Watson-Gegeo (1988: 577) believes that ethnographic research focuses on "people's behaviour in groups and on cultural patterns in that behaviour". However, Watson-Gegeo (1988) 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. My research exhibits this particular feature in that I have observed the setting and the participants, as well as getting their perspectives on the issue of court interpreters. Furthermore, while the literature has informed my research to some extent, I had very few preconceptions about courtroom practice and interpreting before entering the setting.

A second (and related) feature of ethnographic research is the focus on a small research sample – at times even one case study (Atkinson & Hammersley, 1994). The focus is, thus, not on **breadth** of data, but **depth** of data. Watson-Gegeo (1988) states that ethnography must be holistic, reflecting the emphasis on depth of data. As such, any behaviour or characteristics of a society or culture can only be understood within the entire context of that society or culture. In my study, I have tried to get the perspectives of as many of the participants as possible, in order to get a holistic view of attitudes towards court interpreters.

A third feature of ethnographic research is that it tends to make use of 'unstructured' data, which has not been codified at the point of collection (Atkinson & Hammersley, 1994). As shown (in Section 3.5), my data was mainly collected through interviews,

so it was impossible to structure, or code, the responses of the interviewees during the interviews. The final feature of ethnographic research is that the analysis of data is interpretive, and takes the form of "verbal descriptions and explanations" (Atkinson & Hammersley, 1994: 248). As such, it places little emphasis on the more positivist tradition of quantitative analysis. As my research shows, I have predominantly used qualitative techniques, both in collecting my data and in analysing it.

### **3.3.2 Critical Ethnography**

Critical ethnography is a relatively recent development in the social sciences. As the name would suggest, critical ethnography shows many of the characteristics that define traditional, or conventional, ethnography. Thus, critical ethnography relies heavily on qualitative interpretation of data, and makes extensive use of ethnographic analysis and methods (Thomas, 1993). As such, the boundaries between conventional ethnography and critical ethnography are often indistinct.

According to May (1997), however, there are two key areas in which critical ethnography differs from its more traditional counterpart. The most important difference is that critical ethnography is heavily influenced by Marxist and critical theory schools of thought. As such, critical ethnography places emphasis on the role of ideology in instituting and perpetuating inequality within a social context (May, 1997). Similarly, Carspecken (1996) states that research should be critical, and should seek to change society for the better. My research aims to be critical in that it identifies the ideologies of the participants involved in the research, particularly establishing whose interests are being served by the current situation in the courts.

The second difference between critical ethnography and ethnography is that the latter seeks merely to describe a particular setting (May, 1997). Critical ethnography, on the other hand, seeks to change these settings by identifying problems and looking for solutions. Similarly, Thomas (1993) claims that conventional ethnography describes, analyses and interprets culture, whereas critical ethnography is a reflective process "of choosing between conceptual alternatives and making value-laden judgements of meaning and method" (Thomas, 1993: 4). The primary outcome of this type of research is to provide a critique of cultural and social processes, as well as research conducted into these (Thomas, 1993). Thus, whereas "conventional ethnography

describes what is, critical ethnography asks what could be" (Thomas, 1993: 4). In this way, my research is also critical, in that I identify potential solutions to the problem of interpreting in the courts.

The conventional ethnography viewpoint that research should be value neutral is contested by critical ethnography, as the political, social, cultural and economic values of the researcher will always impinge on the objectivity of research (Hammersley, 1992). Carspecken (1996) also believes that facts are never value neutral, and are always tied to issues of ideology and power. The researcher, therefore, needs to make sure that there is a clear distinction between facts and values.

In terms of epistemology, Carspecken (1996) identifies a further two features of critical ethnography. Firstly, he argues that power relations, which are socially and historically constructed, are the foundations of society (Carspecken, 1996). Thus critical researchers need to have a precise knowledge of the nature of power, and how it interacts with the culture, society and thought that are being studied. Secondly, he states that there is never a one-to-one correlation between the representation of events and objective 'reality' (Carspecken, 1996). Thus the relationship between these two must always be mediated by issues of power and ideology.

### **3.4 Data Collection**

One of the features of ethnographic research is that one is not constrained by any particular research methods or tools. The variety of options open to the researcher means that ethnographic research cannot be programmed (Hammersley, 1995). The researcher needs to adapt to any number of situations that might occur during the process of research. Hammersley (1995: 24) acknowledges that ethnographic research cannot be predetermined, but that this "neither eliminates the need for pre-fieldwork preparation nor means the researcher's behaviour in the field can be haphazard". In this section of the Chapter, I report on how I collected the data on which this study is based. Initially, I describe how I gained access to the field, which will include a description of the research subjects. Secondly, I describe the research tools I utilised. Lastly, I describe how I set about analysing the data.

### **3.4.1 Who, How and Why**

#### **3.4.1.1 The Participants**

Before describing how I gained access to the field, it is important to describe the participants in the research. As I was trying to get a holistic view of the attitudes of, and perceptions towards, interpreters in the courts, I needed to get as many opinions, from as many different levels of the system, as possible. I decided that I would focus on the main role-players in the court system, the Magistrates, state prosecutors, lawyers and, most importantly, the interpreters. Unfortunately, all of the Magistrates whom I approached indicated that they would not be willing to take part in the study. All of them believed that it would not be ethical for them to comment on the performance of other court officials – particularly as they are considered to be the 'head' of the court. Thus my study is curtailed somewhat, as only lawyers, prosecutors and interpreters participated.

It became apparent that I would not be able to choose my subjects at random. In the court system in South Africa, the State provides interpreters only in criminal cases. In civil matters, the onus is on the individual lawyer to provide an interpreter for his/her case. Thus, while the choice of prosecutors and interpreters was straightforward, choosing lawyers was a little more complicated. Some lawyers tend to focus on either criminal work or civil work, but the majority of lawyers in Grahamstown deal with both. Thus, I needed to be careful in the selection of the lawyers. As I was focussing on criminal matters, I felt that I would only be interested in lawyers dealing predominantly with criminal cases.

Another decision that needed to be made was how many subjects I should choose for the research. I decided on four or five in each category, as I believed that this would give me a good sample with which to work. Furthermore, I decided to balance the subjects in each category in terms of language(s) spoken. I believed that it would be interesting to find out whether, for example, the perceptions of subjects who speak 'European' (i.e. English and/or Afrikaans) languages only would differ from the perceptions of subjects who also spoke an 'indigenous' (i.e. African) language.

### 3.4.1.2 Accessing the Research Setting

In some cases, one is able to enter into a research setting easily and commence with the collection of data. However, in the majority of cases, one needs to negotiate entry into a research setting very carefully. In this research project, as I was dealing with a number of different arms of the court, I needed to do both.

Initially, my entry into the courts in Grahamstown appeared to be problem-free. A friend of mine, Simon, who is a lawyer, acted as an 'informal sponsor' (Hammersley, 1995), introducing me to a number of the key people I would need to interact with. He was confident that I would encounter no problems in collecting my data. He informed me about which courts to visit, and very generally what to expect. As there are no restrictions placed on attendance in courts, I was confident that I would be able to get into the courts and begin collecting my data. Additionally, he identified, for me, a number of people who might be willing to be interviewed, as well as those who would be most helpful (particularly lawyers).

I approached the Administrative Head of the interpreters in Grahamstown, Mr Ndlovu. We agreed that the way forward would be to conduct interviews with interpreters in Grahamstown to gain their perspectives on the state of interpreting in court. He also suggested that I speak to one of the Regional Inspectors regarding my research. When the Inspector arrived in Grahamstown, I attempted to interview her. The Inspector, however, was not willing to be interviewed by me because she is a state employee and she was not sure whether her Director would allow it. We agreed that I would write a letter to the Director of Legal Services in East London to apply for permission to interview the interpreters (a copy of this letter can be found in Appendix B-1).

My next goal was to try and meet with the Senior Prosecutor in Grahamstown, Mr Amsterdam. When we met, we agreed that I should write a letter requesting permission to conduct interviews with his prosecutors (a copy of the letter that I sent to him is in Appendix B-2). Having applied for this permission, I was obliged to wait for the relevant Governmental Departments to agree to the research. Both the senior prosecutor and the Administrative Division replied fairly quickly, and granted

permission for me to interview their employees. I then arranged for times to interview both the prosecutors and the interpreters.

### **3.4.2 Research Methods**

Ethnographic research typically includes a diverse array of research methods, such as participant-observation, interviews, questionnaires and documentary evidence. Of all these methods, participant observation has most clearly been associated with ethnography (Watson-Gegeo, 1988). However, recognition must be given to the fact that research is unpredictable, so the ethnographer must enter into the research process with an open mind and a well-stocked 'toolkit' of methods. This was particularly important in my case, as it became obvious that participant-observation was not going to be my primary data collection method. I was able to adapt, and collect the majority of my data by way of interviews.

#### **3.4.2.1 Interviews**

Interviews, because of their flexibility and interactional nature, play a prominent role in research in the social sciences (Fontana & Frey, 1994). These features are important to researchers, because not only do they allow them to hear the responses of the interviewee, they also afford the researcher the opportunity to observe the interviewee while s/he is responding and ask follow-up questions. Thus, interviews have a multiplicity of uses, and allow the researcher great leeway when collecting data. However, the chief purpose of the interview is to gather what Carspecken (1996) refers to as 'dialogical data'. In a critical ethnography, interviews also facilitate the democratisation of the research by allowing the participants a voice in the process (Carspecken, 1996). This aspect was particularly important for my research, as I was interested in obtaining insider accounts and perspectives.

Interviewing is typically, a one-on-one, face-to-face verbal exchange, but one may also make use of group interviews or telephonic interviews if necessary (Fontana & Frey, 1994). In my study, I have used one-on-one interviews to collect my data. There are a number of different types of interviews. For instance, Berg (1998) refers to standardised, unstandardised and semi-standardised interviews. This research has made exclusive use of semi-standardised interviews.

The semi-standardised interview shares many of the features of standardised interviews (where there is a strict schedule of interview questions) and unstandardised interviews (where there is no schedule of interview questions). The semi-standardised interview does utilise a number of predetermined questions, and these questions are generally asked in a systematic way (Berg, 1996). However, the researcher is free to diverge from the schedule and ask follow up questions designed to elicit further information where necessary (Berg, 1998). Thus, semi-standardised interviews allow the researcher to enter into the world of the interviewee, while still retaining control over the interview process.

In the interviews I conducted, I decided to arrange my questions into distinct topics. These topics were designed to collect data related to specific research questions. They also enable the collected data to be easily analysed. All of the interviews were recorded so that I would not miss out any potentially important responses. For the interpreters, the main topics were training, their opinions on their relative status in the courts, problems involved in interpreting and possible solutions (see Appendix C-1). I felt that these questions would draw out the unique perspectives of the interpreters on the process of interpreting, as well as their opinions on how the other participants of the court viewed them. Four interpreters were interviewed, and these interviews lasted approximately 43-49 minutes (see Table 1).

<b><u>Participant</u></b>	<b><u>Code</u></b>	<b><u>Date</u></b>	<b><u>Length</u></b>
Interpreter 1	Carol	14/11/2003	43 minutes
Interpreter 2	Gary	14/11/2003	47 minutes
Interpreter 3	Debby	14/11/2003	49 minutes
Interpreter 4	Mark	14/11/2003	44 minutes

**Table 1 – Interpreter Interview Schedule**

The main topics for the other two sets of participants (prosecutors, lawyers and interpreters) were their attitudes towards interpreters, types of mistakes that they encountered and possible solutions. However, the questions for each set of participants were different, reflecting the different nature of their interaction with interpreters. Thus, for example, lawyers (see Appendix C-2) were only asked questions derived from the abovementioned topics, as their interaction with

interpreters is predominantly limited to the court. Five lawyers were interviewed (see Table 2), and the lengths of their interviews varied depending on their relative experience with the topics addressed.

I felt that it would be important to interview prosecutors, as their interaction with interpreters is of a more extensive nature than that of lawyers. During the preparation for trial, they often resort to interpreters to help prepare a case with their witnesses. The more extensive nature of their interaction with interpreters would, I believed, provide a richer form of critique of their abilities than that provided by the lawyers. As such, a further topic of questioning was their interaction with interpreters (see Appendix C). Three prosecutors were interviewed, and these interviews lasted between 35 and 40 minutes (see Table 3).

<b><u>Participant</u></b>	<b>Code</b>	<b>Date</b>	<b>Length</b>
Lawyer 1	Chris	29/09/2003	43 minutes
Lawyer 2	Simon	08/10/2003	40 minutes
Lawyer 3	Jeff	08/10/2003	35 minutes
Lawyer 4	Peter	09/10/2003	42 minutes
Lawyer 5	David	15/08/2003	45 minutes

**Table 2 – Lawyer Interview Schedule**

<b><u>Participant</u></b>	<b>Code</b>	<b>Date</b>	<b>Length</b>
Prosecutor 1	James	13/11/2003	39 minutes
Prosecutor 2	Andrew	13/11/2003	44 minutes
Prosecutor 3	Penny	20/11/2003	42 minutes

**Table 3 – Prosecutor Interview Schedule**

### **3.4.2.2 Observation**

The second method used to collect data was by means of observation. As mentioned in 3.4.2, this enabled me to enter into the world of the court, and observe the behaviour of the key participants (Scollon, 1995). I used observation for two reasons. Firstly, the time I spent in court allowed me to orient myself within the research setting. As I was unfamiliar with the context within which my research was situated, the observation enabled me to discover what actually happens in a court. Secondly,

observation also informed, to a degree, the questions that I used in my interviews. Observing what happened in court gave me some ideas as to the types of questions that I needed to ask my interviewees.

There are many different types of observation and observer. Hammersley (1995) distinguishes between the complete participant, the participant as observer, the observer as participant and the complete observer. The complete participant enters into the world of the researched as a 'native', and acquires information first hand. The complete observer, on the other hand, has no contact whatsoever with the participants (Creswell, 1994; Hammersley, 1995). I chose the role of the complete observer when doing my observation. There were two main reasons for adopting this role. The first reason was purely practical, in that my status as an outsider would not afford me the opportunity to participate in any manner. As the participants in the court are all professionals in their fields, it was obvious that I could not participate in any meaningful manner.

The second reason for choosing a more covert method of observation was that I was attempting to identify the relative status (and, hence, power) of each participant in the court process. As such, I needed to remain anonymous in order to observe these relationships in as natural a setting as possible. If I had chosen to approach the participants to inform them of my intentions, this might have provoked 'unnatural' responses. Because the courts are in the public domain, I did not have to concern myself with the ethical use of covert observation. Additionally, as the main purpose of the observation was to orient myself and to view the action in court, I felt justified in using this type of observation.

### **3.5 Analysis of the Data**

Data analysis refers to a number of related activities, by which the data that has been collected is reduced, simplified and subjected to coding and categorisation. The process of data analysis will, of necessity be different for each researcher, and there are, by no means, any set rules that a researcher needs to obey while analysing his/her data (Creswell, 1994). However, even though there are a number of different ways in which a researcher may proceed with data analysis, there are, nevertheless, certain stages through which data must pass before appearing in their final form.

While I have included the analysis of the data as a separate section in this chapter, it must be acknowledged that data collection and data analysis are often simultaneous activities (Creswell, 1994). Furthermore, the collection of data, along with its analysis serves to inform subsequent data collection and analysis. My research has followed this process, as earlier data pointed to aspects that I profitably explored in later data collection. In this section, I explain the process through which my data has passed, from collection to written narrative. Firstly, I explain how the data from the interviews was transcribed. Secondly, I detail how the data was categorised, and refined.

### **3.5.1 Interviews**

As mentioned in Section 3.4.2.1, all of the interviews were recorded. Thus, once an interview had been completed I needed to transcribe the information on the tape. The tapes were transcribed using a transcription machine with pedals and typed directly onto a computer. I decided early on in the process of transcribing to make the data as simple and as easily accessible as possible and so have not produced complex transcriptions reflecting pauses, hesitations, intonation and the like as a discourse analyst might. My main focus is on the words spoken by the interviewees. Similarly, I have deliberately made the transcriptions as 'clean' as possible and have deleted all the repetitions, and the 'um's' and 'ah's', making transcripts easier to both read and analyse. Copies of the complete transcripts of all the respondents can be found in Appendix E.

Once transcribed, I began the process of categorising and reducing the data. Creswell (1994: 154) refers to 'reduction' as the process by which a researcher "takes a voluminous amount of information and reduces it to certain patterns, categories, or themes". As explained in the previous paragraph, this process had already begun with the 'cleaning up' of the data. I then went through the transcripts and extracted the information that I believed was relevant to my research questions. These extracts, I then categorised into topics for further analysis. Once this had been completed, my final step was to organise my extracts into responses from each group that were either similar or different.

### **3.6 Conclusion**

The focus of this chapter has been to define the methodologies and methods that I employed while collecting the data for this research. In particular, I described the key features of ethnographic research; investigating the nature of society, people's behaviour in groups, cultural patterns and a holistic research. I also discuss the similarities and differences between conventional ethnography and critical ethnography. Critical ethnography has been influenced by Marxist and critical schools of thought and, as such, seeks to investigate the ideologies of the subjects of research. A second difference is that critical ethnography is emancipatory, and seeks to identify problems and find solutions.

I have also described how I collected the data. I have described the participants and why I selected them. Additionally, I described the process of how I gained access into the field. I then discussed the methods of data collection, focussing particularly on interviews and observation. Finally, I discussed how the raw data was transcribed and subsequently analysed. In the next chapter I present my discussion and analysis of the data.

## CHAPTER 4 – ANALYSIS OF THE DATA

### 4.1 Introduction

The purpose of this chapter is to report on my analysis of the data collected in terms of the methodology described in Chapter 3 and the research questions postulated in Chapter 1 (Section 1.3). There I described two sets of research questions, 'broad' and 'narrow' questions. As research questions 1-3 are answered in Chapter 2, my focus in this chapter will be on addressing the 'broad' question: Is the language policy used in South African courts applied equitably? More specifically, this chapter seeks to answer the 'narrow' research questions stated in Section 1.3, namely:

- 4a What are the duties of a court interpreter?
- 4b Is something wrong with court interpreting?
- 4c If so, what are the problems with the current system of interpreters?
- 4d What is being done to remedy these problems?
- 4e Whose interests are served by maintaining the *status quo*?

Before reporting on my analysis, I give a brief description of how the data is presented, as well as why I chose to present the data in this fashion. As explained in Chapter 3 (Section 3.4.2.1) I have separated my interview questions into topics. Each of these topics is designed to elicit data directly relevant to a particular research question. When reporting on my analysis of the data, I focus directly on answering each of the research questions in turn. The sole exception to this format occurs in Section 4.5.4.2, where I address 4c and 4d concurrently. I chose to present the data in this fashion as each of the research questions leads naturally on to the next. By presenting the data in this way, a picture emerges of the state of the art of interpreting, the problems associated with interpreting and possible solutions.

### 4.2 Why Interpreters?

Prior to addressing the specific research questions, mention must be made of why I chose to focus specifically on interpreting and interpreters. Although there are a number of participants in any given court case, Magistrates, prosecutors, lawyers, witnesses and accused, the interpreter is the key in South African courts. Almost without exception, my informants indicated that without interpreters the courts in

South Africa would not function. Andrew, a prosecutor, compares the workings of the court to the mechanisms of a watch. He believes that

They are a vital cog...You have big wheels and you have small wheels, big cogs and small cogs. The bigger the cog is doesn't mean it's more important – even a small cog is important. Without that vital part the watch is going to stop and interpreters are quite often overlooked but they are a vital part. If there are not interpreters these courts are going to come to a standstill.

Another prosecutor, Penny, describes court interpreters as the "engine of communication between everybody in the courtroom, so they are very important. The courts would not be able to function without them". An article in the *Citizen* (Mabasa, 2003) stated that recent interpreter strikes posed a "threat" to the justice system. With regard to the question of equity it would appear that court interpreters are the most important link between the legal system and the public. If something is wrong with the system of interpreting, as it currently stands, then this must impact on equity in the legal system.

### **4.3 The Duties of Court Interpreters**

#### **4.3.1 Overview**

In order to appreciate fully what an interpreter does, it was necessary for me to ascertain the scope of their duties, as well as how these duties are carried out. Thus, in this section of the chapter, I discuss the duties of interpreters. As such, I am seeking to answer research question 4a (see Section 4.1 above). The data is drawn primarily from the interviews with the interpreters and the prosecutors, however I also made use of two Internal Memoranda, provided by the Department of Justice and Constitutional Development (henceforth referred to as either DJCD or 'the Department') to give a perspective of what they require of their interpreters. In addition to describing the duties of an interpreter, I discuss what it means to 'interpret', and the expectations of the participants in the legal system with regard to 'interpreting'.

#### **4.3.2 Grades and Duties of Interpreters**

The current system of court interpreters makes provision for 8 Grades of interpreters. As shown in Appendix D, there are two Grades of 'Court Interpreters', three Grades of

'Senior Court Interpreters', a Grade of 'Principal Court Interpreter', a Grade of 'Inspector of Interpreters' and a 'Chief of Interpreters'. The primary qualification to become a court interpreter is a Grade 12 school qualification and a language test. Thereafter promotion is based on experience. This system, however, is under review (as shown in Appendix D). In terms of the review, the Grades of Court Interpreter, Senior Court Interpreter, and Principal Court Interpreter remain the same. However two additional posts are envisioned after these levels, that of Chief Court Interpreter and Head: Interpreting Services. Furthermore, from the level of Chief Court Interpreter upwards, a tertiary qualification is required.

An Internal Memorandum issued by the DJCD (2002) describes the duties of the different levels of court interpreters. For the purposes of this study, I have decided to focus on the duties of court interpreters, as well as two vital elements of the duties of Principal Interpreters (which will be discussed further in Section 4.5.4.2). Thus, the duties of a court interpreter are as follows: Do interpretation work, do elementary clerical work when the court is not in session, keep court records up to date and clean recording equipment (DJCD, 2002). The two duties of a Principal Court Interpreter that are relevant to this study are to control and supervise court interpreters in bigger centres and to train court interpreters (in-service training).

Typically, a court interpreter is required to perform a number of duties on any given day. The descriptions given by interpreters regarding their duties vary, from an abstract definition to a more specific, 'blow by blow' account. Thus Mark states that his duties are

...to perform and to deliver the justice system to the community to the best of my ability. To interpret for people that are not able to understand the languages of the court.

Here he gives a broad outline of what he considers to be the primary function of the duties of an interpreter. Similarly, Gary places stress on the interpreting aspect, describing the duties of an interpreter as being "...to convey the message intended by a speaker, or rather the idea, and *vice versa*". Carol, on the other hand, views her duties more specifically, describing her day thus:

During the morning you arrive at the office, thereafter you go and fetch your court book, write in your cases for the day. Thereafter you might go to court and start interpreting in court. Before you

start interpreting in court, the attorneys might come to you and ask for assistance to consult with their clients, or the prosecutor will want to consult with witnesses before they start the trial. Or maybe some of the prosecutors who do not understand Afrikaans you will then help them consulting. The same applies with the accused. Lets say the accused wants to plead guilty on a charge, you go through and try to help them with the docket and help them see what's on the docket and read all the statements and stuff. If the accused does have questions, and even if the accused does not have questions, you will try and see if the guy understands. If he does not you will try and explain to him what's going to happen. For instance if he pleads guilty, these will be the results maybe or if he pleads not guilty, this will happen. In some cases maybe the prosecutor will be there telling you what you must say to the guy and then you just interpret that.

What is evident is that there are two distinct 'types' of duties that are required of interpreters. The first 'type' of duty is an administrative one, writing up cases in the court book etc. (the elementary clerical work as prescribed by the DJCD). The second, and primary, 'type' of duty is interpreting – either in court or outside of court. While the duties of an interpreter might appear to be limited, a number of the interpreters take on extra duties. Thus, for example, Debby ensures that the Magistrate's bench has a cushion.

There is a sense that the duties of an interpreter are not clearly delineated enough. The expression 'elementary clerical work' does not adequately describe the type of clerical work that is necessary, or required. My impression is that the majority of the respondents believed this clerical work to be keeping the court book up to date – which is specified as a separate duty by the DJCD. While I was interviewing the interpreters, they were busy updating the files in one of the Record rooms. This chore, according to Mark, was voluntary, yet it fits into the category of 'elementary clerical work'. Thus there is little clarity as to what is expected, or required, of court interpreters in this regard. While this lack of clarity exists, there is a chance that it is open to abuse.

While the lawyers predominantly make use of the interpreters during the course of a trial, state prosecutors sometimes need to use interpreters before a trial. They will only do this when they are not familiar with the language of the witness or the

accused. Of the four prosecutors that were interviewed, only Andrew really makes use of an interpreter when investigating a case. He speaks a little Xhosa, but when he needs to get 'specific assistance', he will make use of an interpreter. Similarly, Penny, a mother tongue Xhosa speaker, only really needs this type of assistance when confronted with an Afrikaans speaker.

#### **4.3.3 Summary**

In summary, this section of the chapter has reported on the specific duties of interpreters. The duties of a court interpreter do not appear to be excessively demanding. Their primary concern is interpreting. This interpreting work is most often conducted in court, but, on occasion, interpreters may be required to assist the prosecutors question witnesses. They are also required to perform a certain degree of clerical work, particularly maintaining the court book. The guidelines laid down by the DJCD, however, are a little vague with regard to the specific clerical work that interpreters are required to do.

### **4.4 Is Something Wrong with Court Interpreting?**

#### **4.4.1 Overview**

Having established the duties of court interpreters, as well as how interpreting as a process occurs, I now examine perceptions in the legal profession as to whether interpreters are doing their jobs properly. As such, this section of the chapter seeks to answer research question 4b (see Section 4.1 above). While answering this question, I also show which members of the legal profession believe that there is a problem. Additionally, I discuss whether the administration of justice is being negatively affected by possible problems with interpreting. Finally I will discuss two of the important issues that arose around this topic, namely the *laissez faire* attitude on the part of the lawyers towards interpreting mistakes, and their apparent unwillingness to report these mistakes.

#### **4.4.2 Perceptions about Interpreting**

In 2001, LANGCO published a report castigating the poor performance of interpreters in South African courts, labelling interpreters as 'careless'. They also stated that the administration of justice is being negatively affected by the poor performance of interpreters. Amongst the respondents, there were mixed views about the



performance of interpreters, and how this might affect the administration of justice in South Africa (see Table 4, page 57).

Amongst the interpreters, there was a unanimous view that interpreting was not as good as it should be. In other words, they were all aware of criticisms levelled at the state of interpreting in courts. They were not very specific, however, about whom these criticisms are coming from. Carol, for instance, says "I have heard it from members of the public. Some interpreters are not doing what they are supposed to do...I haven't had any problems from the Magistrates, just people". She further says that it is 'just rumours', not explicit, open criticism. Gary, on the other hand, refers to criticisms from attorneys, remarking that it is obvious when an attorney, who is conversant in the languages being used, is not happy with a particular interpretation. He believes that this criticism leads interpreters to have 'stage fright'. He also feels that this stage fright is exacerbated by the presence in court of more educated people, who are able to understand African languages.

Mark and Debby both feel that this perception exists because of the preconceptions that people have about interpreters and interpreting. Debby states that "because of those old interpreters who were taken off the street, people are saying interpreters are bad, forgetting that the interpreters in our days are good quality". She feels that one cannot generalise about all interpreters being incompetent. Mark echoes Debby's beliefs about perceptions of interpreters, saying

People are taking court interpreters as people that have been taken off the street, "Can you speak English, can you speak Afrikaans?" "Yes I can". "Come, come, come". So cheap that they take our profession... They do not get what we actually do all day. They don't value it that much.

He furthermore believes that this perception is the result of a feeling that interpreters are undervalued by the court system "because you do not carry picks and spades coming to court or a briefcase...not knowing that the interpreter is the engine that drives the court". This issue will be explored further in Section 4.5.6.

The prosecutors provided mixed views about the state of interpreting. Andrew mentions that he has not heard anything about the state of interpreting in general, saying that there are "individual problem cases, but generally the interpreters do a

good job". James, on the other hand, is scathing about the way interpreters carry out their duties. He believes that, at times only about 30% of the message is delivered by the interpreter. He feels this happens particularly when the interpreter has to explain the legal rights of the accused. Penny stands somewhere in the middle. She says that the prosecutors do talk about the state of interpreting. However, she echoes Andrew's sentiments, in that "they are not, most of them, competent. With the exception really there are those who take their work seriously and they are doing an excellent job".

Amongst the lawyers, there were also mixed responses. Most of the lawyers had encountered a perception that court interpreting was not as good as it should be. These problems are generally a matter of folklore and rumour amongst the lawyers. Simon states that one generally hears about interpreters through the proverbial grapevine. He, for instance, refers to a story told to him by a friend in East London about an interpreter who was drunk. Chris, on the other hand, is highly critical about the state of interpreting in Grahamstown's courts. He has worked as an interpreter, and believes that the state of interpreting is a widespread concern. He says that he has interpreted throughout the Eastern Cape and says that it (the bad state of interpreting) "is not only a common thing in Grahamstown, no throughout the Eastern Cape".

#### **4.4.3 The Administration of Justice**

It would appear therefore that there is a general perception that interpreting in the courts is not what it should/could be. All of the respondents believed that interpreters are prone to making mistakes. However when asked whether the mistakes that are made by interpreters seriously jeopardise the administration of justice, the responses were mixed.

All of the interpreters believed that mistakes made by interpreters could negatively impact on the administration of justice to some degree. Debby believes that it is wrong to pigeonhole all interpreters as being incompetent. She believes that "it depends on that interpreter. If you don't listen, if you are not a good interpreter you must stand down, let others come. Just like you have good lawyers and bad lawyers it's like that. We can't generalise about interpreters though". Debby specifically refers to the 'older' interpreters as being particularly bad, as they were trained under the 'old system'. It is the mistakes made by these older interpreters that potentially

jeopardise the administration of justice. Similarly, Carol believes that it is only some of the interpreters who give the rest a bad name. Gary firmly believes that interpreter errors are a source of concern, and could seriously undermine the administration of justice. He believes this to be the case because the court depends on what the interpreter says in order to rule on a case. Because of their important role in the court, if an interpreter makes mistakes, the court cannot evaluate the evidence that is being led, and, consequently, cannot be expected always to come to the right decision.

All of the prosecutors believed that the state of interpreting could negatively affect the administration of justice. James believes that it is a serious problem. He is particularly concerned about the errors that are made when explaining a person's legal rights. While not fluent in Xhosa, he believes the numbers of mistakes that are made in this vital area are disturbing. Penny also feels that the mistakes made by interpreters are serious. She states that

Sometimes they are very, very bad that they affect everything – especially if the witness speaks a language that is not known to the prosecutor, not known to the presiding officer, not known to the defence.

Similarly, Andrew believes that interpreter errors can affect the course of a trial. He gave an example about a case where a policeman filled out a statement incorrectly, and how this affected the course of a trial. He believes that

something like that can obviously happen in court, where as a result of imprecise interpretation a different sense, or something else, is being interpreted and that can then be used to either discredit the witness or not. What one tends to find is that if you were to bring out a contradiction that a witness is not in a position to explain it is downhill from there throughout the evidence. Then the witness will feel intimidated and will get into his little shell, and then you won't get the type of evidence that you should... The effect that that might have is that either a person who ought to be convicted gets acquitted, or a person who ought to be acquitted gets convicted.

Most of the lawyers believe that the errors made by interpreters do not seriously affect the administration of justice. There are a number of reasons given for this. Jeff deals predominantly with civil cases. As such he often makes use of hired interpreters. While these interpreters also make mistakes, he is able to correct most of the errors, as he is Xhosa speaking. Peter feels that there are two main causes of errors in interpreting, where the interpreter has not put the question to the witness properly, or

where the interpreter mis-interprets the response of the witness. He believes that these errors are not overly prejudicial to a court case. David believes that if the errors made were vital errors

...there would be complaints. Because if they were vital it would mean that the essence of what has been translated or interpreted would not have been in the interests of the case under hand. I don't think they are so vital that they frustrate the whole tenor of the proceedings.

Simon has not personally encountered interpreting errors that have swayed the outcome of a trial. He does, however, believe that they could easily happen. He believes that if interpreters "come in there and give incorrect interpretations all hell could break loose...there could be incorrect verdicts". This occurs because unless what the interpreter has said is contested, that is what goes onto the court record. Chris is the only lawyer who believes that the errors are negatively affecting the administration of justice. He believes that there is a general ignorance about the errors that are made because a large number of lawyers, prosecutors and Magistrates do not speak Xhosa, and, thus, do not "understand the goings-on in court".

#### **4.4.4 Some Discussion Points**

There are a number of disturbing issues that emerged from the interviews, particularly with the prosecutors and lawyers. The first is the *laissez faire* attitude towards mistakes in interpreting that permeates the legal system. Despite the fact that all of the lawyers have either experienced firsthand, or have heard of mistakes by interpreters, very few of the lawyers show any concern about the state of interpreting. Jeff states, "we rely on them (interpreters) entirely because some of us don't understand what he (the witness) is saying", and yet Simon admits that, as he doesn't understand Xhosa, he cannot say whether an interpreter is doing his/her job properly. It is perhaps ironic that a number of members of the legal profession take it on trust that an interpreter is performing properly – despite a lot of evidence to the contrary.

A second issue that arises is the apparent unwillingness of lawyers and prosecutors to speak out against bad interpreting. David assures us that lawyers do not condone bad interpreting. However, he also says that

...they do not want to disrupt the process because you are not always in court. If you complain and you don't hear another person complaining, then what is the use complaining? It would be as if it is you, in particular,

who is having a problem. Now we have never sat down and deliberated over this issue, so we talk about it informally.

Similarly, Penny says that instances of bad interpreting could be reported to the interpreter supervisors, but "it has never been practice that you really report that this is happening...I have never been trained that you report to the supervisor". She prefers to address her concerns to the interpreter in question, and hopes that "those who are bad come up to the standard". James also states that "people just live with it (bad interpreting), and they don't really talk about it".

It appears that no one is willing to confront the problem head on. This is largely due to a reluctance to 'rock the boat', but could also be due to a desire not to jeopardise a working relationship with interpreters. David confirms this view, saying

...you tend not to wish to upset anyone because you think no-one is going to come your way the next time...sometimes you want to appease the other people for the sake of our cases and our official relations with them. You don't want to upset anyone – I wouldn't like to upset anyone for myself. Sometimes you ask favours from them...so you have to maintain relations with them at some level.

It is certain though that without constant criticism from people with a stake in correct interpreting, there is no incentive for interpreters to improve.

#### **4.4.5 Summary**

There appears to be a universal perception that interpreters are making mistakes while interpreting in court. Certain of the respondents, significantly the interpreters themselves, were emphatic that there are problems, and that it could be said that interpreting is in a state of crisis. The lawyers and prosecutors were not as unequivocal in their views. All admitted that there were some problems, but many of them said that these problems were not a matter of everyday discussion. In some cases, they were predominantly rumours heard from fellow lawyers and prosecutors. However, all the respondents were able to cite personal experiences where interpreting had not been adequate.

There were mixed feelings about whether the state of interpreting posed a serious risk to the administration of justice. However, there are two main clusters of responses.

Respondents	Are there problems with interpreting?			Do these problems seriously affect the administration of justice?		
	Yes	Qualified Yes	No	Yes	Qualified Yes	No
Carol	*			*		
Gary	*			*		
Debby	*				*	
Mark	*				*	
James	*			*		
Andrew		*				*
Penny	*			*		
Chris	*			*		
Simon		*				*
Jeff		*				*
Peter		*				*
David		*				*

**Table 4 Perceptions about Court Interpreting**

The interpreters and prosecutors generally believed that either bad interpreting posed a serious problem, or that it posed a possible problem for the administration of justice. An example of the latter is Debby, who initially states that it does not pose a problem, but qualifies her response by saying that it would depend on the particular interpreter. The general belief amongst lawyers is that the state of interpreting does not pose a problem for the administration of justice. The lawyers generally believe that most of the mistakes are detected, and if they are not they do not change the essence of a case. The lone dissenting voice is Chris, who has also worked as an interpreter.

There are two worrying trends that emerge from the responses. The first is that many of the respondents do not appear to be concerned about the state of interpreting. Although many have encountered problems, it appears that members of the legal profession expect these problems and accept them as being part of the legal process. The second, and related, trend is that none of the respondents, particularly the lawyers and prosecutors, report instances of bad interpreting. It would appear that there is little incentive to report such instances, and most of the respondents were not interested in jeopardising working relationships with interpreters, nor were they willing to 'rock the boat'. This lack of desire to report interpreters who are not doing their jobs adequately has, no doubt, led to the maintenance and acceptance of the *status quo*.

## **4.5 Problems and Solutions in Interpreting**

### **4.5.1 Overview**

Having established that there are problems with court interpreting, it is important to identify the nature of these problems. This section of the chapter, thus, isolates and describes the specific interpreting problems that occur in court. I also examine what the respondents believe possible solutions are, as well as how the DJCD is addressing these problems. In doing so, this section provides answers to research questions 4c and 4d.

During the course of the interviews it became apparent that problems faced by interpreters are not solely confined to the courtroom. It must be noted, however, that this is a composite list of all the problems experienced by the participants – no single interpreter experiences all of these problems. To account for these problems, I have

divided this section into three parts (also see Table 5). The first part discusses problems related specifically to interpreting, particularly language problems. The second part describes the various environmental factors that are encountered by interpreters that might affect their work, focussing *inter alia* on courtroom conditions, salaries and professionalism. The third part describes the training that interpreters undergo, as well as the problems associated with this training. This section also examines possible solutions to the problems encountered. There is an additional problem that is experienced by interpreters, that of the attitudes of other members of the court towards interpreters. This, however, is discussed more fully in Section 4.6.

<b>Type of Problem</b>	
<b>Language</b>	<ul style="list-style-type: none"> <li>• Official languages of the court – particularly Afrikaans.</li> <li>• Legal language/terms (legalese).</li> <li>• Cultural terms/customary practices.</li> <li>• Varieties/dialects of Xhosa.</li> </ul>
<b>Environmental</b>	<ul style="list-style-type: none"> <li>• Concentration</li> <li>• Professionalism</li> <li>• Motivation</li> <li>• Salaries</li> <li>• Other participants</li> </ul>
<b>Training</b>	<ul style="list-style-type: none"> <li>• Duration</li> <li>• Subject Matter</li> <li>• Frequency</li> <li>• In-Service Training</li> <li>• Supervision</li> <li>• Administration</li> </ul>
<b>Attitudes towards interpreters</b>	Discussed in 4.6

**Table 5 Problems with Interpreting**

#### **4.5.2 Language and Interpreting**

In Chapter 2 (Sections 2.4.3, 2.4.4 and 2.4.5) I pointed to a number of possible areas where interpreting might prove problematic. In this section, I describe the various problems that occur. In particular, Kaschula (1995) points to the problem involved in translating customary terms from Xhosa into other languages (particularly English). However, these are not the only types of errors that are likely to occur. All interpreters are expected to be fluent in a number of languages, yet errors do occur when interpreting between languages. Similarly, there are many different varieties, or

dialects, of different languages, which might induce errors. I also identified problems that arise from the complex nature of legal language itself.

Moeketsi (1999) mentions that bilingualism is not necessarily a sufficient prerequisite for a good interpreter (see Section 2.4.3). Thus, an interpreter needs to be able to process both languages equally well, in other words the interpreter needs to be expert in the languages that s/he speaks. All of the interpreters in Grahamstown are mother tongue Xhosa speakers. As such, their competence in English and Afrikaans has been identified, by certain respondents, as a cause for concern. Simon believes that the level of English, for example, amongst the interpreters is fairly high. At times he might need them to repeat a sentence, or to expand on what they have said, but in general "the majority of them come across fine". David feels that the level of English varies amongst the interpreters, and is largely dependent on their schooling and how often they use the language. A problem in Grahamstown, however, is the use of Afrikaans. Both Peter and Simon identify Afrikaans as a problem amongst certain interpreters – particularly as Afrikaans is an official language of the court. Similarly, Mark believes that some of his colleagues, particularly the older ones, "are battling to translate or interpret from English, particularly from English to Afrikaans".

A big reason for the problems involved in translating between languages (and particularly the 'European' and African) languages is a lack of certain vocabulary items in indigenous languages, coupled with difficulties in conveying cultural concepts and practices from one language to another (Kaschula, 1995). Indigenous languages have borrowed extensively from the European languages, but, in a number of fields, these borrowings have been insufficient. Andrew identifies a particular lack in the sphere of scientific terms and science (particularly medical science). Gary agrees, and states that there are often problems interpreting in "drunken or reckless driving" cases, as the interpreters often do not know vital words – like the parts of a car for instance. When there is a significant gap in the lexicon of a language, interpreting becomes difficult, and as Andrew says "interpretation and translation is very ambiguous and imprecise because you have to convey something to someone that is not there in language".

Kaschula (1995) also states that a big problem in the legal sphere is translating Xhosa customary law terms from Xhosa into English (see Section 2.2.3.2). Very few of the respondents felt that this was a major problem in Grahamstown, largely due to the fact that Grahamstown is an urban area, so customary law does not really apply – as it might do in a more rural environment. Furthermore, David says that the majority of customary law cases involve civil actions, such as divorces, estates etc. In these cases, customary law bows to the common law of the country. However, there are certain 'everyday' cultural concepts and terms that do not translate easily across languages. Mark describes a problem that many interpreters have when trying to translate a concept from Xhosa to English

For example, lets say a Magistrate is postponing a case, he will say "Mr So-and-So, your case is remanded, postponed, to 22<sup>nd</sup> December 2003". If I, as a Xhosa speaking person, interpret for that person a date in Xhosa, a month in Xhosa and a year in Xhosa, that person will be totally confused. Some of the concepts cannot be interpreted to our language. He knows the 22<sup>nd</sup>, he knows December, he knows 2003. But most of us Xhosa speaking people we do not know our months, the 12 months of ours, from January to December. We have got them but it is difficult, they know 'January', 'February' because they are more used to using them.

What Mark appears to be saying here is that most Xhosa people are more familiar with the 'English' dates, than their own, and therefore interpreting these 'English' dates into Xhosa can often lead to confusion. Another concept that does not transfer easily across languages is that of 'possession'. Debby described a case where there was some confusion over what it means to be 'in possession' of something

... There is an Act, 'possession of stolen property'... He will say "You have been found in possession of this or it was nearby you" – it may be a distance. Our people don't understand that 'to be in possession'. They will always think that if it's 'in possession' it must be on you, not away from you.

There are also a number of grammatical issues that arise when interpreters are not mother tongue speakers of English. David explained that in Xhosa, there is no differentiation between genders. This can become quite important, because when the interpreter interprets something into English, s/he needs to ensure that the proper gender is specified. David believes that "the distinction is sometimes not of the gender that was being said by the witness. Now the court will...be under the impression that a particular person was doing the thing or is being referred to whereas

that is not the case". Another problematic area is tenses. Chris believes that this is a big problem with interpreters, because in English

If you start with past tense right through your sentence, it should be that sequence of past tense. Which is unlike our language. Xhosa is different. I could start by using a past tense verb and then somewhere in the middle of my sentence I use present tense. And with due respect some people who are interpreters don't know this.

A related problem is that of the complex nature of legal language, or 'legalese'. Most of the interpreters pointed to legal language as a problem area. They are mostly comfortable with the everyday legal terms that are used. Their biggest problem occurs when the Magistrate is delivering his/her judgement, as the Magistrate might need to refer to other cases, precedents and legal principles. According to Mark

You will find out that when the Magistrate gives judgement, addresses his judgement, or when the attorney is arguing before judgement you will find him quoting those big books. You didn't go to law school, but they quote from those big books, State vs. Khumalo (1994) maybe, a Transvaal case blah, blah, blah. They will quote and you do not know that case. So you are not able to interpret for the accused person, of which we can't do it, not even 10%.

The judgement is problematic because of its complex nature and the necessity to refer to legal precedents and principles. One reason why the interpreters probably do not struggle with legal terms the rest of the time is that the lawyers try to avoid them. All of the lawyers insist that when questioning a witness, even one who speaks the languages of the court, they try to speak as simply as possible, and to avoid the use of legal terms. Peter feels that "it would be pointless using legalese when questioning a witness, as this would only confuse him". Similarly, Chris asks "What is the point of speaking language that other people don't understand and yet you are saying that you are dispensing justice to people... I think it is nonsensical to be honest with you".

A final language problem is the difficulties involved in interpreting different varieties, or dialects, of Xhosa. This problem occurs particularly when an accused or witness is from the Transkei. The type of Xhosa spoken in the Transkei is extremely traditional and conservative. As such, it differs from the Xhosa spoken in Grahamstown and other areas. Debby states that "we will find those people coming from the Transkei,

the soldiers, they will use this and I don't know what is it they are talking about. But if you are from the Transkei you use it on a daily basis". Similarly, Gary says that in the Transkei, "they normally tend to show respect in their language. They do not call things by their names, they have got some sort of way to call things, they call it 'respect language'...Xhosa which is used here in Grahamstown is different to Xhosa which is used in the Transkei".

#### **4.5.3 Environmental Factors in Interpreting**

While there are numerous errors that are made because of the difficulties and intricacies of language, interpreters also need to contend with a number of environmental problems. Together with language problems, these environmental factors constitute the main reasons for the poor state of interpreting in South Africa. In this section, I examine environmental problems such as job requirements (particularly in terms of time, and mental effort), motivation, professionalism, expectations of other members of the court and problems with witnesses.

The job of an interpreter might appear to be a relatively simple one. However, all of the interpreters refer to the intense levels of concentration that are needed to interpret properly. Generally speaking, the court starts sitting at 9am, takes a break at 11am until 11:30am then proceeds through to lunch at 1pm. After lunch court resumes at 2pm and goes right through until 4pm. On any given day an interpreter might be called upon to interpret for this entire period. Additionally, as pointed out in Chapter 1 (Section 1.1), an interpreter might be required to use all of his/her languages in any given case. Carol describes situations like this, and says that when one has to use three languages (English, Afrikaans and Xhosa), it is extremely strenuous, "When you come out of court you feel like you just want to sleep...you have been using your mind, you cannot even think...in court it is so strenuous". This means that an interpreter expends a tremendous amount of mental energy in a day's work.

All of the interpreters admit that when they get tired, they lose concentration and mistakes happen. Gary states that interpreters can easily mis-interpret when their "mind is not there", and interpret without thinking. He gave an example of a case where he lost concentration, where

this person was saying "when he is walking he is always looking down". Fortunately the Magistrate, he was Xhosa, and he said to me "No Mr Interpreter that is a wrong interpretation, that is not right. The right interpretation is that that man he loves his work". I did not agree with him, but that Magistrate comes from the Transkei and they use those terms all the time. I had used the term literally instead I could have used it figuratively.

Similarly, Mark believes that one of the hardest parts about interpreting is maintaining high levels of concentration. As a prosecutor, Andrew has also noticed this problem, and acknowledges that interpreters, at times, might need to concentrate for as long as 4 to 5 hours at a time, which "can tax any person's powers of concentration". One of the results of the strenuous mental expenditure involved in interpreting is that some of the interpreters suffer from depression. Debby, for example, is seeing a counsellor in Fort England (the local psychiatric hospital), and is taking pills, because of depression.

The second environmental problem that arose is that there is a lack of professionalism amongst the interpreters. This problem was a concern identified particularly by the lawyers and prosecutors. Simon, for example, believes that some of the interpreters have a 'devil-may-care' attitude towards their work. Penny believes that some of the interpreters do not take their work seriously, which is a problem because if interpreting is not taken seriously, what goes onto the court record will be a false representation of the truth. She also mentions that some interpreters arrive late to court, which reflects negatively on the credibility of both the court and the interpreter. In a similar vein, Peter and Simon both mention the problem of absenteeism amongst interpreters, especially since there is no backup in Grahamstown for sick or absent interpreters. When an interpreter does not arrive for work, that particular court cannot sit for the day.

A possible cause for this lack of professionalism is a lack of motivation amongst interpreters. A main reason for this lack of motivation is that there are very few opportunities for advancement in interpreting. Debby mentions this as a particular problem, and feels that new tiers should be opened to increase the chances of promotion. The DJCD has also recognised this as a problem, and has increased the number of posts available at lower levels, while streamlining the number of posts

available at the top levels of interpreting (see Table 6). Additionally, the DJCD has recommended the addition of two extra posts, that of Senior Court Interpreter and Chief Court Interpreter (DJCD, 2002).

A related issue is that of salaries paid to interpreters. While James believes that interpreters are adequately compensated, this could hardly be further from the truth. Both Mark and Gary commented on the inadequate remuneration. A primary reason for recent strikes by court interpreters is the poor salaries paid to interpreters, as well as a perception that the DJCD was reneging on promised salary raises (Otto, 2003b). A placard held by one of the interpreters illustrates the frustration of interpreters, reading "You pay peanuts, you get monkeys: Promises + Lies = Strike" (Otto, 2003a). The DJCD has subsequently delivered a salary rise to the lower levels of interpreters, but a lack of funds has prevented a salary rise for the upper levels (Otto, 2003a). Before the salary rise, a Level 2 interpreter received R34 389 pa, level 3 interpreters R39 488 pa and Level 4 interpreters R46 353 pa. Level 2, 3 and 4 interpreters have subsequently been upgraded and receive R60 000 pa, whilst Level 5 interpreters have been upgraded to R80 000 pa (*Pretoria News* 20/10/2003).

Post	A	AR	Total
<b>Chief Inspector of Interpreters</b>	7	-6	1
<b>Inspector of Interpreters</b>	9	4	13
<b>Principal Court Interpreter</b>	40	6	46
<b>Court Interpreter</b>	1316	156	1472
<b>Total</b>	<b>1372</b>	<b>160</b>	<b>1532</b>

4.4.5 A stands for presently approved posts.

4.4.6 AR stands for already recommended posts

Adapted from DJCD (2002)

#### **Table 6 Posts available for Interpreters**

It is most peculiar that interpreters receive so little remuneration for the work that they do. As I established in Section 4.2, court interpreters have a very important role in the legal system. Without the court interpreter, the courts would not be able to function. Additionally, it has also been established that the job of a court interpreter is

extremely demanding. They are expected to be experts in a number of areas and they also, in many cases, do more work than any other official in a court. It is hardly surprising that representatives of other court officials were sympathetic towards the strikes, saying "They are essential... Yet the Department of Justice does not take care of them. Look after them and they will be able to provide a better service" (*Pretoria News* 08/10/2003).

A further environmental problem faced by interpreters is the difference in expectations amongst other members of the courts. These expectations revolve, primarily, around the question of whether an interpreter should 'interpret' or 'translate'. The primary duty of an interpreter is to 'interpret'. However, as Wadensjö (1998) points out, there is often confusion between 'interpreting' and 'translating' (see Chapter 2, Section 2.4.2). Gary distinguishes between translation and interpretation, saying "you must convey the message or the idea so that all parties understand what is in the mind of the speaker... We don't translate". Amongst the other respondents there also is a general recognition that 'interpreting' does not mean 'translating'. David states that "...sometimes you convey the general meaning of what has been said, and sometimes you have to convey the literal translation of the words that were used".

Most of the respondents agreed that they do not desire, or expect, a direct translation from one language to another. Andrew, for instance, believes that there should be a mixture of the two, stating

You stick as close as possible to the literal translation, but in instances where the literal is insufficient to convey the essence of what is being put or what is being asked. For example if a witness makes a gesture the interpreter has to say "Your Worship the witness has made a downward stabbing motion with his right hand" and that has to be conveyed. Obviously you cannot interpret a motion, so the essence of what is coming across has to be reflected onto the record. So I think if you are going to go for one or the other then somewhere along the line you are going to lose out on the kaleidoscope, the fullness of what is actually being communicated.

Similarly, James feels that there should not be a focus on either interpreting or translation. Thus, he feels that there should not be a general interpretation, but also not a word for word translation. He expects the interpreter to simply get the specific ideas across to the witness so that s/he is clear about what the prosecutor wants.

However, not all participants in a trial are satisfied with plain 'interpreting' in the sense that I have used it above. Jeff, however, firmly believes that interpreters should be translating what has been said, rather than conveying the general meanings.

During the interviews with the lawyers and prosecutors, I got the impression that interpreting is a rather simple process. One simply takes what another person has said, and renders it into another language. As all interpreters are bilingual (at the very least) there should be no problem involved in this process. There is no indication that many of the other participants are aware of the concentration levels needed to interpret consistently for up to 6 hours. Simon is the only participant (other than the interpreters) who appears to understand how much effort interpreting takes, and what it takes out of the interpreters. He says that "they are sometimes interpreting for 5 to 6 hours and I think they get tired naturally".

A final environmental problem experienced by interpreters is that of the other participants in the courtroom, particularly the witnesses. A large majority of the witnesses and accused are very poorly educated. As such, they often do not understand questions that are asked, and, hence, give very strange replies. These replies are not, however, always attributed to the witness. Mark states that when he is interpreting he cannot make assumptions about what the witness is trying to say, he can only pass on what the witness is actually saying – even if it makes no sense. This sometimes lands him in trouble, and the Magistrate will shout at him – when it is the fault of the witness. Carol also believes that the witnesses can be problematic

You have got cases where elderly people come to court. You say this to him, interpret whatever has been said. Then that person will answer something different. Then at the end of the day it seems as if you did not interpret what was said by the other person, whereas you did. People they don't listen. Some people think that they understand the court proceedings whereas in most cases they find out that they don't understand. Then they will start jumping to answer whereas they did not understand the question. At the end of the day it ends up being that you did not interpret what was said, whereas you did except the person did not understand the question.

Mark also points to problems with the Magistrates (especially those with big moustaches!) and prosecutors who speak softly, or with their hands over their mouths. When he asks them to repeat something they get angry, and shout at him. Of course

when they are shouting, they move their hands away and they speak up – so he can hear them perfectly!

#### **4.5.4 Training and Administration of Interpreters**

One of the biggest problems that is identified by the interpreters is that of the training that they receive (see Chapter 2, Section 2.4.4). Moeketsi (1999: 136) states that the "existing attempts to train court interpreters are as feeble as they are ineffective". This sentiment is echoed by all of the interpreters that I interviewed. In this section of the chapter, I begin by briefly examining the qualifications required to become an interpreter, the type of training that interpreters receive, and whether this training is sufficient. I also examine the level of interim training (in-service), as well as the problems surrounding interpreter supervision in Grahamstown. I conclude this section by discussing the viewpoint of the DJCD with regard to interpreter training to assess whether the problem is being recognised and adequately dealt with.

##### **4.5.4.1 Qualifications and Employment of Interpreters**

While the hiring of interpreters is discussed more fully in Chapter 2 (Section 2.3.4), I would like to expand briefly on the qualifications needed to become an interpreter, as well as on how interpreters are hired. Until 2001, the starting requirement for an interpreter was a Grade 10 level education (Appendix D-1). It is only when one applies for the post of Principal Court Interpreter or above that a Grade 12 becomes a job requirement. Given that the majority of interpreters are black South Africans, and given that the level of schooling for black South Africans is notoriously sub-standard, these qualifications would appear to be insufficient for the job of interpreting. Chris identifies this as a major issue in interpreting, saying that the English of those who come out of "black schools...is very, very poor". Additionally, a court interpreter is required to do a language test. There is no information about what this language test is, which languages are tested and how they are tested. While these starting qualifications have been upgraded (see Appendix D-1), the problem remains that the hiring process is a haphazard one, and does not guarantee a successful interpreter.

A second issue that needs to be raised is that most interpreters are exposed to the rigors of court interpreting before they have even been trained. A beginning

interpreter is assigned to a station, and only later will s/he be sent to Justice College for the Beginners Course. Debby describes her first day on the job as follows

...when I started working in court there were some problems because I was not taken to be trained and go to court. No I was not. First day I was busy before I was interviewed. A court orderly came into the door and told the Inspector "they want an interpreter". I don't know even what I was going to do in court but I started. I didn't even know that I must stand there, and talk to the Magistrate, "Your Worship". I just interpreted. I ran from the Magistrate to the witness or the accused. At that stage I didn't even know that you have to stand in one place and control the court. I was embarrassed but I proceeded.

There are two potential problems that arise out of a situation like the one described above. The first is that it must be extremely unfair on the interpreter, who is required to perform a task of which they know absolutely nothing. The second (which is discussed further in Section 4.5.6) is that this could reinforce perceptions that already exist that court interpreting is unprofessional.

#### **4.5.4.2 Interpreter Training**

There are two courses that are arranged for interpreters at Justice College in Pretoria (unfortunately, despite repeated attempts to obtain details of the content of these courses, the qualifications of the teachers, the duration of and feedback on the courses, I have received no information from Justice College). The first course that an interpreter will go through is the Beginners Course. An Advanced Course is also offered after an interpreter has gained a little more experience. This Advanced Course was originally only offered to Regional and High Court interpreters, but is now offered to all levels of interpreters. All of the interpreters who were interviewed had gone through both the Beginners Course and the Advanced Course.

The duration of the Beginners Course is two weeks. During this training, the interpreters are taught the basics of interpreting, as well as various legal courses. Debby says that she was taught how to interpret in court, what the expectations are of an interpreter as well an introduction to various legal Acts and procedures. The overwhelming opinion amongst the interpreters, however, is that this course was not sufficient. A constant theme throughout Mark's interview was the fact that the training he received was insufficient. He says that

From both those courses I didn't learn a thing of actual interpreting. What I was taught was to sit there and be told that "this is a stool, it is used by the court interpreter, this is a bench, used by the Magistrate, those are the chairs that are used by court orderlies, this is a witness box". This is not good. It didn't teach me anything.

Mark feels that everything that he has learnt, he has learnt by himself, through experience in court. Similarly, Gary feels that after returning from such a course, one should be better than when one left, but this is not happening. He says that even though the principles and basics are taught on this course, "that is still just theory. The most important part of it is in court".

The Advanced Course is apparently slightly better. In this course, the interpreters are exposed to more technical aspects of the law, as well as how to handle different situations that might arise in court. Carol, for instance, learnt a lot more about the techniques of fingerprinting (essential in housebreaking cases), as well as how to deal with rape cases. Other areas that are taught are DNA tests as well as ballistics. A central aspect of the course is to familiarise interpreters with medical terms. As such, they go to MEDUNSA and observe a post-mortem. In terms of actual interpreting, it appears that the assumption is there that the interpreters are able to handle that side of their job, so the focus is on more specialised training in various aspects.

There were a number of problematic areas pointed out by the interpreters where they feel the courses could be improved. Mark, for instance feels that the courses are too widely spaced apart. He believes that interpreters should be sent on courses as often as every six months, to refresh their skills. Carol echoes this sentiment, as she believes that each day in court presents a different challenge and a different problem. As such, more regular training would benefit interpreters greatly. Mark also believes that a more comprehensive training in legal terminology is important. He says that at times, particularly when Magistrates are delivering judgements, he cannot interpret properly.

A particularly worrying aspect about the problems experienced by interpreters and the training given (or not), is that most of the problems experienced are not new. Carol states that whilst she was attending the Advanced Course

I was with people who have been 15 years, 20 years interpreting. I have been with them, and heard them complaining saying they've got these difficulties. I was like 'these people have been interpreting for years, more than I have, but they are still encountering the same problems!'

If interpreters are encountering the same problems, the implication is that there is not sufficient feedback being given (or, indeed, sought) by the DJCD with regard to the problems experienced by their employees. This is reflected in the fact that none of the training appears to be directly targeted at providing solutions for these common problems.

In 1998, a University Diploma in Legal Translation and Interpreting was launched by the DJCD (see Section 2.3.4) (Ngomane, 1999). Ostensibly new interpreters would be put through this course, and old interpreters would be given an opportunity to improve on their skills. None of the interpreters in the Magistrates' Court in Grahamstown have been on this Diploma course, although a few of the interpreters in the High Court have attended the course. With the availability of such a resource, it is worrying that the DJCD is not urging interpreters to take the course. They do offer bursaries for those who want to study further, but very few interpreters appear to want to do this.

Gary believes that this reluctance to do the Diploma is largely due to laziness. In truth, besides offering bursaries, the DJCD appears to do very little to encourage interpreters to do the Diploma. Gary says that the Department has a mandate that everyone should improve their skills, however there is no time frame attached to this improvement. Thus, if an interpreter does not want to do the course, s/he is not compelled to do so. While laziness might account for some of the interpreters, there are more compelling reasons. Having introduced the Diploma, the DJCD made no provision to evaluate and recognise the qualification gained (DJCD, 2002). Thus, interpreters who completed the Diploma received no reward (monetary or in terms of promotion). As such, there is little incentive amongst interpreters to complete the Diploma. As a result of this lack of recognition, where interpreters do study, they tend to do other degrees – such as an LLB.

There are indications, however that the DJCD is aware that the training given to interpreters needs to be improved. An Internal Memorandum (2002: 8) states that the "training and development of Court Interpreters cannot be overemphasised". They acknowledge that crime is constantly evolving, and interpreters often find themselves without the proper vocabulary to perform their duties. As such, the DJCD (2002: 9) stresses that "there is a necessity for proper and continuous training of Court Interpreters". The Memorandum also discusses the role of Justice College in providing proper training for court interpreters. At this time, Justice College performs three functions, administrative, personnel and training. This has led to the training of interpreters being compromised (DJCD, 2002). The Memorandum points out that the multiplicity of functions being performed by Justice College means that "training is not properly attended to and thus lacks (sic) behind" (DJCD, 2002: 8). As such, it recommends that the administrative and personnel functions be removed from Justice College.

The Memorandum highlights two particular areas where improvements can be made to the training programme. The first is that Justice College needs to design programmes "that are more practical and appropriate...to further develop and professionalise interpretation" (DJCD, 2002: 9). It was also recognised that interpreters are not trained in people skills. It was determined that Justice College should introduce courses to improve people skills, and hence enhance the leadership, management and development of interpreters" (DJCD, 2002: 9).

The development of interpreters has also received criticism from the respondents. A particular problem that exists in Grahamstown is that there is no in-service training given to interpreters. Once an interpreter has completed their training courses, they are basically left to their own devices. In other words there is no further development of interpreters outside of the training courses. All of the interpreters (as well as some of the lawyers and prosecutors) commented on the lack of in-service training or mentoring once they got back to their stations. Interpreters are really only left with each other for support. Carol, for example, was advised to go with her problems to her colleagues to try and get solutions.

The main reason for this lack of in-service training in Grahamstown is that Grahamstown does not have a Principal Court Interpreter. As mentioned in Section 4.3.2, the Principal Court Interpreter performs two vital duties, the supervision of interpreters and in-service training of court interpreters. Without a Principal in Grahamstown, neither of these is being performed. Gary, who is the most senior of the interpreters, argues that Grahamstown should have a Principal Interpreter, and that the lack of this post in Grahamstown is problematic. He has been forced to assume a number of the duties of the Principal. As such, he has assumed a largely administrative role – which he finds particularly demoralising. He does say, however, that the post of a Principal Court Interpreter for Grahamstown is being discussed at the Regional Office.

The lack of proper supervision is a related problem. As mentioned above, Gary has been forced into a role for which he has neither the training nor the desire. He is largely confined to his office, where he performs a myriad of administrative duties. This means that he does not even have time to go into the courts to evaluate the performance of his colleagues. Another consequence that he faces is that, because he no longer works in the courts, the other interpreters do not view him as someone who can listen to, and help with, their problems. In effect, the most experienced interpreter in Grahamstown has been largely sidelined, with the result that his experience is not accessible to the younger, less experienced interpreters.

The DJCD has also identified the lack of supervision of interpreters as a problem. The foremost problem identified is that there are insufficient posts delegated for supervisory functions in the various sub-offices (DJCD, 2002). This lack of supervision has meant that interpreters are largely left to their own devices, or are at the mercy of other court officials. This has resulted, amongst other things, in interpreters being used to interpret languages in which they are not proficient. The DJCD (2002: 7) also recognised that "in most sub-offices...performance appraisal is foreign to Court Interpreters...because administrative and judicial officers are not willing to take responsibility for performance appraisal reports". In Grahamstown, for example, this administrative officer would be the Control Officer.

The fact that interpreters fall under the supervision of the Control Officer creates a separate, yet related, set of problems. The Control Officer in Grahamstown is not a trained court interpreter. As such, he has very little idea of the system of interpreting and the problems faced by interpreters. As Debby says, "even the Head of the Office doesn't know what is happening in court. He can't even write a report about me because he doesn't know what to write". Mark also identifies this as a problem

...the guy who is the head of this area here is concentrating more on the administrative, not on us. I am not joking, I don't even think he once went into court to hear my performance. He only hears reports from the Magistrates, that Mr So-and-so is a very good interpreter, outlining what the problems are with the interpreter, not himself. So he is concentrating more on the other side, the admin side.

There can be no suggestion that the Control Officer is at fault here. In Grahamstown, the Control Officer is an administrator, and cannot be expected to be able to supervise and evaluate interpreters properly.

A related, contentious issue is that there is no national body (besides Unions) that takes specific care of the interests of interpreters. Thus, while lawyers have the Law Society, Magistrates the Magistrates Commission and prosecutors the National Prosecuting Authority, interpreters fall under the Administrative Division. As such, they are often viewed as clerks, and this causes a lot of resentment. The perception amongst the interpreters is that administrators do not understand the work an interpreter does. Debby asks why interpreters should fall under the Administrative Division (who are predominantly referred to as 'the clerks'), as they "do not even understand what we are talking about". Mark argues that they are expected to help the clerks out, but they, in return, receive little support or help from the clerks. This has also been identified as a problem by the DJCD. Various investigations have been conducted into issues affecting interpreters, but "the recommendations were not implemented because there is no unit at a National level to manage interpreting issues" (DJCD, 2002: 15).

#### **4.5.5 Summary**

In this section of the chapter I have reported on the types of problems that are a part of interpreting in South Africa. In addition, I have discussed suggestions made by the interpreters to try and solve these problems and I have determined the extent to which

the DJCD recognises the problems that occur, and what steps they have taken, or are contemplating taking, in order to provide solutions for these problems. As I mentioned, however, it has been extremely difficult to obtain any feedback from the DJCD with regard to these issues. As a result I have relied on two Internal Memoranda issued by the Department to evaluate their awareness of the problems. There are four basic sets of problems that an interpreter encounters. Three of these, language and environmental problems and interpreter training are addressed in this section. The fourth problem, that of attitudes towards interpreters, is addressed in the following section.

The first set of problems I addressed were those relating to the language skills required of interpreters. There is a perception amongst the respondents that the language skills, particularly Afrikaans, of the interpreters are not of a high enough standard. This results in a number of errors in interpretation. A further language problem is the difficulty experienced by many interpreters in translating complex legal terminology – particularly the judgements delivered by Magistrates. There are numerous dialects of Xhosa, and most of the interpreters are not conversant with all of them. This is particularly an issue when one of the witnesses is from the Transkei. Similarly, there are also difficulties in interpreting cultural concepts and traditions into English.

The second set of problems are the environmental issues that affect interpreters in the process of interpreting. The most prevalent environmental problem is that interpreting is extremely mentally demanding, and interpreters struggle to maintain concentration for long periods of time. Lapses in concentration were pinpointed as one of the major causes of interpreter errors. Another problem is that of professionalism. Interpreters are not perceived as being professional enough. There are a number of reasons for this perceived lack of professionalism. Interpreters are not really motivated to perform their duties well. Poor salaries and conditions of employment mean that there is a sense of despondency amongst interpreters. Interpreters also believe that often they get blamed for witnesses not understanding the questions asked by attorneys and prosecutors. The final environmental issue is that there is a sense of confusion amongst certain of the respondents as to whether

interpreters should 'interpret' or 'translate'. Thus the expectations of other members of the court could pose a problem for interpreters.

The final set of problems relates to the training, supervision and administration of interpreters. There is no doubt that the training received by interpreters is sub-standard. All of the interpreters were dissatisfied with the training they had received. The DJCD recognises this as a problem, and is taking steps to ensure that training is practical and applicable to interpreters. There is very little supervision of interpreters in Grahamstown. There is no post of Principal Court Interpreter, so the duties of this post have been delegated to a Senior Interpreter. He is tied up with administrative issues, and thus has no opportunity to supervise properly or to arrange in-service training. Linked to this problem is the fact that interpreters have no national body to look after their interests. They fall under the Administrative Division – an arrangement that is wholly unsatisfactory. The Administrative Division has very little idea about the problems involved in interpreting, and cannot provide sufficient support for the interpreters.

## **4.6 Attitudes and Ideologies**

### **4.6.1 Overview**

In this section of the Chapter, I begin to critically analyse the attitudes of members of the court towards interpreters. Primarily, this will enable me to determine how other members of the court perceive the 'profession' of interpreting, as well as their attitudes towards the practitioners. Wadensjö (1998) believes that interpreting is not often regarded as a profession, and is very much the 'poor relative' of translation. By examining the attitudes of the court towards interpreting, I can ascertain whether this perception remains. These attitudes will also help answer my final 'narrow' research question regarding whose interests are served by maintaining the current state of affairs in interpreting.

### **4.6.2 Attitudes towards Interpreters**

Without exception, the interpreters believe that their status in the court does not reflect the work that they do or their importance in the court. There is a general feeling that they are looked down upon by other members of the court, and are ranked along with the stenographer and the court orderly. Gary does feel that the status of

interpreters has improved somewhat. He remembers that in the 'old days', interpreters were never consulted about breaks in court, and they were referred to simply as 'Tolke' (Afrikaans for 'Interpreter'). He believes that this has changed, and interpreters have more authority in the courts, and are now referred to as 'Mr So and So' instead of 'Tolke'. Even though he believes matters have changed, Gary does not go so far as to say that interpreters are viewed as equals.

Mark disagrees completely. He feels that interpreters are looked down upon. He feels that "the interpreter is nothing". This perception is largely created by the apparent lack of understanding demonstrated by members of the court towards interpreting. This issue has already been raised (see Section 4.5.3), but as it illustrates the attitudes of court officials, it is worthwhile exploring it further. Mark believes that one of the biggest problems is that interpreters get virtually no break from their jobs

...sometimes you find a lawyer who wants to consult with his client, but he can't speak Xhosa, maybe he is English or Afrikaans speaking, he gets me with my cup of tea at the courtyard, "Meneer Tolk, kom asseblief hierso hoor (Mr Interpreter, please come here). Hoor my gou hier uit (Listen to me quickly)". That guy is not going to pay me, for my tea-time. The prosecutor wants to consult with the witness or witnesses. He or she can't communicate with these people, "Mr Interpreter please help me out here" they say. I am a court interpreter, not a consulting interpreter.

Similarly, Debby says that they hardly ever get time off. They are constantly under pressure to conclude cases. This results in an interpreter sometimes sitting in court, interpreting, from 9am up to 6pm at times – without a break. This constant pressure, as well as the stress of interpreting has resulted in very poor morale amongst the interpreters.

There is also a sense amongst the interpreters that other members of the court are not knowledgeable enough about interpreting. In Section 4.5.3 I discussed the confusion arising from expectation as to whether interpreters should 'interpret' or 'translate'. There also appears to be very little perception as to the difficulties involved in interpreting. Carol believes that members of the court don't understand,

They think the interpreter just interprets. That is why they always say "No you just say whatever the guy is saying". It's not about that. If the guy is saying something you have to think about that before you convey it

because you are not a translator. It is not as easy as translating... So I don't think other people understand what an interpreter's work is.

Among the lawyers and prosecutors, there were mixed responses to how the court views interpreters. James believes that interpreters are seen as being equal to other members of the court. He believes that if there is a perception that court interpreters are less than equal, it is because they do not do their jobs. Penny also believes that attitudes towards interpreters are largely linked to performance. She says that

I regard them as court officials, but I think it depends on the behaviour of each particular interpreter as to how they are viewed by other court officials, because if you get that interpreter who does his work properly and knows what he is doing you will see that the court officials will respect that person. I think it is all in their hands... It really depends on how one behaves himself, how one does his job.

Simon and Andrew, however, believe that interpreters are not treated as equals in the court. While their importance to the justice system is widely recognised, Andrew believes that often they are looked down upon "as similar to somebody doing an administrative task". Simon also feels that interpreters do not get the respect and credit they deserve. He believes that most members of the court are unaware of the difficulties involved in interpreting, and view interpreters as 'secondary' figures in the court.

There are two possible reasons mooted for why members of the court look down on interpreters. Firstly, interpreters do not, generally, have an academic qualification behind their name. Carol believes that "they don't see me as a professional... Because we don't have a degree, we don't have a diploma, they look down on us". Andrew and Simon agree that one of the possible reasons for the diminished status of interpreters is the fact that they are not regarded as 'professionals'. Andrew believes that interpreters should be made to get formal qualifications – particularly in the languages they are going to be interpreting in. A second possible reason for why interpreters are looked down upon, is instances of unprofessional behaviour from interpreters themselves (as discussed in Section 4.5.3 above), such as tardiness, absenteeism etc.

#### **4.6.3 Who Benefits from the *Status Quo*?**

It is difficult to come to any concrete conclusions about whose interests might be served in maintaining the current state of poor interpreting. If one identifies the key

players in the legal system, the Department of Justice and Constitutional Development, Magistrates, lawyers, prosecutors, interpreters and those accused of crimes, it is apparent that there are certain parties that gain no benefit from the current system. There is certainly no benefit gained for the Magistrates, interpreters and accused. The only parties that could possibly benefit are the DJCD, lawyers and prosecutors.

The Department of Justice and Constitutional Development must shoulder a lot of responsibility for the state of interpreting. It must be acknowledged that they inherited an extremely poor system to begin with, but they have apparently done nothing to improve the state of interpreting, or for that matter, interpreters. I will examine two specific issues, salaries and training.

The issue of salaries has already been discussed in Section 4.3.5 above. However, it is worthwhile re-examining this issue in the light of the role of the DJCD in maintaining poor standards of interpreting. As I have already established, interpreters play a vital role in the court, and yet they are poorly remunerated. The starting salary for level 2 interpreters was R34 389pa, level 3 interpreters R39 488pa and level 4 interpreters R46 353pa. Even though interpreters have received a substantial salary increase, they are still poorly remunerated in comparison to other members of the court. By way of comparison, for example, the entry-level salary for state prosecutors is R94 725 pa.

If we were to regard the role of the state prosecutor as being equal (as James suggests) to that of an interpreter, it is extremely difficult to explain the large disparity (in some cases nearly R60 000) in salaries received. There are two possible explanations for the difference in salaries. The first is that prosecutors and interpreters are controlled by two different national bodies. These two bodies might operate different pay structures. I have not been able to determine whether this is in fact the case. However, government, to a large degree, tries to maintain uniform salary scales, so this explanation is relatively unlikely.

The second possible explanation is that, all other things being equal, the only difference between an interpreter and a prosecutor is that a prosecutor will generally

have some type of formal academic qualification. As I have established, interpreters do not. I also established, in Section 4.5.4.2, that the Department has made no attempt to encourage interpreters to upgrade their skills (outside of Justice College). It has a mandate that interpreters improve their skills, but this is not linked to any specific time frame. While the Department provides bursaries for interpreters to do the Diploma course in Interpreting, they acknowledge that the Diploma has been largely unsuccessful in that it was never linked to a material benefit. If it transpires that the difference in salaries is related to qualifications, then could it be possible that the Department is unwilling to upgrade interpreter skills to save on salaries? While there is no absolute proof of this, there is a pattern of systematic underdevelopment of interpreters that makes this argument plausible.

The other parties that could possibly benefit from poor interpreting are the lawyers and prosecutors. There are two ways in which an attorney (by this I am referring to both lawyers and prosecutors) can use the system of interpreting to their advantage. Simon believes that making use of an interpreter in a trial can be beneficial, as

... the majority of my criminal work is Xhosa-speaking people and even if they can speak English when they give you evidence they would naturally prefer to give it in their mother tongue. They're not comfortable. It also can be an advantage because they get time to think about their answer. If they get a translator, they've got that extra bit of time going to think of an answer.

The second advantage applies only to those attorneys who understand the languages that are being used. That attorney is in a position to detect errors and decide whether or not to challenge them or not. David, for instance states that if none of the other officers of the court understand a language (for example Xhosa), "we will simply sit in court, and only pick it up when we think it assists us, whatever has been said". The implication is that if the mistake is prejudicial, it will be challenged. In South Africa, there is no legislative requirement that officers of the court report mistakes in interpreting. In a casual conversation with Simon, I brought up this issue, and he informed me that while there is no legal requirement, there is an ethical and moral requirement not to use mistakes to your benefit. If an attorney were to be caught doing this, they could be disciplined.

However, an argument could also be made that the DJCD is also a loser in maintaining poor interpreting. An indifferent legal system reflects poorly on the competence of the Department. Thus, it could be argued that it would be in the best interests of the Department to improve standards of interpreting. So why has this not happened? If the interpreters are so vital, what explanation exists for their neglect at the hands of the Department? There are, of course, disadvantages for the attorneys as well. While some mistakes might favour your client, others might not. As such bad interpreting is a lottery, and while you might benefit from it, you can also suffer at its hands. Similarly any attorney who is caught abusing the system of interpreting will discredit the profession. It is therefore in the best interests of the Law Society and the National Prosecuting Authority to argue for better interpreting. Once again then the question is why do most attorneys feel that there is no problem – despite all evidence to the contrary?

#### **4.6.4 Summary**

In this section of the Chapter, I have firstly discussed the attitudes of members of the court towards interpreters. There is a general consensus that court interpreters are looked down upon by other members of the legal profession. This is evident in the way that interpreters are treated by the court, as well as by a lack of understanding of the difficulties involved in interpreting. One of the major reasons why the status of interpreters is so low is that they are not regarded as being 'professionals'. A number of the respondents felt that the lack of a formal academic qualification was the primary reason why interpreters have a low status. The other reason put forward is that certain interpreters do not act in a professional manner, and this impacts on the status of interpreters.

Secondly, I have attempted to answer the question, "who benefits from the *status quo*"? It is immediately apparent that there are only two parties who might, the Department and the attorneys. Although interpreters are a vital party in court, they are poorly remunerated as compared to other parties. The only apparent reason for this is that they do not have a qualification. If the salary levels are based on qualifications, the Department might have a vested interest in not training interpreters properly to avoid the resulting salary rises. Giving credence to this explanation is the fact that the Department has a track record of not developing interpreter skills or

encouraging interpreters to take the Diploma course. The other party that stands to benefit are the attorneys. There are two ways in which this might occur. An attorney can use the system of interpreting to gain his/her client extra time to answer a question. Additionally, an attorney who speaks the languages being used can decide which mistakes to act on – depending whether they are prejudicial to his/her client or not.

#### **4.7 Conclusion**

The primary goal of this chapter has been to answer the 5 'narrow' questions that were posed at the outset of this research project. The questions were all designed to give me a broader understanding of what an interpreter does, what the perceptions are of interpreters, what problems they face, and who might best be served by maintaining the poor state of interpreting in courts. My first research question (4a) sought to discover the duties of interpreters. There are two main duties of a court interpreter, namely to do elementary clerical work and to interpret. While I have expressed some concern as to the vague description of the clerical work necessary, the focus of the rest of the chapter is on interpreting itself.

There were two interesting trends that emerged while answering the second research question (4b). The first is that it is the interpreters themselves who are the most critical about the service they deliver. All of them believe that the state of interpreting could seriously jeopardise the administration of justice in South Africa. Interestingly enough, the lawyers felt that there was no real threat to the legal system from interpreting, as the mistakes that occur are not serious enough to change the course of a trial. A possible explanation for this divergence in views is that lawyers do not really have an inside perspective on the state of interpreting. They are only generally in court when conducting their own cases, and might not see what an interpreter does for the whole day. Nevertheless, they are all aware that mistakes are being made, and I must seriously doubt that they do believe that this is beneficial to justice.

There are a number of difficulties that confront interpreters during the course of their duties. While most of these are covered in the literature (see Chapter 2), there are a number of interesting environmental issues that came to light. The issues that become more relevant further in the chapter are those of professionalism and salaries. Many

of the attorneys felt that the interpreters are unprofessional. There is no doubt that some interpreters are more committed than others, so charges of unprofessionalism are not unwarranted. This lack of professionalism can be attributed to two main factors, motivation and poor salaries. Interpreters receive very poor remuneration for the work that they do, and naturally this is demotivating. Another serious problem is the level of training received by interpreters. There is a worrying lack of urgency, on the part of the DJCD to address this issue. Although a Diploma course in interpreting has been set up, there is no incentive offered for interpreters to do the course. Consequently, not one of the interpreters has bothered to do it.

This lack of drive by the Department lays it open to the charge that they have a vested interest in maintaining the poor levels of interpreting in the courts. The salary earned by an entry-level prosecutor is far above that earned by fairly experienced interpreters – despite the fact that interpreters are as important as prosecutors. One explanation for this disparity in salaries is that prosecutors tend to have formal qualifications, and interpreters do not. One conclusion that can be drawn is that the Department is delinquent in requiring interpreters to improve their standards (by way of the Diploma) in order to avoid paying higher salaries.

One issue that deserves a final mention is the almost complete lack of understanding of the qualifications, training and mistakes of interpreters by other members of the court. Very few of the attorneys were able to elaborate on the difficulties of interpreting beyond surface level language errors. This is accompanied by a *laissez faire* attitude towards the mistakes made by interpreters. There is a general sense of unconcern, an 'I am alright Jack' attitude that is a little disturbing. It is possibly also a contributory factor towards the poor standard of interpreting. If other members of the court do not complain about the poor standard of interpreting, then the pattern is bound to continue.

In the final chapter of this report, I summarise the main conclusions of the thesis. These conclusions I then use to answer the final 'broad' research question, namely the issue of equity in the legal system. I also make a number of recommendations based on the finding of this report. Finally, I discuss some of the limitations of this study, and suggest possible avenues of future research.

## CHAPTER 5 – CONCLUSIONS, RECOMMENDATIONS AND FUTURE RESEARCH POSSIBILITIES

### 5.1 Introduction

In this chapter, I deal, as part of my conclusions, with the final research question that needs answering, namely, "Is the language policy in the courts, as it is currently applied, equitable?" I present recommendations, largely based on the suggestions offered by the respondents and finally, I outline some of the limitations of the report, and offer some suggestions for future research.

### 5.2 The Question of 'Equity'

In order to answer the question about equity in the courts, I would like to return to the policy of South Africa regarding 'equity'. Section 6(4) of the Language Policy of South Africa, states that

The national government and provincial governments, by legislative and other measures, must regulate and monitor their use of official languages. Without detracting from the provisions of subsection (2), all official languages must enjoy parity of esteem and must be treated **equitably** (my emphasis).

Using the definition provided by LANGTAG (1996: 45), "equity refers to fairness, justice and reasonableness". The LANGTAG (1996: 45) report further clarifies that the term "'reasonableness' should not be used as a means of excluding people from linguistically accessible services". It has been my contention throughout the course of this thesis that this is precisely what happens in the legal system.

In order to demonstrate this, I return to the 4 'broad' research questions posed at the beginning of the report (Section 1.3) and deal with each in order:

1. What is the language policy of South Africa regarding the use of official languages in court?
2. Is this policy applied in the Magistrates' Court in Grahamstown?
3. If it is, is it applied equally?
4. If it is, is it applied equitably?

As regards the first question: The language policy of South Africa regarding the use of official languages in court is laid down in a number of legislative Acts. Firstly, Section 35 [3][k] of the Constitution states that everyone has the right to be tried in a language that s/he understands, or to have the proceedings interpreted into a language that s/he understands. Secondly, the Magistrates' Court Act (Section 6 [2]) states that if evidence is given in a language in which the accused is not conversant, a **competent** interpreter should translate for the accused. The second question seeks to determine whether indeed the language policy is applied in the Magistrates' Court in Grahamstown. All courts in South Africa are bound by the specific provisions of the Constitution, and are bound to uphold the Constitution and the laws governing the country. The courts in Grahamstown make extensive use of interpreters, so the answer to this question must be 'yes'. The third question asks whether the language policy is applied equally. Once again, the Constitution (Chapter 2 [9][1]) states that "everyone is equal before the law and has the right to equal protection and benefit of the law". In this regard, the answer, therefore, must also be 'yes'.

The final question, whether the language policy is applied equitably is more difficult to answer. It is my contention that any attempt to answer this question must involve an examination of the system of interpreting. Equity and interpreting are issues that are inextricably linked. The interpreter is the 'professional language practitioner' of the court. S/he is the mouthpiece through which people of different cultures and languages can communicate. Thus, if the system of interpreting functions properly, one may assume that the language policy is 'equitable'. If, however, the system is flawed, then 'equity', must be, of a necessity, compromised. In order to establish the facts, I designed 5 'narrow' questions to determine the state of interpreting in South Africa:

- 4a What are the duties of a court interpreter?
- 4b Is something wrong with court interpreting?
- 4c If so, what are the problems with the current system of interpreters?
- 4d What is being done to remedy these problems?
- 4e Whose interests are served by maintaining the *status quo*?

While these questions are answered in the previous chapter, I will re-visit some of the appropriate questions to find an answer for the question of 'equity'. The evidence in

respect to question 4b is particularly important, as it establishes that there are problems with the state of court interpreting in South Africa. All of the respondents admitted that they had experienced instances of interpreter errors in court. The crucial issue that is raised is how serious these errors are to the proceedings of a case. In my opinion, the law is a very precise area. As such, any mistake could negatively impact on the outcome of a case and, consequently, compromise the 'equity' of the courts. There are certainly some mistakes that are less serious than others (Chapter 4, Section 4.4.3), but we cannot run an efficient legal system based on the hope that most of the mistakes will not seriously affect the administration of justice. If we are to be serious about equity, these mistakes need to be eliminated totally.

The evidence in response to question 4c suggests that there are two broad categories of problems, linguistic and organisational, that afflict the system of interpreting. The linguistic problems are largely solvable, as they revolve around the complex nature of language(s). Intensive language training, and a focussed approach to corpus planning should see the majority of these errors eliminated. The second set of problems is more complex. They predominantly point to the relative inability of the Department of Justice and Constitutional Development to ensure that the structures around interpreters are sound and function efficiently. These problems too are not insoluble.

The evidence in response to question 4e, suggests that if there are ideologies in South Africa that are retarding the development of interpreting in courts, finding workable solutions to the problems will prove to be difficult. As I have indicated, there is at least a circumstantial case of deliberate neglect of court interpreters by the Department. Salaries are too low, training is negligible, supervision in some areas is non-existent and no effort is made to get interpreters to improve their skills. Similarly, the attorneys could also be accused of playing the system for their own benefit. Once again, the lack of concern for mistakes made or understanding of the process of interpreting provides a circumstantial case against the attorneys in South Africa (Chapter 4, Section 4.4.4). It must be stressed, however, that these allegations are by no means levelled at all of the abovementioned parties. There are concerned attorneys, and the Department appears to recognise some of the problems afflicting interpreting and appears to making moves in the right direction.

The inescapable conclusion, however, is that the legal system is not fair. Those who are reliant on the legal system for justice face a real risk that their right to justice could be compromised by the state of interpreting. Similarly, those who have abrogated their rights through criminal acts could end up benefiting from the state of interpreting. In a criminal case, the State is required to prove their case 'beyond a reasonable doubt'. There can be no 'reasonable doubt' that the system of interpreting is flawed. Consequently, there can be no 'reasonable doubt' that the application of 'equity' in South African courts has been compromised.

### **5.3 Recommendations**

As mentioned above (Section 5.2), the problems faced by the interpreting system are by no means unsolvable. However, the solutions to the myriad of problems that face interpreting will not be easy to find. I have identified 3 particular issues that need urgent attention:

The first issue that needs to be addressed is the training of interpreters. There are a number of measures that the Department could introduce to improve the training of interpreters:

- The Department has formulated a Diploma course in court interpreting. This Diploma should be compulsory for all new interpreters before they are employed in the courts. The benefit of this will be twofold; interpreters enter the courts with a thorough grounding in interpreting, and they also enter with a qualification – thereby raising their status in the legal system.
- Existing interpreters should also be actively encouraged to take the Diploma course. This active encouragement could include linking the Diploma to promotion of financial benefits. Therefore, an interpreter who does not do the Diploma will not be promoted.
- The role of Justice College needs to be reviewed. Firstly, it should be utilised solely for training purposes. Secondly, it could either offer the abovementioned Diploma, or it can be used on a more regular basis for refresher courses.
- The courses offered should be both theoretically sound and practically oriented. The interpreters need to be aware of why they are doing something,

as well as how they do it. The instructors therefore need to be able to cope with this task.

The second issue that needs to be examined is the administration and supervision of interpreters:

- Interpreters need to have their own national body. Currently there is no organisation that looks after their interests, or understands their particular role and problems. Such a body will also allow interpreters a voice in their own profession – a voice that is currently non-existent.
- The supervision of interpreters, including in-service training and mentoring needs to be increased. The Department has taken a step in the right direction by creating two new posts, but the need, particularly in Grahamstown, for Principal Court Interpreters is acute.

The third issue that needs to be addressed is the language problems experienced in court:

- Offering language courses either through Justice College, or linked to another tertiary institution (UNISA for example) will allow the interpreters to upgrade their language skills, eliminating 'translation' errors.
- There is a Centre for Legal Terminology in African Languages (based at UNISA), which needs to urgently address the issue of cognates for legal terms in the indigenous languages. While the Centre originated in 1987, there is little evidence that they have actually made any progress in translating legal terms into indigenous languages. This corpus planning is vital, both in terms of updating indigenous languages generally, and also in making the art of interpreting easier. Alternatively, the language of the court should be simplified, eliminating the complex, confusing and divisive legalese. Other national bodies, such as the Pan South African Language Board (PANSALB) and the National Language Service (NLS), also need to be included in these corpus planning efforts.
- The problem with dialects of indigenous languages is not as easy to solve. The best recommendation that can be made is that knowledge of the major dialects should be a requirement for the post of interpreter. This problem is

not as urgent, though, as other linguistic problems as the interpreter and the witness can usually come to some agreement about dialectal differences.

- A recommendation was made by myself to the respondents of the interviews that law degrees should include a compulsory course in the two languages of the court, English and Afrikaans, as well as the major indigenous language of the area. The rationale behind this is to produce more lawyers, prosecutors etc. who have a basic understanding of an indigenous language. This language requirement used to be enforced in law degrees, and there is no reason why it cannot be reintroduced.

The final issue that needs to be addressed is the raising of awareness of the role and job of interpreters amongst other court officials. Court officials need to be educated about the difficulties involved in interpreting, both in terms of concentration levels required, and in terms of the various other difficulties that have been discussed. Similarly, members of the legal profession should be encouraged not to accept bad interpreting. Review mechanisms, or complaints procedures, need to be set up and lawyers, prosecutors and Magistrates should be encouraged to use them. It is simply not good enough to just 'have a quiet word' with a negligent interpreter.

#### **5.4 Limitations and Future Research**

In this section of the chapter, I discuss various limitations to the applicability of the research. I describe both methodological limitations that I encountered, as well as limitations regarding the universal applicability of the research that has been conducted.

One of the main problems I encountered was getting sufficient respondents to constitute a sample large enough to make the research meaningful. The problem was not the willingness of the 'gatekeepers', the Control Officer and the Senior Prosecutor, but the busy schedules of the respondents themselves. All of the respondents are busy professionals, so I was required to fit in with their schedules. Some of the additional respondents that I would have liked to speak to could simply not give me the time due to their work. As such, the sample is fairly small. However, as the court in Grahamstown is also a fairly small one, I do not believe that

this constitutes a major problem. I believe that I have managed to obtain a fairly representative sample of respondents and viewpoints.

A second methodological limitation is the lack of observation in the research. I would have liked to be able to observe actual court cases to get firsthand data on the errors that are made during interpreting. However, as I do not speak any indigenous languages, observation was not really an option. I thus used observation more as a foundation for the formulation of interview questions. A limitation that is linked to this is that, for the same reason, I was largely unable to include an analysis of discourse features of court interaction. The mode of interaction in a court would have been an extremely interesting subject, particularly as it raises many issues about language and power and would have complemented and enriched my study.

I was also not able to develop any meaningful relationship with anyone in the Department of Justice outside of Grahamstown. I spoke to a person at Justice College about the courses offered there and e-mailed a list of questions to that person. However, after numerous e-mails I have still received no response to these questions. Similarly, I have attempted on numerous occasions to get someone within the Department of Justice to speak to me. From the Regional Office in East London, I was referred to the Head Office in Pretoria, and met a brick wall. On numerous occasions, I was passed from one person to the next, and when I finally managed to get a name, I could never track the person down. As such, the only voice that the Department has in this report is in the form of two Internal Memoranda that were provided by the interpreters in Grahamstown.

In terms of applicability of the research, I should stress that the research only describes the situation in Grahamstown. It must be recognised therefore that the situation described here is not necessarily the situation in courts across South Africa. I suspect that the situation in Grahamstown is, in many ways, representative of the general problems facing interpreting in South Africa, but there are many courts, particularly in the major urban centres, that are far worse off than Grahamstown. Similarly, there are probably courts that are better off. Each court will face its own set of problems: so certain aspects of this research are not generalisable.

The scope of this thesis has meant that I have focussed on a number of different aspects of court interpreting. Due to the space restrictions placed on the report, however, it has not always been possible to expand on issues such as attitudes towards interpreting/interpreters and the role of ideology and power in the courts. Similarly, I have mentioned a relative dearth of material on court interpreting, a fact bemoaned by Moeketsi (1999), the most prolific writer on the subject in South Africa. Thus, there are a number of issues raised by the thesis that could benefit from further research.

- Language errors in interpreting, particularly from 'European' languages to indigenous languages; the role of transfer errors and L1 interference; frequency and seriousness of errors; difficulties in the cultural transfer of meaning in the court – particularly when customs and traditions are involved.
- Status and power within court structures, particularly with regard to interpreters and their status in the courts.
- Corpus issues, such as legal terminology; the difficulties of creating legal terms in indigenous languages; other technical terms – medical, forensic, scientific etc.
- Policy debates; languages of the court; languages of record; equity in the court; the 'plain' language debate.

## **5.5 Conclusion**

To the layperson, court interpreting might appear to be a simple enough procedure. Underneath the veneer of outward competence, though, lie a number of serious technical and organisational issues that threaten to undermine the image of interpreters in the courts, as well as the application of justice in South Africa. Strong links have been drawn, in this thesis, between poor training, poor management and supervision and poor performance by interpreters. These issues together pose a potentially lethal threat to the administration of justice. It has also been shown that the principle of 'equity' (fairness) is an integral concept in the language policy that applies in courts. This very principle is supposed to ensure that, despite our numerous languages, religions and cultures, South Africans can always rely on the fact that when they are in the hands of the justice system, they will be treated fairly. The primary mediator between the legal system and the public, in the majority of cases, is

the interpreter. Poor interpreting, therefore, erodes the concept of 'fairness' and, along with it, the faith of the public in the judicial system.

This thesis has suggested a number of practical and achievable solutions to some of the problems that have been identified. The most urgent measure to be taken is the training (and in some cases re-training) of interpreters. Currently, most interpreters receive an average of six weeks training, which is patently insufficient. The perceived lack of education and training amongst interpreters has significantly undermined their power in the court. As the interpreter is the 'boss' of the courtroom, this situation cannot continue.

The interpreters also need to be given their own national body that will represent their interests. Such a body would also be more involved in the administration and supervision of interpreters. Serious and concerted corpus planning efforts need to be made by national bodies to ensure that terminological problems do not stand in the way of justice. This, of course, is not only a priority in the legal system, but in many other spheres as well. Finally, awareness of the difficulties faced by interpreters needs to be inculcated into other members of the legal profession. At present, shoddy interpreting is tolerated: this is the fault of everyone involved in the legal system.

As a final comment, the Department of Justice and Constitutional Development is faced with a massive task of restructuring and reformulating the system of interpreting in the courts. Although some of their policy documents have indicated that they are aware of the problems facing interpreters, a suggestion has been made that their possible motives in maintaining the current situation have not been in the best interests of the public or the legal system. As the Department directly responsible for the maintenance of the laws laid down in the remarkable Constitution that South Africa possesses, they are responsible for ensuring that nothing stands in the way of justice for all South Africans, particularly those who were 'previously disadvantaged' under apartheid, but who are now 'currently disadvantaged' under the law.

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## APPENDICES

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## APPENDIX A

### Appendix A-1: The Language Policy of South Africa

#### THE CONSTITUTION OF SOUTH AFRICA (ACT NO. 200 OF 1993)

#### CHAPTER 1 - FOUNDING PROVISIONS

#### SECTION 6

1. The official languages of the Republic are Sepedi, Sesotho, Setswana, siSwati, Tshivenda, Xitsonga, Afrikaans, English, isiNdebele, isiXhosa and isiZulu.
2. Recognising the historically diminished use and status of the indigenous languages of our people, the state must take practical and positive measures to elevate the status and advance the use of these languages.
3. (a) The national government and provincial governments may use any particular official languages for the purposes of government, taking into account usage, practicality, expense, regional circumstances and the balance of the needs and preferences of the population as a whole or in the province concerned; but the national government and each provincial government must use at least two official languages.  
  
(b) Municipalities must take into account the language usage and preferences of their residents.
4. The national government and provincial governments, by legislative and other measures, must regulate and monitor their use of official languages. Without detracting from the provisions of subsection (2), all official languages must enjoy parity of esteem and must be treated equitably.
5. A Pan South African Language Board established by national legislation must promote, and create conditions for, the development and use of
  - i. all official languages;
  - ii. the Khoi, Nama and San languages; and
  - iii. sign language ; and
  - a. promote and ensure respect for
    - i. all languages commonly used by communities in South Africa, including German, Greek, Gujarati, Hindi, Portuguese, Tamil, Telegu and Urdu; and
    - ii. Arabic, Hebrew, Sanskrit and other languages used for religious purposes in South Africa.

## APPENDIX B

### **Appendix B-1: Letter to Director Legal Administration (13/10/2003)**

13 October 2003

Dear Sir/Madam

#### **Research In the Courts**

My name is Jonathan Leiper (Student Number 690L4464), and I am currently enrolled at Rhodes University, Grahamstown. I am busy doing my Masters in English Language and Linguistics. As part of the course requirements, I have to produce a Dissertation (or mini-thesis) on some aspect of language.

During my coursework studies in Language Policy, I became aware of a perception that the state of court interpreting in South African courts was not as good as it should be. As I have a number of friends in the legal world, I became very interested in this subject. The literature that I have read has given me the impression that interpreting is in a state of crisis. However, very little of the literature seeks to give an inside perspective - in other words to find out the perceptions of those who use the courts on a regular basis. Thus, my thesis will attempt to discover this.

I hope to interview members at all levels of the legal system. Because I am focussing on the court interpreters, naturally my primary focus will be on them. During the course of these interviews, I will be trying to find out about interpreter training, what their experience of interpreting is, what are the difficulties and what types of errors occur. Most importantly, I want to find out what people inside the profession think about interpreting today.

With my thesis, I hope to address what I think is an academic imbalance that exists about this subject. As I stated earlier, there are very few studies that have tried to get the whole picture concerning interpreting. I also hope to be able to arrive at some practical and helpful conclusions and recommendations for how interpreting can be improved.

As such, I am writing to you to ask permission to speak to some of your interpreters. I realise that they are incredibly busy people, and that this will be a big imposition on them. However, as people use interpreters on a regular basis, I would very much like to get their views on the subject. If possible, I would like to interview five or six of the interpreters (including the Chief Interpreter for the Magistrates' Court), as well as either yourself, or an Inspector. The interviews will be about 40-45 minutes each. I have attached a copy of the types of questions which I will be asking.

Please note that my intention is **not** to be critical of anyone in the legal system. I am merely hoping to find out what people within the system think about this issue. I will, of course, protect the confidentiality of all the participants if they so desire. I will also make available transcripts of the interviews, in case anyone wishes to take something out.

I appreciate the time that you will spend considering this request. I need to collect the data as soon as possible, so I would appreciate your rapid consideration of my request.  
Yours faithfully

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**Appendix B-2: Letter to Mr Amsterdam (17/10/2003)**

17 October 2003

The Senior Public Prosecutor  
Private Bag X1004  
Grahamstown  
6140

Dear Mr Amsterdam

**Research In the Courts**

My name is Jonathan Leiper (Student Number 690L4464), and I am currently enrolled at Rhodes University, Grahamstown. I am busy doing my Masters in English Language and Linguistics. As part of the course requirements, I have to produce a Dissertation (or mini-thesis) on some aspect of language.

During my coursework studies in Language Policy, I became aware of a perception that the state of court interpreting in South African courts was not as good as it should be. As I have a number of friends in the legal world, I became very interested in this subject. The literature that I have read has given me the impression that interpreting is in a state of crisis. However, very little of the literature seeks to give an inside perspective - in other words to find out the perceptions of those who use the courts on a regular basis. Thus, my thesis will attempt to discover this.

I hope to interview members at all levels of the legal system. Because I am focussing on the court interpreters, naturally my primary focus will be on these people. However, in order to get a complete picture of the attitudes towards interpreters I am hoping to be able to interview lawyers, Prosecutors and Magistrates as well. In the course of these interviews, I hope to determine what these professionals think about the state of interpreting, what particular problems are that they encounter in their work, what the interpreters do well, and, most importantly, how the people inside the profession think the problems might be dealt with.

With my thesis, I hope to address what I think is an academic imbalance that exists about this subject. As I stated earlier, there are very few studies that have tried to get the whole picture concerning interpreting. I also hope to be able to arrive at some practical and helpful conclusions and recommendations for how interpreting can be improved.

As such, I am writing to you to ask permission to speak to some of your prosecutors. I realise that they are incredibly busy people, and that this will be a big imposition on them. However, as people who use interpreters on a regular basis, I would very much like to get their views on the subject. If possible, I would like to interview two English mother tongue prosecutors, and two Xhosa mother tongue speakers as my research to date indicates interesting differences in how these two groups view the situation. The interviews will be about thirty minutes each. I have attached a copy of the types of questions which I will be asking.

Please note that my intention is **not** to be critical of anyone in the legal system. I am merely hoping to find out what people within the system think about this issue. I will, of course, protect the confidentiality of all the participants if they so desire. I will also make available transcripts of the interviews, in case anyone wishes to take something out. As I have said above, I am aware that the prosecutors work closely with the interpreters, and the last thing I want is to jeopardise this relationship.

I appreciate the time that you will spend considering this request. I am operating on a fairly strict time schedule, so I would appreciate your rapid consideration of my request.

Yours sincerely

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## **APPENDIX C**

### **Appendix C-1: Interview Questions – Interpreters**

#### **Training**

1. Could you give me a brief description of your duties as an interpreter?
2. What do you think are the qualities of a good interpreter?
3. Please describe the training process that interpreters go through:
4. Do you receive any in-service training once you have started in the courts?
5. Could you tell me about your own background as an interpreter?

#### **Attitudes towards interpreting**

There appears to be a perception that interpreting in the court is in a state of crisis

6. During the course of your duties have you come across this concern?
7. Do you think that it is a valid concern?
8. Why do you think that this concern exists?
9. What is being done to address these concerns?

#### **Problems facing interpreters**

10. What particular problems do you think face interpreters in South African courts today?
11. Is there a general awareness of these problems in the legal system?
12. What is being done to address any of these problems?
13. What do you think could/should be done to improve the interpreting in South African courts?
14. Do you think that it is fair that a lot of attention is being paid to interpreters and not the rest of the legal system (judges, Magistrates, lawyers etc)?
15. What do you think could be done to help these officers be more effective in identifying potential interpreter errors/problems?

### **Appendix C-2 Interview Questions – Lawyers and Prosecutors**

1. Could you give me a brief description of your history in the legal profession?
2. How often is it necessary for you to make use of court interpreters?
3. What is the nature of your interaction with interpreters? (prosecutors only)
4. How important do you think interpreters are in the legal system?

#### **Attitudes towards interpreting**

There appears to be a perception that interpreting in the court is in a state of crisis

5. During the course of your duties have you come across this concern?
6. Do you think that it is a valid concern?
7. Why do you think that this concern exists?
8. Do you know of any measures being taken to address these concerns?

#### **Problems facing interpreters**

9. What particular problems do you think face interpreters in South African courts today?
10. Is there a general awareness of these problems in the legal system?
11. How often are problems with interpreting picked up in court?
12. In your opinion are these problems serious enough to jeopardise the administration of justice?
13. What do you think could/should be done to improve the interpreting in South African courts?
14. Do you think that it is fair that a lot of attention is being paid to interpreters and not the rest of the legal system (judges, Magistrates, lawyers etc)?

**APPENDIX D****Appendix D: Qualifications and Grades of Interpreters****PERSONNEL ADMINISTRATION STANDARD (PAS), PRESENT CORE AND THE REQUIRED CORE STRUCTURE**

<b>PAS</b>		<b>CORE</b>		<b>REQUIRED CORE STRUCTURE</b>	
<b>POST</b>	<b>APPOINTMENT MEASURES</b>	<b>POST</b>	<b>APPOINTMENT MEASURES</b>	<b>POST</b>	<b>APPOINTMENT MEASURES</b>
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 Grade II level 3		Court Interpreter Grade II level 3	Grade 10, 0-2yrs experience or Grade 12, no experience. Language Test		
Senior Court Interpreter Grade I level 4		Senior Court Interpreter Grade I level 4	Grade 10, 2-5 yrs experience or Grade 12, 0-2 yrs 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, 5-10 yrs experience or Grade 12, 2-5 yrs 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+ yrs 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+ yrs experience	Chief Court Interpreter	Tertiary qualification, 5 yrs experience
Chief Inspector of Interpreters, Salary level 9		Chief Inspector of Interpreters, Salary level 9	Grade 12, 10+ yrs experience	Inspector of Interpreters	Tertiary qualification, 5-10 yrs experience
				Chief Inspector of Interpreters	Tertiary qualification, 10 yrs experience
				Head: Interpreting Services	Tertiary qualification, 10+ yrs experience

Adapted from Department of Justice and Constitutional Development (June 2001)

## APPENDIX E

### Appendix E-1: Interview with Carol

- J: Could you explain why you became a court interpreter?
- C: Actually I would say that it is because I was looking for a job. Then I heard about the job of interpreting. Fortunately for me I knew that I could speak Xhosa, English, Afrikaans and Sotho, so I then decided let me grasp this opportunity as I can speak these languages and then also I decided that since I like working with people that that would be the best thing.
- J: How long have you been an interpreter?
- C: I started in 1997.
- J: What do you think are the qualities of a good interpreter?
- C: Being a good listener first because of the occupation. You have to always be nice to people especially in court, you are not supposed to treat them as people who have committed crimes we treat them as normal people since they have not yet been convicted of a crime. So you have to be nice, try to be patient and do your best.
- J: What is your typical day as an interpreter?
- C: **During the morning you arrive at the office, thereafter you go and fetch your court book, write in your cases for the day. Thereafter you might go to court and start interpreting in court. Before you start interpreting in court, the attorneys might come to you and ask for assistance to consult with their clients, or the prosecutor will want to consult with witnesses before they start the trial. Or maybe some of the prosecutors who do not understand Afrikaans you will then help them consulting. The same applies with the accused. Lets say the accused wants to plead guilty on a charge, you go through and try to help them with the docket and help them see what's on the docket and read all the statements and stuff. If the accused does have questions, and even if the accused does not have questions, you will try and see if the guy understands. If he does not you will try and explain to him what's going to happen. For instance if he pleads guilty, these will be the results, maybe, or if he pleads not guilty, this will happen. In some cases maybe the prosecutor will be there telling you what you must say to the guy and then you just interpret that.**
- J: When you get into court, how do you interpret?
- C: How do I interpret? That is difficult. Firstly in most cases in court you are told what to expect, or what's going to happen. Lets just say for instance you come to court where it's the first time an accused is appearing in court then the Magistrates will ask me to explain the accused's rights and then you explain the accused rights. Thereafter the accused will tell you what he or she wants to do after that. Then you will convey the message to the Magistrate and say whatever they say, and the case will be remanded or whatever, or if it's a trial you will start the trial then. The real thing is just to convey the message intended not really using the exact words as such.
- J: Do you see yourself as a translator or an interpreter?
- C: No, an essential meaning. I would take myself as just to convey the message intended not translating the words that have been said. Just to convey the message intended.
- J: Is it difficult to translate word for word?
- C: It depends, sometimes it is easy depending on what you have said. There are some times it is not easy, depending on what you have said. Most times it is difficult, it is not easy to translate. If a person just said something now in Xhosa then I have to use most of the time my mind. You have to be fast thinking. Take for instance, when you deal with cases, prosecutors and Magistrates have time to go and check their books or consult or whatever and get the books. We don't have that time in court. You are expected to say whatever the guy said at that time. There is no chance therefore - maybe you don't understand a word, you don't know how to say it in English but you know the word in Xhosa. There is no time where you can say 'No, I have to go and think about the word'. Because sometimes you know the word in Xhosa but in English it just rushes you.
- J: How do you prepare for that?
- C: You can't because in most cases you only meet with the cases in the court, and you are expected to interpret. It is not like in High Court. In High Court at least you are given a chance. Lets say they give you a day before or earlier that day what you are going to do, a case and what to expect, what witnesses will be called. It is different in District Court. When you come across with a case, the prosecutor will just come in court. Maybe he doesn't even meet an interpreter there. He will just write his docket separately and at 9 o'clock expect you to be in court then start in court by saying 'I am going to start with the trial'. You haven't prepared you don't even know what it is all about. So you have to do that, and there is no chance for you to consult or anything. It is not an easy job.
- J: What kind of training did you receive for this?
- C: I have been in Beginners Course. I also have been in Advanced Course. I did the Beginners course in '97, and the Advanced Course last year in December.
- J: Lets start with the Beginners course, what subjects did you do?
- C: They tell you how you are supposed to interpret in court, what they expect an interpreter to do, how to be a good interpreter and what you are supposed to do. We were given procedures like Acts and told lots of things in Beginners Course. But not like the Advanced Course where we were given more specialised training. Beginners Course was almost four weeks, four-five weeks.
- J: Did you receive training before you started work?
- C: You were first assigned to a station, then you are sent to the court thereafter.
- J: After you got back there was there any supervision of yourself?
- C: There is actually no one for instance in the office here who is checking up on you to see if you are OK. The only thing that we are advised to do, if you find you have got a problem you have got to go to your colleagues, or maybe you meet once a week, or twice. Try to sit with others and tell them what problems you have in court and discuss them. Almost like a support group trying to help each other.
- J: What about Advanced Course?
- C: In Advanced Course we are being taught more about cases like rape and how you deal with cases that have been raped and how you are supposed to treat them. It more like the Beginners Course, but it is more advanced than when you started, so you are being taught about how to handle different situations. For instance we went for a forensic lesson, to see how people are being cut up. It was not nice. I nearly ran out, it was difficult seeing people lying there dead. We also went to the police for shooting all that stuff,

saw how the police shot and cleaned and all that stuff. Just really furthering my experience and, in the case of medicine, expanding my terminology. In cases for example of fingerprints, how fingerprints are lifted, what do they do after the prints have been lifted. After this stage they can see who did something. Everything about it.

J: Do you think you have received enough training?

C: No. I would say it's not enough because every day you get a new thing in court. So every time you appear in court there is always a new thing to learn. So I wouldn't say it's enough. You have to go through training now and then to try and refresh your memory, so I don't think it's enough.

J: Could you ever train a court interpreter enough then? It seems to me you can't.

C: I don't think so. When I was in this Advanced Course in Pretoria I was with people who have been 15 years, 20 years interpreting. I have been with them, and heard them complaining saying they've got these difficulties. I was like 'these people have been interpreting for years, more than I have, but they are still encountering the same problems!' They always had something to say about the problems, I don't think you can ever get enough training.

J: What types of problems?

C: For instance in cases in court where the accused is a Xhosa, and then your witness is Afrikaans speaking and the Magistrate is English, so you have to speak in three languages, which is extremely strenuous. When you come out of court you feel like you just want to sleep. You feel like tired, you have been using your mind you cannot even think. Even in court it is so strenuous. There is no one giving you a chance to have a rest because the accused will say whatever and you have to convey that probably to the witness, then the witness will say whatever and then you have to take it and say it to the Magistrate then the Magistrate will say whatever and you have to take it again and say it back to the accused. Most of the time you are the one who is doing the talking. You end up being tired and you also find in cases that some Magistrates or even prosecutors they don't even think that maybe there have been cases where the Magistrates they don't even allow you to go for tea time at 11, or 1 o'clock, lunchtime. They will say 'no, we want to proceed' and you are so tired as you have done all this talking you don't have energy now. It's sometimes so difficult. Sometimes they don't even consult you and ask you if you are prepared to proceed and whatever. I feel that the time we have they don't think of the interpreter, they only think for themselves.

J: What is the attitude towards interpreters by other members of the court?

C: They don't understand. They think the interpreter just interprets. That is why they always say 'No you just say whatever the guy is saying'. It's not about that. If the guy is saying something you have to think about that before you convey it because you are not a translator. It is not as easy as translating. I would say that translating is easy but we don't translate, you have to convey a message. So you have to think before you say whatever so that the message can come across correctly, as the way the guy intended it to. So I don't think other people understand what an interpreter's work is.

J: Why do you think this is?

C: They don't see me as a professional, they just see an interpreter that is not as professional as they are. Because we don't have a degree, we don't have a diploma they look down on us. I think an interpreter is very important in court because the court cannot run without us. You are important even if you don't have a degree, they need you.

J: There is a perception that interpreting is in a crisis. Have you heard this?

C: Yes, to some people yes. I have heard it from members of the public. Some interpreters are not doing what they are supposed to do. In other words they are not conveying what the guy intended. As a result the message will end up being lost at the end of the day. I haven't had any problems from the Magistrates, just people – it's just rumours. I personally have never had a problem with the Magistrate. I have worked with all the Magistrates here and have never had a problem.

J: Do you think this concern is a valid concern?

C: I think there is room for improvement. I think we really need more training.

J: Do you know of anything that has been done to address these concerns?

C: Yes, at times we raised some of the things and also at the Advanced Course. We need more training.

J: From a personal point of view what are the difficulties involved in interpreting?

C: You have got cases where elderly people come to court. You say this to him, interpret whatever has been said. Then that person will answer something different. Then at the end of the day it seems as if you did not interpret what was said by the other person, whereas you did. People they don't listen. Some people think that they understand the court proceedings whereas in most cases they find out that they don't understand. Then they will start jumping to answer whereas they did not understand the question. At the end of the day it ends up being that you did not interpret what was said, whereas you did, except the person did not understand the question. Then the guy does not say 'I did not understand the question would you please repeat it'. So there are cases like this. You have to be sure your speaker understands the question that was asked.

J: Are there any other difficulties? What about language difficulties?

C: Yes, yes. I would say that in cases like drunken driving in Afrikaans there are cases, or maybe from English to Afrikaans where the guy does not speak Afrikaans you have to use English and Afrikaans. Then you know this thing in English but you do not know it in Afrikaans and it becomes difficult.

J: Do you have problems explaining legal terms to witnesses?

C: No not really. If I don't understand something in a case where my Magistrate understands both English and Afrikaans. If the guy speaks in Xhosa and says this word in Xhosa and I now want to tell the guy this thing in English I will just tell the Magistrate, 'I know this word, but I have forgotten it'. Because sometimes the word will just flash in court. You know this word in English but it will just flash, but you just tell the Magistrate 'in Afrikaans this is the meaning of the word' or the guy you just tell him it is basically this. It becomes easier when the Magistrate understands both languages, but when the Magistrate understands only one it becomes difficult. That's when you probably have to ask the court to adjourn and try to ask for assistance from somebody else.

J: What about different varieties of Xhosa, are there any difficulties?

C: Yes, it becomes difficult if you find someone from Transkei. At least when you are here in Grahamstown you know what languages they use frequently whereas somebody from Transkei will come words that you have never heard. You grew up in town so this is the first time you have heard about this. It is not a problem actually, yes it is a problem the word, but you speak to the guy and try to figure out, 'would you please explain to me this, what does this mean?' Then the guy will start explaining 'No it's something like this and this' then you end up following what the guy is saying because there is enough in common for me to get around this. You just ask the guy to explain this thing if you don't understand a word, how does this thing look and all that. That's when you get it 'OK in town we use it this way, but if we are in Transkei that way'. Then you just tell the Magistrate in the

Transkei we use it this way but here we call it this. You make it a point to first understand first what your speaker said because at the time that you are trying to convey the message so that you can convey the right thing, but you can understand what the speaker said and just say to the guy to try and explain simply so that that you understand.

J: What about cultural customs, do you find that there's a problem interpreting these.

C: It's not that much here in Grahamstown, it's only maybe once or twice, it's not that much in customary law. Once you get it, it is sometimes difficult, especially when you have a white Magistrate then it becomes difficult to explain to them what the guy is trying to say. But you try your best to explain it to them.

J: Do you think that the other officers of the court appreciate these difficulties at all?

C: Yes there are people, especially elderly people who become cross and just want to tell you.

J: Is there anything being done to address these language problems?

C: Like for instance when we go to courses we are being given lots and lots of notes whereby you know something said in English and Afrikaans and Xhosa. And then like in fingerprints they try to explain to you what is this in Xhosa, and what do you call it in English. So when you go to courses you learn these things. So there is an attempt to do this.

J: What do you think could be done to improve interpreting in South Africa?

C: More training. I would say maybe after 6 months even if you could go maybe for a week or even a day a two, I feel that it would be good. To keep yourself, because every day you get a new thing so you have to know and try to learn more. A degree or diploma might help get more status.

J: What types of aspects should be focussed on more in your training?

C: Perhaps more terminology, the terms that are being used in court.

J: Does the Department encourage you to study further?

C: Yes. There was a Diploma for interpreters, for interpreting. There are bursaries for that. I would love to do that. There is now an LLB that I want to do. I haven't started yet but I would love to do this.

## Appendix E-2: Interview with Gary

- J: Could you give me a brief history of your career as an interpreter?
- G: I have been a court interpreter for about 16 years. I started in this Department in about November '87. I was on probation for approximately 3 years and then I was promoted to Senior Interpreter in 1996 here in Grahamstown. **The duties of a court interpreter are to interpret to convey the message intended by a speaker, or rather the idea, and vice versa.** It is also important to grasp what has been said by the speaker at the time. It is also expected of an interpreter to speak loudly enough, clearly, slowly. You must be heard at all times in order to make it easy for the other parties involved, attorneys, prosecutors, also the public and the presiding officer as well. They must not strain they must not get stressed, they must hear you properly. If you do not understand what has been said by the speaker you have to bring to the attention of the court - 'I do not understand the idiom or the term used by the speaker' and you will ask the bench to adjourn so that you can peruse it or go to your colleagues to get their assistance and advice. It is always very important to do that.
- J: What languages do you speak?
- G: I speak English, Xhosa, Afrikaans. It is always expected that the languages an interpreter speaks must be very good. As an example, English and Afrikaans are not our mother languages but we are expected to be good in order to be able to work. We must equip ourselves with vocabulary. There are medical terms used, and you must acquaint yourself with those terms. You must try to read in order to acquaint yourself with vocabulary. Also Xhosa. For example, in the Transkei they are using the traditional Xhosa. **They normally tend to show respect in their language. They do not call things by their names, they have got some sort of way to call things, they call it 'respect language'.** Also here in the Grahamstown region you must equip yourself with the language used in Grahamstown. For example Xhosa which is used here in Grahamstown is different to Xhosa which is used in the Transkei.
- J: Could you describe your typical day as an interpreter?
- G: Normally the court starts at 9 o'clock. As an interpreter the court is in your hands you must always be there. You should not be lagging behind but always there. For example if you are having difficulties or you are tired you must tell someone you are not feeling well. For example also if there is a case, maybe drunken driving or reckless driving, and you know a colleague who can do better than you, you can ask me to excuse you to get another court interpreter.
- J: Why drunken driving or reckless driving?
- G: **There is some terminology which is used which is not familiar to others. Some of the interpreters do not know even the parts of a car and this gives them a problem.**
- J: How many cases does an interpreter do per day, or per week?
- G: On average it depends, for instance a dagga case, that one case can take a whole day, or even a second day. But on average I would say that approximately 4 cases a day between 9am and 4.15pm.
- J: How do you interpret?
- G: You are in court, you take your bench. The prosecutor will present his case to the bench. Then your mind must not be divided at that time. You must know that this court is in your hands, and the judge of this court depends on you – even the judgement of this case I am going to interpret here depends on my shoulders. If I happen to give an incorrect interpretation a miscarriage of justice could occur. You must be proud of that. Your mind must always be there, and you must interpret in the 1<sup>st</sup> person, as if it was you not the second person. For example, the presiding officer will ask 'What is your level of education?' He is referring to the accused. I am not supposed to say to the accused 'The Magistrate is asking what is your level of education?' For the right interpretation you must just say exactly what he said in the vernacular. State direct to him in Xhosa or in Zulu 'What is your level of education?'
- J: Do you interpret or translate?
- G: There is a difference between translation and interpreting. You see interpreting is to convey, not just translate the words to another language. **You must convey the message or idea so that all parties understand what is the mind of the speaker. You must read his mind. We don't translate.** As I indicated you must first grasp what has been said by the speaker, you must read his or her mind then you start to formulate in a short space of time and interpret, convey, the idea intended by the speaker. The gist of what is said. One must be brief and to the point, but one must also ensure that the message is delivered.
- J: What training does an interpreter go through?
- G: Normally the training that is given at the moment is the one which is organised by Justice College. As a beginner you have to attend the course in Pretoria. The duration is about two weeks. In my opinion that training does not help us. It does not help us because when you come back from that course you are supposed to be better than before because you are coming from the course. But it does not happen like that. **They are teaching us the principles and basics, that is still just the theory. The most important part of it is in court.**
- J: What types of things are covered by this course?
- G: They give you some practical stuff, but no real courses on the law. There is a Diploma now. Those people who can afford it can do it.
- J: How accessible is that Diploma, could anyone do it?
- G: Yes, anyone could do it. The Government does pay for it. For instance, I think that most of the interpreters in the High Court have it. In the Magistrates' Court, two people are starting and are busy with that.
- J: Why does everyone not do it?
- G: The others are not interested or they are too lazy to do it. Some of them also want to do other degrees, like a LLB.
- J: Is it not a requirement that interpreters have to do this after a certain number of years?
- G: Yes there is a mandate that everyone must improve, but there is no time frame for this.
- J: What about the Advanced Course?
- G: The Advanced Course initially was meant for Regional Court interpreters and High Court interpreters but now everybody does it. You learn things like DNA test, ballistics tests and fingerprints. All the interpreters here have gone on this course.
- J: Do you have to have a certain amount of experience before you do this course?
- G: No there is no time frame involved. For example one of our interpreters who is relatively inexperienced has already attended that course.
- J: What support is provided to the interpreters after their initial course?

- G: That is a good question. What is happening is that there is supposed to be an in-service training programme. Unfortunately, here, in this establishment there are 8 interpreters. We are supposed to have Principal Interpreters. It is the duty of Principal Interpreters to monitor interpreters, to do an in-service training, to go listen and help their interpreters. But unfortunately that matter is being discussed at the Regional Office, they are busy dealing with that. Soon we hope to have Principal Interpreters here in Grahamstown. At the moment the only real support system we have is each other. If someone has a problem they speak to each other or a Senior Interpreter, like myself.
- J: What skills do you acquire while you are interpreting?
- G: Since we are dealing with languages it is vital that you must equip yourself, and try by all means to improve them. For example, in a serious case, a rape case, you must try by all means to get that skill, to know how to talk to a victim, a minor involved in a serious matter like that. At the moment they are busy with that, they are going to give us some training on how to deal with a minor. Cases are different, you get dagga cases, rape cases, murder cases. For example if you are interpreter in the court, most of the cases are murder cases, rape, cases, housebreaking and robberies. It is your everyday, same vocabulary. So if it is a rape case I know what the language is going to be, if it is a murder case I know what vocabulary I must have. Sometimes there are attorneys who are trilingual, they know Xhosa, Afrikaans, English. So now we are having a problem. Most Magistrates now are black, they do not know Afrikaans. As an interpreter what is expected of you is to interpret English or Afrikaans to Xhosa and *vice versa*. That is why Afrikaans is important. Sometimes you could be using three or four languages in a trial.
- J: There is a perception that court interpreting is not what it should be. Have you come across this concern?
- G: Yes, a lot. As I already indicated early on, you can see an attorney who knows these languages is not happy about an interpretation. They are not going to feel at home now, they are going to have that fear. An interpreter must not fear, they must be faithful and not biased, he must be fair. I find those are the skills that we need. That is our big problem, fear, stage fright. For example many people in Grahamstown speak English well. Now if you are an interpreter in that court there is a professor from Rhodes who knows English very well as it is his mother language, students from Rhodes and cases conducted in English. Now you are going to fear that, you are going to have that fear. Once you have that fear it is going to disturb your understanding.
- J: Do you think it is a valid concern?
- G: Yes I do. When I started as a beginner interpreter I had that fear, that stage fright, but as you go on you are very happy to see that the court is full, that you have a full house. You must be proud, and perform.
- J: What is being done to address these concerns?
- G: There are courses we are attending. They are attending courses to try and alleviate these problems. Indeed many people have been saying that interpreting is not at the right level. That is why the Department is trying to develop these courses for us.
- J: How do other members of the court view interpreters?
- G: If they know you well, there's nothing wrong. If one is a beginner they are thinking 'Is he a good interpreter, is he a bad interpreter, will he make it?' Nowadays, interpreters are viewed more by other members as being equal. In the past that was not the position. We were not taken as court officials. For example if the Magistrate would not want to adjourn for a tea break or lunch, he will not approach you and ask if we can go through, he will just go through without asking you, those sort of things. **But nowadays, we don't experience that any more. In the older days, for example we were called 'Tolke' that is Afrikaans for 'interpreter', but now they call us 'Mr So and So'.**
- J: What particular problems do you think face interpreters today?
- G: The job that we are doing is of vital importance. In terms of our remuneration I must say that we are not getting sufficient salaries. That is one of the problems which discourages interpreters. They do not perform fully some of them either.
- J: In terms of technical aspects, what problems do you find?
- G: As I have indicated, the court languages, English and Afrikaans are not our mother languages. As an interpreter provided by the Government to interpret it is your duty at all times to perform as expected. If you are to perform well, you need to read a lot and to listen to TV news, everything that is coming. Everyday you must make some investigations concerning languages. You can also struggle to translate some words. English was not meant to be translated into other languages. If it happens that I do not understand a term used by a speaker, you can just ask the bench that you are going to explain what is happening, what this guy is trying to say. If you do not know the actual meaning of the word you need to explain. There is also a problem translating customary law terms into English. I can't think of any terms right now. We don't really get many of these in Grahamstown, they are mostly in the rural areas.
- J: How do you convey the language of the law across to someone?
- G: That is very difficult. You have really got to try and explain what is happening, so that they understand. It is not easy at times though, but you have to try and make sure that they have understood you.
- J: Why does mis-interpreting happen?
- G: I would say that maybe at the time the interpreter's mind was not there, and he can easily mis-interpret, because you have to use your mind. Sometimes he just interprets without thinking, before he thinks, he just utters the words. For instance **this person was saying 'when he is walking he is always looking down'. Fortunately the Magistrate, he was Xhosa, and he said to me 'No Mr Interpreter that is a wrong interpretation, that is not right. The right interpretation is that that man he loves his work'. I did not agree with him, but that Magistrate comes from the Transkei and they use those terms all the time. I had used the term literally instead I could have used it figuratively.**
- J: Do you think these problems are common, and happen to all interpreters?
- G: Yes. Even the attorneys themselves they make blunders and mistakes and are corrected by the presiding officer also. So they make mistakes and are corrected as well.
- J: Whose word is final, where there is a dispute?
- G: That would be the Principal Interpreter, he would ask for that tape and listen to it.
- J: Could any of these problems seriously jeopardise the administration of justice?
- G: Yes I do think so, because the Magistrate is depending on what has been said to evaluate the evidence that has been laid. You as the interpreter are an important part of that, and they are depending on you. That is why I said earlier on you interpret faithfully without having any fear. You must take the court into your hands. You must not feel intimidated, it is your job, you are the boss there. It's happens sometimes. I know I was interpreting in one of these courts there are these court orderlies who have been working there for some years, they have got that experience. If you did not interpret well, you hear them whisper then you start to get that fear, you feel intimidated. And it is your duty as an interpreter to bring that to the court's attention that these people are

sitting down here disturbing you. If there is something that they are not happy about they are welcome, maybe after the court session, to call me, to come together as court officials to iron out that problem so that it does not happen again.

J: What could be done to improve the overall quality of interpreting?

G: To my point of view I think that oral training is needed, by someone who is superior, to be always in the court, to jot down the mistakes and assist where he can assist. After the court is finished you can sit down with him and discuss issues and problems you are experiencing. And it must not be just one day, or every six months time if you want to be an interpreter. This person must also be a competent interpreter. The training that you are receiving at the moment, the duration is too short.

J: Should more be done to educate other officers of the court about the difficulties of interpreting?

G: Yes I think those people must come together and iron out these problems we are having. To my experience that does not happen. Interpreting, however, has got better from when I started. Attitudes have changed towards interpreters also. At the present moment though I am not interpreting, I am always doing court interpreter's affairs. I want to be in court, that is demoralising. That is why there is a need for a Principal Interpreter to be here to sit in this office, so that I can go to court.

J: In general are the interpreters in Grahamstown motivated to do their job?

G: Personally, I try to motivate them, but that is not enough. I would say that they do not see myself as someone who should deal with them. I must mention the fact that to work with females is a very difficult task. They are sometimes very arrogant, and they are rude. They want to control. They are divided, some of them are motivated and some of them lose interest. I try to motivate them, trying to get them to work properly.

### Appendix E-3: Interview with Debby

- J: Could you begin by telling me a little bit about how you came to be an interpreter?
- D: When I started working here, I was looking for a job it was '86. I started in De Aar. I am good in Afrikaans, but my English was not so good, but I studied until Standard 10. Then **when I started working in court there were some problems because I was not taken to be trained and go to court. No I was not. First day I was busy before I was interviewed. A court orderly came into the door and told the Inspector 'they want an interpreter'. I don't know even what I was going to do in court but I started. I didn't even know that I must stand there, and talk to the Magistrate, 'Your Worship'. I just interpreted. I ran from the Magistrate to the witness or the accused. At that stage I didn't even know that you have to stand in one place and control the court. I was embarrassed, but I proceeded.** It is now 2003 and I am still here. I am mad! I don't want to say that I am an advanced court interpreter, because if you are an interpreter you have to learn on a daily basis. You come to places where they have got their own language, we call it the language of that place. Lets say if you are in East London, they use their terms there, in Grahamstown they have got their own terms, in PE. As a court interpreter you must be intelligent, you must understand because they call different places different names. There was a stage where I was in East London where the Xhosa accused said that 'Kwi-Kwi' (sic), I did not know that 'Kwi-Kwi' is this place. I said 'Your Worship, Kwi-Kwi?' The Magistrate said 'No, Debby, it's Kwikne'. Such things, you don't understand the places. You have to learn on a daily basis, you have to read papers to upgrade your English and your Afrikaans more especially. You know in the Regional Court, in the High Court you have got cases where the judges are English, they don't understand Afrikaans, it is not so good. But being an old interpreter, there are problems. You will find out a name which is being called, lets say 'colour'. Lets say, they will say, this thing was 'idark' (sic). Which is different, I translate not interpret. To interpret is to convey the message, but if you translate, if it is being said in Xhosa and you translate it, it doesn't have the same meaning. And if you translate in Afrikaans, it has another meaning. Now you have to convey the message so that they understand. But not convey it in a wrong message so that they don't even understand. You have to put it as it is, but not translate direct but convey. That is interpreting.
- J: The difference between interpreting and translation is important then?
- D: That is correct, yes because if you translate you start with this word and if you interpret it into another language you do not start with the first word. You have to convey the so that they have a broader picture. Because the Magistrate depends on an interpreter and even the judges if they take a decision if this accused is guilty or not the only language which is being used in court is the one which is being used by an interpreter. That's why we are the one who is controlling the whole court. You must have a broader mind. You have to interpret even if you are as, a good interpreter you say, 'Your Worship, this word means this if we translate it in Afrikaans, but the witness has used it in this sense, but I will convey it and mention it in Xhosa so that if the judges the case goes for review they tell you 'See this' or even 'the supervisors, inspectors have used this, but it means this'. We have got lots of problems, lots of problems.
- J: What do you think are the qualities of a good interpreter?
- D: You must be a good listener first. You must be intelligent, you must give the accused a smile. You must know what you are doing. Even in the court you must know your duties. First thing if you start in court you must forget about your problems and all those things. Now I am here, all these even the accused depends on my skill, so I am 100% sure of what I am doing.
- J: What is your typical day like?
- D: First thing is to report, look for my court book, get the charge sheets. After that I write them in the court book. See if the witnesses are there. If they are Xhosa speaking I will help. If my prosecutor is not Xhosa-speaking I will help to consult, to interpret to interview, to explain to the witness 'the statement says that, can you explain to me', so that I can read the statement. There are some attorneys who will ask 'is that the statement that you have given to the police on that day?' 'Yes'. 'How many days after that?' 'So many days'. 'On that day everything was fresh on your mind?' 'Yes'. 'But today in court you have said this and this, why is there a confusion between...'. You know you need to explain all those details. From there you need to go into court and see if everything is OK, the court is in order. The bench pad if you know you have a chair you see that the bench pad is there for the Magistrate. It is not my duty but I do it anyway. You see if the machines are alright. See that none of the accused are not here and make sure there's no noise and then you can have your seat there and start interpreting.
- J: How many cases would you do on average a day, or does it depend?
- D: It depends on lets say if we put about 6/7 we can't. It depends because one case maybe it's a robbery or a murder case there are 6/7 witnesses and I always say, being the one who is controlling the court it's six people who are talking through me. I will always say to them 'I am tired now' and even the judges will say that an interpreter should only interpret for 45 minutes well, but after that the mind is tired. You know, because all those people, the Magistrate, the prosecutor, the witnesses, the accused, the attorney are talking through the interpreter. To interpret it means a good quality and even this work is depressing. They don't even send us after six months for counselling, they don't do that. Mentally it is tiring because all the interpreters if they go on pension or they become ill that is one thing. There is a decided case where the attorney is saying, 'Your Worship, the interpreter is not saying this and this'. You must be a good interpreter. If you say 'Your Worship, could you remind him that State vs. So-and-So, the only language which is being used in court is the one which is used by the interpreter' finished.
- J: Do you get that often?
- D: No, not me. Lets say, if I can make an example. **There is an Act, 'possession of stolen property'. It's a broader explanation where you will get somebody has been charged with that. He will say 'You have been found in possession of this or it was nearby you' - it may be a distance. Our people don't understand that 'to be possession'. They will always think that if it's 'in possession' it must be on you, not away from you.** So the accused will say 'it was not on me' and then you go and explain not meaning that. If the attorney wants something that the accused must go out, you say 'Your Worship, the accused was saying not in my possession, I am saying Your Worship that is correct I will interpret that but I was explaining in a broader way that it doesn't mean in your possession, for our people it means this and this. It will be a minor case not to say because our cases are being sent for review for appeals. It is there where the judges will find out there is something that the interpreter did not interpret because the judges are Xhosa, English and Afrikaans. The tapes are being listened to before if it is for review or appeal to see if everything was done properly.
- J: Is it easy to interpret something the wrong way?

- D: Yes, there might be two or three other meanings. If I could mention something else, in a rape case among the coloured people they say 'Hy het haar genaai'. Now, being a good interpreter I can't say 'Your Worship, what is naai?' I will say 'He sexually he had sexual intercourse with me'. The Worship then knows. And you will say, 'But in court we are not using those words. That is those things and even the bum, they will say, 'poephoh'. If you interpret you must know those words, we don't use that language in court you have to interpret it.
- J: Could you describe to me how you interpret?
- D: Firstly if you are an interpreter you must not interpret in indirect speech. You put yourself in the shoes, but some of the interpreters if he says 'I was walking then I was dragged', you must also put yourself in their shoes. One thing I am good at in my interpretation is that. I will always even say to Magistrate 'I understand it like this, but the witness is meaning this, but if the court will bear with me and help me so that the court can get a broader picture'. Or we adjourn to the Chambers and explain so that it must not give that picture to the audience.
- J: How were you trained?
- D: After I joined I was sent to Pretoria for the Beginners Course and then we were told everything. Even we were taken to MEDUNSA where a post-mortem was done, to interpret those terms which is used by the doctors. Oh, one problem, you can't even interpret those terms in Xhosa. I want to be fair with you. Even if a person is being raped, you say 'private part' but the doctor is mentioning 'the hymen was not there'. There are no words in Xhosa for that. Even the expert witness in stock theft, lets say a piece of meat was sent for analysing they will talk about the 'nucleus', we don't have the word in Xhosa, 'cell', all the findings in the trial. What I am doing before going to court, the expert I will take and say, 'Can't you give me the words in simple English?' And then I can interpret. Before going to court you have to sit down with the expert witness and explain everything so that you can explain the whole report.
- J: So you have to do a lot of preparation?
- D: I am doing that. I will ask. I don't want our people must go out without knowing what is being said in court. Even if the prosecutor stands up 'Your Worship, this case was set for trial, but today the witnesses are not here, and he is being defended by So-and-So'. You are there for those people, even something small, even the conversation between the prosecutor and the Magistrate. Your case was called so you must know what is being said. If you have got an objection, 'Your Worship I have got an objection' but because of our standards, some of us don't do that and then the accused will be blank.
- J: Once you have done your training is there any mentoring of supervision by an older, more experienced interpreter?
- D: They are supposed to do that, but they don't do it. They don't because some of the Magistrates have this problem, maybe after you have been sent to courses, the interpreters are not listening properly. If you can be supervised monthly, sit down together and have a discussion about the problems we get from the court and all those things. More especially English to Afrikaans. I had a case in Graaf Reniet where the accused was charged for possession of these copper wires and tonnes from Telkom and you know it needs a person who has been trained because the prosecutors, the experts are there. They will sit down with the docket for the whole month before going for a trial, but they expect an interpreter must just go into court and start interpreting. We don't understand those things, the tonnes and all those things, the meters from Graaf Reniet to Aberdeen, how much it costs, the weight. You have to sit down. But they always expect but in my view I want them to see that the interpreter is the most important thing in court.
- J: How do you think interpreters are viewed by the court?
- D: You know in the old days they would take somebody from the street to interpret just so that the Magistrate could understand. There was no education. Even if you can speak Afrikaans, they would take you from the street and say 'Interpret'. But, nowadays we are trained and we have got also Diploma's in interpreting. We are not interpreters, now we are 'language practitioners'. Our name is being changed, we are studying now. We are still looked down upon by other members of the court though. It is not a general problem though, some of the people have a problem and others do not. Even the audience will sometimes say 'Sissie, can't you come and interpret?' Some of our interpreters speak softly. The fact is that people want to know what is happening in court. You are proud in court. I will sit down and shout so that even the Magistrate does not say, 'Repeat this for me'. But now and then I have problems in the language because language is broad.
- J: What kind of language problems do you have?
- D: It's only those bombastic words. You know the doctor will never come and use easy language. You say 'Your Worship I am not familiar with this word. Can you ask the doctor to come to the layman's language'. Because he starts and I don't even understand those things. Or before going to court I will take the J88 write it for myself.
- J: Are there problems translating between languages?
- D: No I don't have a problem. It's only I have to polish some of my language now and then. What I can say is that I am so used to interpreting. Sometimes I forgot I am interpreting English I will go on in Xhosa! I am an interpreter so I am used to speaking all of these languages. But it depends on the case. Maybe somebody has been choked to death, the finding of the doctor, maybe stabbed, killed, it depends. And even when a gun is being used the doctor will come and say, or the people from ballistics will say 'he was standing at a distance of so many meters and it penetrated...and it goes like this and this and the bullet started entering here, travelling this direction'. Then you say 'What direction?' But they have taken us to Pretoria to see these things. The doctor there cut everything and placed it on the table and showed us.
- J: What about the language of the law?
- D: Yes. Lets say the Magistrate will say 'Before I give you a sentence, I have to take into consideration S vs. So-and-So, 'Where your personal circumstances will be taken into consideration, the interests of the community and the seriousness of the offence'. That one I know. But if he quotes from S vs. So-and-So just to give you a broader picture that this and this have to be taken into consideration, interpreting the context! You know, those times. And then they will quote another case and the accused doesn't know what is what. Some of the interpreters say 'No, the Magistrate is quoting from an old case, it doesn't concern you'.
- J: What about customary terms?
- D: They are problematic. Some of the interpreters are using 'mamfene' (sic). You know those names they are called. And the interpreter will say 'is it a moeder bobbejaan'. You know 'mamfene' (sic) is not a 'moeder bobbejaan'. Legal concepts are also a problem. Sometimes I don't understand. I have to say to the Magistrate that I don't know what they are saying. I can't think of too many now though. We don't get many of these. **We will find those people coming from the Transkei, the soldiers, they will use this and I don't know what is it they are talking about. But if you are from the Transkei you use it on a daily basis.**
- J: One example is 'ukuthwala' which is confused with 'abduction'.

- D: Yes and 'uthwala something'. To 'thwala' is to, if I can interpret this also, you 'thwala' somebody on your shoulder, like a bag, you carry him. If that sentence was use 'uthwala unfazi' and you will say it is to marry, but customary. And then you have to give the customary meaning. Lets talk about rape. Our people doesn't understand that if he has got a wife, if that wife does not give you consent that is rape. You know Xhosa's will say in court, 'Why can't I', you know it's a tradition, if you have got a wife you must. But if you have Magistrates that understand these maybe it is easier.
- J: What about plain mistakes that are made, why are they made?
- D: You don't concentrate that is the problem. If you are tired even the Magistrate will say 'can't you just do another hour?' From there you are tired, and they can't blame you for mistakes. Because you have already said that you are tired. You take your mind off interpretation you are just now doing things. The interpreter then doesn't concentrate. If you could adjourn just for a few minutes so that I can stand in the street and listen to the cars. You know, the mind is tired.
- J: Is court interpreting in a state of crisis?
- D: Yes I have heard of this. Most of the people who think the interpretation is not good is those old interpreters. They don't interpret properly. But we are trying to upgrade ourselves. **Because of those old interpreters who were taken from the street, people are saying that interpreters are bad, forgetting that the interpreters in our days are good quality.** They are still 'oh the interpreters are bad, they interpret not what I am saying he interprets his own thing'. But it is not like that, because the Legal Aid is there, the attorneys are there. They can listen, they are Xhosa speaking they will hear what you are saying. That is the problem.
- J: Does this concern seriously affect the administration of justice?
- D: **No. It depends on that interpreter. If you don't listen, if you are not a good interpreter, you must stand down, let others come. Just like you have good lawyers, bad lawyers it's like that. We can't generalise about interpreters though.**
- J: Why does this concern exist?
- D: Up to now I have got this problem. These interpreters were trained in that old system, forgetting that they have to upgrade us. Now we want them to change the whole system in Justice College. The problem starts at Justice College. They will only explain to us the introduction, the pleas, the sections. Not getting into the daily basis, the daily work that is being done by interpreters. I can explain 'You have got the right to legal representation'. I know that. That is the only thing that they are giving us there, our training. And then that is the other problem that I have. If a person has been arrested, if they are released on bail they have to relate their circumstances before court, 'I won't go, I won't interfere with the witnesses'. And then I said to them even the judges who wrote those Acts doesn't even understand those circumstances. There are people who say 'I have got a family' or 'I am working'.
- J: Do you know of anything that is being done to address these concerns?
- D: No they don't, they forgot about us. Even in Justice College, even our supervisor, the Inspector. But the Department, oh. Even they pay us less because they don't even see us as important part in court.
- J: Why do you think that is?
- D: It's because of those old interpreters. Since August though they have upgraded our salaries. But we will have a meeting where they will say 'Because of those old interpreters, because there was no post for this and this senior interpreter, directors'. Now they have to sit down and make those available so that we can apply. What the problem is all the interpreters in the old days were falling under the Administration, the Clerks. **Even the Head of the Office doesn't know what is happening in court. He can't even write a report about me because he doesn't know what to write.** Even Mr XXX is an acting supervisor, he cannot sit in court and listen. Now we are trying to upgrade the standard of interpreters. We are trying to get them to open a fourth tier. The prosecutors they have their own Directors, the Magistrates Commission and the Clerks. What about us? **Why must we fall under the Clerks – we are not administration. Because if you are explaining our problems they do not even understand what we are talking about.** Even if a clerk at 1 o'clock would say 'I am tired' the Magistrate would go to XXX and say 'the interpreter's tired', he doesn't know. He will think that they are lazy. He doesn't know that the mind is tired now.
- J: So you believe that interpreters should be administering interpreters?
- D: That's correct. If I am saying now I started in 1986, not once have the Department sent me for counselling. Not once. We need the counselling. That is why interpreters are making mistakes.
- J: There appears to be a lack of confidence and low morale?
- D: Yes, the whole of Grahamstown. But we are trying to upgrade that system. Some of them bring their home problems to work, coming angry. Before going to court. You can't. Before interpreting, play music, laugh, so that you clear your mind and then start. But some of them they don't do that. You must know what they are doing, it's a strenuous, strenuous job. It's working here. Lets say after six months I will take my own room in Fort England! I have got some pills which I am taking from Fort England from the counsellors there for depression. They don't even care. You must just go to court and proceed with your job. That is the reason why they don't understand about interpreting. They think it is just going to court and saying whatever. It is not. The interpreters are also under stress because they don't even always know the law terms.
- J: What could be done to improve this situation?
- D: They must start from scratch with training the interpreters. Send them good interpreter supervisors. Even those supervisors, I don't think they are 100% in their education.
- J: Does the Government encourage you to go on courses?
- D: Only on Diploma yes, for three years. Then you have a Diploma.
- J: How actively do they encourage you?
- D: They just send forms, they don't encourage and say this must be done if you want. If you don't want, you don't want. If they could send all the interpreters, like in the High Court. Here not one of us has started. I think one of them is starting with the law now, one is studying. There is no requirement to do additional courses. They don't care. There is no expectation for us to improve except for the courses at Justice College. We are not pushed into these other courses.
- J: Do you think that the other members of the court should be made more aware of the problems of interpreting?
- D: They don't know about us. The Department don't even know that we exist. We must just do the work, push it forward, they don't even think there are interpreters. We don't get any time off. Our Inspector was saying they must give us time after two, three hours we have to adjourn and refresh yourself. But they don't do that. 'Can't we finish with this, please, please' they will always say that. So we could be interpreting from 9am to after 4pm because if the Magistrate says we don't adjourn, we don't adjourn. Through lunch, even after 4pm, the Magistrate will say 'We will finish this case'. Sometimes until 5pm or 6pm. Even if our additional court is doing Hogsback, Cradock and all those things, we have got a Magistrate, XXX, the Regional one. He is Xhosa,

English. He doesn't understand Afrikaans. Well imagine in Graaf Reniet, all those people are Afrikaans. You have to interpret for him what the witness is saying. Then if he is giving judgement, it will be for 45 to 60 pages of judgement. Reading like this in English. It is bad and you get very tired.

## Appendix E-4: Interview with Mark

- J: Could you describe why you became an Interpreter?
- M: Firstly it was because I was once a student at Vista University, but I dropped out. Then I went to court in Port Elizabeth, and asked for employment. I was there for approximately a year, but not a full year as a court interpreter.
- J: What languages do you speak?
- M: Xhosa, English and Afrikaans.
- J: What are your duties as an interpreter?
- M: My duties are **to perform and to deliver the justice system to the community to the best of my ability. To interpret for people that are not able to understand the languages of the court.**
- J: What do you think are the qualities of a good interpreter?
- M: A court interpreter needs to firstly be able to concentrate 100% in court, which is very trying, very strenuous. **They require training on a quarterly basis, if I may put it like that because some colleagues of mine who are older than me are battling to translate or interpret from English, most especially from English to Afrikaans.** English to Xhosa is not as big a problem because you are comfortable in your mother language, and yes you know English and yes you know Afrikaans. But there are those words and legal terms that we as interpreters are not acquainted with. Probably the Magistrates and the lawyers and the prosecutors are acquainted with those terms. But we are not.
- J: What training have you received?
- M: Insufficient. The Beginners Course, it was in June. And September this year the Advanced Interpreters Course. **From both those courses I didn't learn a thing of actual interpreting. What I was taught was to sit there and be told that 'this is a stool, it is used by the court interpreter, this is a bench, used by the Magistrate, those are the chairs that are used by court orderlies, this is a witness box'. This is not good. It didn't teach me anything.**
- J: So there was very little theoretical training, problems, solutions etc?
- M: I would say totally not, except for fingerprints. I was taught about fingerprints, the names of fingerprints for housebreaking cases where experts come from Pretoria to give evidence. Those terms I know. Actually with interpreting, actual interpreting itself, I just want to put it we are still struggling.
- J: What do you think are the types of things that should be taught?
- M: Legal terms, number one. **You will find out that when the Magistrate gives judgement, when he addresses his judgement, or when the attorney is arguing before judgement you will find him quoting those big books. You didn't go to law school, but they quote from those big books, State vs. Khumalo (1994) maybe, a Transvaal case blah, blah, blah. They will quote and you do not know that case. So you are not able to interpret for the accused person, of which we can't do it, not even 10%.**
- J: What could be done about that?
- M: Let me talk about myself. I learnt alone from 1995. If I have a new word, well I would go through those decided cases, to go through what was it all about, but I did it by myself. Maybe people could do that.
- J: Do the Department not demand training or improvement of standards?
- M: No. Totally not. It is only when one has applied for a bursary. Then he or she will go for law at UNISA, or whatever institution. But there is no training, they are studying for themselves. That's why I say every six months we need a course, just a short little course, maybe two weeks, because we need refreshing. What it needs is concentration as I said. That person, once you lose concentration you've messed up the whole thing.
- J: Once you have finished the Beginner's Course is there any in-service training or mentoring that takes place?
- M: From the Beginner's Course we first go to Pretoria or whatever city or town, Port Elizabeth, East London, training, writing the test. And then from there for two weeks you go for practical. And there are those inspectors there. But now the training is really, really poor to the extent they have got so much advanced interpreters, so much inspectors, but for them it is too difficult, well I don't know if it too difficult or they do not want to come down to us. To come and assess us, how we perform in court and all those things.
- J: So there is no ongoing assessment?
- M: No.
- J: So if you have a problem, who do you discuss it with?
- M: Presently I do it on my own, because you go to your colleagues, they do not know, the Magistrates are so busy. You want to contact a Magistrate and you find out maybe he has already gone to his house. I just translate it, read it and translate it myself for future purposes.
- J: When you are in court do you interpret or translate?
- M: I interpret. The process of interpreting is to send the message entirely because if the Magistrate gives a judgement he will start with a sentence. If I wanted I could begin with that sentence in Xhosa from the end, to the beginning as long as I've interpret the message from the Magistrate. And then translation you will end up losing track or the quality when you translate.
- J: Do you find that other members of the court want translation or interpreting?
- M: Yes prosecutors do not have a problem with interpreting. I would for my own say it is because almost for justice. I would say for lawyers they like word for word translation because maybe one wants to get his guy free, and he will object to the Magistrate, 'No your Worship, the interpreting or the translation was not correct'. Which is just a technicality to take a chance, through the interpreter. Just to free his guy.
- J: Legal language is complex, how do you remember it and get the message across?
- M: You will stop your speaker because you are trying to get the message from the Magistrate or the witness if he is not represented by a lawyer, the lawyer, the government prosecutor. You will have stop to control your speaker if he goes down long sentences. As an interpreter you grow each and every time. You can interpret a paragraph if you can grow. But if you are not grasping the message, you just stop your speaker, you control your speaker, and then interpret. Whatever is good enough for you to grasp. It depends on the interpreter. As you get more experienced you get better and pick out the main points.
- J: There is a concern that court interpreting is not good enough. Have you come across this concern?
- M: Yes, I don't know whether I can answer that question. **People are taking court interpreters as people that have been taken off the street, 'Can you speak English, can you speak Afrikaans?' 'Yes I can'. 'Come, come, come'. So cheap that they take our profession. This is really very serious because if you get down to it, the only person who speaks for about 8 hours a day**

is the court interpreter because he is interpreting for the rest of the parties, attorney, witness etc. So it is important that people, I have met people who say 'Interpreters, ag, drunkards, interpreters'. They do not get what we actually do all day. They don't value it that much.

J: Why do you think this happens?

M: I think that they don't understand, because you do not carry picks and spades coming to court or a briefcase. You just come in a suit, a nice suit, your tie, you sit there you talk. Not knowing that the engine is the interpreter. At the end of the day the interpreter is the engine that drives the court. It appears to be easy because some of us we are used to it. But sometimes, most especially towards the end of the week, you feel it a lot, maybe around 3.30pm or 4pm you feel it that you are really, really tired. But you have to still give 100% concentration.

J: What are the attitudes shown to interpreters by other member of the court?

M: Interpreters are looked down upon. The interpreter is just nothing. Because sometimes you find a lawyer who wants to consult with his client, but he can't speak Xhosa, maybe he is English or Afrikaans speaking, he gets me with my cup of tea at the courtyard, 'Mnr Tolk, kom asseblief hierso hoor. Hoor my gou hier uit'. That guy is not going to pay me, for my tea time. The prosecutor wants to consult with the witness or witnesses. He or she can't communicate with these people, 'Mr Interpreter please help me out here' they say. I am a court interpreter, not a consulting interpreter. Police officials are there, the investigating officers are there, to help out with their witnesses. He must come with the docket to court, that 'Mr Prosecutor these are my witnesses, here are their statements'. He or she must read through and interpret for these people when they come there for the court.

J: Do you think it because you don't have an academic qualification?

M: I would say that that is exactly the reason. The Department is aware, and our Unions are still busy fighting on this that the interpreters should have their own Division, not to fall under clerks. For instance here in Grahamstown we don't have a Principal Interpreter, we have just got a supervisor and the guy who is the head of this area here is concentrating more on the administrative, not on us. I am not joking, I don't even think he once went into court to hear my performance. He only hears reports from the Magistrates, that Mr So-and-So is a very good interpreter, outlining what the problems are with the interpreter, not himself. So he is concentrating more on the other side, the admin side. We often get overlooked. We do help the clerks out with Admin, but they don't help us out, they can't help us out. Like this week we are almost free of the courts because most of the prosecutors are out to Port Elizabeth, so what we sat down, as only 2 courts are running, we decided to go down there to the record room and do filing, just to keep ourselves busy.

J: Are you guys adequately compensated for what you do?

M: In terms of salaries, no. The only compensation I would say is when we are out with the Regional courts. Then we go to the hotels or your friends, and then coming back for those weeks or that month you can claim. But salary-wise, we are not well paid.

J: Is anything being done by the Department to raise awareness about interpreters?

M: No.

J: What should be done?

M: A lot of training needs to be given, a world-class training, a very professional one. To empower our performance, number two, for the interpreters to stand alone, to have our own division.

J: What particular problems arise during the process of interpreting?

M: To speak exactly what the person, or the witness has said. Not to think that maybe he is trying to say, just to make it right for you as an interpreter to interpret comfortably. If he doesn't know the word, raise his hand as an interpreter, 'Your Worship, I do not know this word in Xhosa. May the court help me out?' You must not assume that he or she is trying to say something, and that person doesn't mean that, you then interpret something wrong. Those are the things that you need to be cautious about. It doesn't matter no matter whether a person is giving a sentence in a senseless way. Just pass it to the Magistrate and let them decide that it does not make sense. But most of the times, more especially the Magistrates who doesn't know our language, Xhosa, Zulu whatever. They will be angry and say 'Mr Interpreter, are you right', you see they will shout at you though it is the person who is wrong. Because really you are not a Magistrate. He or she, the Magistrate is going to give judgement, he is the one that is going to decide on the case. Even if it is nonsense, senseless, give it to him like that. That is what I was taught, that being a coward, you see. Don't grab the ball into you is you are working a long time as an interpreter. There is a message, pass it on, quickly pass it on. It is not my job to correct that speaker.

J: Do you encounter language problems at all, translating concepts from one language to another?

M: Yes, most especially with Xhosa. You will find that there are concepts that cannot be translated from English to Xhosa. For example, lets say a Magistrate is postponing a case, he will say 'Mr So-and-so, your case is remanded, postponed, to 22<sup>nd</sup> December 2003'. If I, as a Xhosa speaking person, I will interpret for that person a date in Xhosa, a month in Xhosa and a year in Xhosa. That person will be totally confused. Some of the concepts cannot be interpreted to our language. He knows the 22<sup>nd</sup>, he knows December, he knows 2003. But most of us Xhosa speaking people we do not know our months, the 12 months of ours, from January to December. We have got them but it is difficult, they know January, February because they are more used to using them.

J: What about legal terminology and the complex language of the law?

M: It is quite a big problem. That's where these trainers need to stick on that.

J: Have there been any attempts to translate English legal terms into Xhosa?

M: Yes there are, more especially medical terms, the medical terms like lungs, heart and all the parts when the expert is there to give evidence. We are given these during the course. But let me tell you it is not sufficient to be an interpreter. There are some terms in Xhosa so there is no difficulty in translating them but maybe the witness does not know them

J: What about plain mistakes? What types of mistakes are made?

M: I would say firstly it is to lose concentration. Maybe if your mind is not there, maybe you are thinking of something else. Or the prosecutor or the Magistrate is speaking softly. You find some of the ones with big moustaches when giving judgement or with their hands over their mouths. It is difficult. And then they become angry if you ask the Magistrate to repeat what you have just heard because you did not hear exactly what he said, 'Mr Interpreter why don't you listen when I am talking to you'. When he shouts at you he moves his hand away from his mouth. Those are the problems. Or just to be out of court, to lose concentration.

J: Are these the most common mistakes or is it a combination of these and terminology?

- M: It occurs more with the legal terms because those are the where the Magistrates, they feel comfortable with them. Also the attorneys, but we are not because we have not had the legal training.
- J: What do you think should be done to improve interpreting?
- M: More complete training is number one and more specially in those complicated cases of a person having six counts that were committed during one night or one day, murder, rape, assault, theft of a motor vehicle etc. The Magistrates should give us a time to interpret for ourselves the judgement that he is going to give. Because you will find out sometimes, the Magistrate will say 'OK let's postpone this case' I want to go and prepare my judgement. Judgement is different to sentencing, the judgement is the outcome of the case and then the sentencing it is what this guy is going to get punished, going to jail for. To give us copies, 'This is my judgement Mr So-and-so prepare for yourself'. So when you get there in court you are free, you are comfortable, you are just flowing. Because you will find out they are quoting all those big books. And once you become frustrated you lose concentration.
- J: Do you think officers of the court should be made more aware of the problems you face?
- M: Exactly yes. What we call it, what is the term they must be socially contextualised. They have to know our problems, because I am an interpreter, I am there and it doesn't matter whether it is a black Magistrate who hears what I am saying, he must take what I interpret whether he likes it or he doesn't. Because we are staying in the locations, we are staying with these people. I will talk of the case of malicious damage to property, when two neighbours are fighting. Then the other neighbour throws stones at the windows of the other one. There are those things in black people of witchcraft. 'Yes, you are a wizard. You are one who is sending your umuti to my house', all those things. We know that because we live with those people. And that white Magistrate, I am sorry to say, he will say 'No, there's no such thing'. There are umuti, witchcraft and all those things. So they need to be socially contextualised. They must know they way we live and then we must know the way white people live. And they have to practice this in court.

## Appendix E-5: Interview with Chris

- J: You talked about your training. What training did you actually get?
- M: I would say formal training to be an interpreter. You don't just get a person to go to court and say 'Go ahead speak English, interpret from Xhosa to English or English to Xhosa'. It doesn't do that. Interpreting is not like translating. Translation is just looking at the words - 'the' means 'i' in Xhosa, 'walk' means 'habu' (sic) - you don't do that in court. So we were formally trained to speak court language, which can be difficult if you go there for the first time. So interpreting in court is not just like translating in a meeting situation, it's different. There you have to train formally, what you do when a person says this, how do you say it from English to Xhosa, how do you say this from Xhosa to English. That's formal training. In as much as you can obtain every statement that one utters but there are statements that are common in court - that was the formal training that we were given. What do you say when the Magistrate says this, how do you put this across to the accused when the Magistrate says this what do you say to the Magistrate when the accused says this. That's a common language which you don't get in an ordinary meeting. That is the formal training I am talking about. **And besides that I think it's the product students who come out of black schools. English is very, very poor and I think it is the quality of education more than anything else.** You could say that the pupils coming out of the so-called 'C schools' and private schools are different. My daughter studies at Kingswood and speaks English very well. She says 'Dad you don't say things like this'. That's the quality of English that I'm talking about. But then we didn't have these kind of schools, we were taught English the proper way. For instance if you start with past tense right through your sentence, it should be that sequence of past tense. Which is unlike our language. Xhosa is different. **I could start by using a past tense verb and then somewhere in the middle of my sentence I use present tense. It is different with English and those are the little things you should know if you speak English because those are the grammatical rules. And with due respect some people who are interpreters don't know this.** You listen to Xhosa. It is wrong because the sentence or tense is wrong. That is the formal training I am talking about.
- J: Once you actually started work as an interpreter did you receive any further training or were you mentored by any of the older interpreters?
- M: Yes, if you go to court I was mentored by interpreters, the guy I was talking about from Johannesburg. You would go to court for a month, just sit there and listen to this guy and watch him how he interprets how he does things in court. By so doing you learn and then you are given a chance to do it, given a week or so a case or two to interpret to see if you do the right thing. And then this guy whose you mentor would say afterward 'No what you said there was wrong you should have said it like this, you should have done ABC'. Which is not happening. You take a guy from matric, I am talking about black students from matric, who cannot construct one single sentence in English. And then you say you must go and interpret. What result will come out of that? That is the thing that really worries me about the court interpreters.
- J: There is interpreting Degree or Diploma that interpreters have to complete before they are allowed into court - I think it is a three year diploma.
- M: Court interpreters going for a Diploma, I don't think it would mean anything. You learn court interpreting by doing things in court by experiencing them. Like I said we were trained for about a month in Port Elizabeth. But when I got back to Queenstown in court I didn't know what was happening. You can train a person, you can offer these Diploma courses whatever but it's different. You have to be in court and do these things practically in court in order to then experience interpreting. It's not easy. So the question of getting Diploma's, I don't know without really being prejudiced or biased against who is offering these courses I don't think they help. Because the bottom line is the quality of English that these people come out from school that is the bottom line. If they are not taught English rules, grammar whatever you call it, they are still going to struggle in court with the interpreting because you have to understand English as a language before you start interpreting. That is my view.
- J: What do you think are the typical mistakes, or errors or areas where miscommunication takes place? What are potential dangers for interpreters?
- M: When I was here in Rhodes 2000, I was leading evidence in chief from my witness and this guy was a Xhosa speaker and he said 'The purchaser or rather the seller was present when we all signed the contract (which is a deed of sale)'. The interpreter said in English 'We were all present when the deed of sale was being signed'. That is a different thing. My witness was referring to the seller, not to everybody. He wanted to expressly tell me that this person was also present amongst others, but this interpreter said we were all present when the deed of sale. I said 'No, this is not what the witness is saying. He said the seller was present when the deed of sale was being signed amongst others by me and other people'. Because the seller was denying that he was ever there. You see those glaring mistakes. There are so many things that if I could think of examples but now I can't.
- J: Would you say that a big problem is the conceptual differences between languages for example Ukuthwala as opposed to abduction?
- M: Now Ukuthwala in our context, the Xhosa language is completely different. It is something that is allowed. You see a beautiful girl, you talk to your parents say 'I have seen that lady' there we'll go and visit the parents of the woman and the parents would agree to help you. The parents of the girl would agree 'OK we like your son but we will send our daughter to a shop buy something that's when you will waylay. Ukuthwala in Xhosa simply means waylay. You wait for that person, you catch him unawares you take him away. That's waylaying. It's not abduction. People in court use Ukuthwala like abduction and you say it's not it's waylaying you wait for that person and catch them unawares and you take them away that's waylaying. And you wouldn't know that no interpreter would know that word if he is not an experienced interpreter. And, it's legal waylaying somebody who's going to marry a person and the parents have agreed behind closed doors. So it's legal abduction physically but there is it's waylaying.
- J: Do you think there is quite a lot of confusion between for example customary law and the Common law?
- M: Oh yes. Customary Law writers like Professor Mqeqe and others will tell you lots about these things. Like the abduction and ukuthwala like the there are so many things. There is a lot of conflict and in the olden days divorce was not allowed. I have never heard of a customary law marriage allowing people to divorce, it didn't happen. But these days it happens, you just return the lobola or cattle. In the olden days they would never allow that because it was not the marrying parties that were involved, it was the parents. Without the parents agreeing that you should go back home you'd never be able to divorce your husband or your wife. Those are the conflicts that are there now. Like in this latest Act 120 of 1998 I can still not fathom how this is going to work. If I marry my wife according to customary law and am allowed to divorce that wife in terms of the divorce law of 1970. I it doesn't make sense to me but it's there those are the conflicts that are coming up in the latest legislation because these Acts, amongst other

things tell us that the common law marriage is of the same status is elevated to the same status as the civil marriage. It is, but there are some conflicts within these Acts.

J: Do you think the complicated nature of the language of the law has a lot to do with this?

M: Ja, Ja because law is derived law started in Rome and Romans spoke Latin and the Roman Law was spread from Rome to Western Europe. And Germans, English and any other Western Europe country they still don't have words from Latin to English. *Viva Voce* evidence you see that kind of thing. It simply means 'oral' evidence. But we still use that kind of terminology in court. The witness will be leading *viva voce* evidence. What the heck is that? It simply means oral evidence. It's because there is no word in English that could be translated from *viva voce* to simply 'oral' it says oral but it does not mean that in Latin. There are so many words and ja it's the language, the legal language that makes things so complicated.

J: Do you think simplifying that language would help out.

M: I think so I think so. But because I am a lawyer I like that legal language you know. It's more a status thing - I am a lawyer I am going to speak legal language. **But what is the point of speaking language that other people don't understand and yet you are saying that you are dispensing justice to people and these people don't hear a single word what you are saying in court. I think it is nonsensical to be honest with you.** I have got a book there, handyman's book, it's written by Boshoff. I train my students to speak the simplest English that you can ever English that you hear in the street. If you write a letter to your client why should you use legalistic language when that person reads the letter he is not going to hear a single word of what you are saying. What's the point of writing a letter? Writing a letter is to communicate with your client with another person but if you use high flown legal language what is the purpose. It's nonsensical to be honest and if legal language could be changed to become simple English for those who speak English and simple Afrikaans for those who speak Afrikaans I think law would be an interesting thing.

J: There have been moves to translate key legal terms into the various African languages. Do you think this will make a difference?

M: It will but, as I said before, English people still haven't found the exact meaning of Latin words because law originally came from Rome. So it would not be the same thing. We wouldn't use the legal terminology in our own African languages or whatever because legal terminology is very difficult it's very difficult. Like I have been interpreting for many years, for 7 to 8 years in court. Like the Magistrate would say *mutatis mutandis* I never found the correct interpretation for that in Xhosa. So we would still use *mutatis mutandis* translated in a simple language, but there would be no one word for *mutatis mutandis* you see. There are many, many legal terminologies which cannot be translated. We would still borrow some words from English, Afrikaans or whatever. Like we in Xhosa we have a word 'emmer' 'bring, bring emmer'. 'Emmer' means bucket in Afrikaans. We don't have a Xhosa word for bucket. Why, because the bucket was brought by white men into this continent and they never told us what is this, they told us this is 'emmer' this is 'bucket' so we borrowed that word, 'emmer'. We still use these days, Xhosa speaking, Zulu speaking there is no word for a bucket or an emmer in Afrikaans. Certain things did not originate in this continent they come from Europe and elsewhere. You'd never have an exact word for that because you never had those things. Like 'saddle' in Xhosa we have 'isale' we call it 'isale' but if you listen to that 'saddle' and 'isale' it is the same thing. We never had saddles before it came with the white man and he said 'this, this is my saddle, put it on my horse'. The Xhosa simply said 'Oh, isale' those are the words. It's going to be like that even we will never find exact words for certain terminologies, we'll still borrow from English or Afrikaans or whatever language or even Latin for that matter.

J: You have expressed concern about the court interpreters. Do you think this is a widespread concern?

M: It is, I have no doubt about that. As I said I've been around not only in South Africa, but in the Eastern Cape. **It's not only a common thing in Grahamstown, no throughout the Eastern Cape.** I don't know about the Transvaal or the Orange Free State where the language is Sotho, but Xhosa are really struggling. Xhosa interpreters are really struggling. I'm talking about old interpreters, you'll see that they are still struggling to interpret. It is a difficult, difficult undertaking to interpret, it's not easy, it's not easy.

J: Who tends to express this concern? I have spoken to Mr Strauss and he didn't perceive it to be as big a problem as it is made out.

M: **It is because he does not understand he does not understand Xhosa, he does not understand the goings-on in court.** If you could understand what is actually happening when you interpret from Xhosa to English that's where the problem is. It's easy I find it that the interpreters don't struggle when they interpret from English to Xhosa, but from Xhosa to English it's very difficult. I don't think with due respect to Mr Strauss I don't think he understands what he is talking about. I mean I've experienced this as a Magistrate I've experienced this from this side of the law as an attorney. I know what I am talking about. It's a real problem and people need to be trained and people need to value their being employed. They must really be proud of what they are doing. That time is gone, people are just going through the motions. He looks the other way round while the Magistrate is sitting this side. Ag, maybe I'm too much of a conventional person by nature but these are the little things that when I watch these interpreters they have no pride in what they are doing. They are only there to get a salary at the end of the month, which is a bad thing.

J: Do you see anything being done to improve the system at all?

M: I don't know. I'm no longer connected with the Department of Justice. I hear that people are being trained to be interpreters and I wonder who is training the trainees. I don't know whether those who are training really qualify to train to train these guys. I don't know. I've never been to any of these courses where the interpreters have been trained. As I said I've been almost throughout the Eastern Cape listening to interpreters. This is the same problem that you find in Grahamstown. Translating or interpreting from Xhosa to English is very difficult because you don't have Xhosa words that can fit into an English language. You can carry the message, convey the message to a Xhosa speaking from English because he will simply use any Xhosa word to fit the statement but it's difficult from Xhosa to English. That's where the problem is. I've seen even here in this Magistrates court the so-called experienced interpreters they struggle, they struggle to convey the message. What is important is to convey the correct message from the witness to the bench if you don't do that then the proceedings would be in a shambles.

J: What would you do to improve it?

M: I would train and train and train these people and maybe that would be taking it too far. I think people who are employed as interpreters should be people who value languages not just English... Afrikaans, English, Xhosa. Because if you don't like languages I don't think you can make a good interpreter. No, you must like the language first before you become an interpreter. 'Cause if you don't like the language or if you don't know the language it's a nightmare to be there. I've seen many interpreters in these courts in sweats you know because he realizes that he is playing an important role but he cannot perform that role to his satisfaction or to his expectation. He knows that you can see that. Terrible. It's a nightmare. So I would say people must be trained and they must be skillful. You mustn't just take people from the street and say 'go there' that's where the problem starts these days. People just go to

courts to be employed. I don't think people should really do it that way. I know some people would say I'm talking nonsense but that's how I feel.

J: Do you think a possible answer would be to encourage more black Magistrates, black lawyers? It seems that if there is a black lawyer or black Magistrate involved it would lessen the likelihood of these errors in translation.

M: Depending on where the Magistrate comes from. Some Magistrates have been to school throughout their lives and from school to University to a degree and goes to the Magistrates' Court is employed as a prosecutor, not as an interpreter and he's elevated to being a Magistrate. That Magistrate, in my view knows nothing except law. Interpreting is something else. You must do it to be able to know what you are doing. To experience to get that you must do it. In as much as Magistrates and lawyers master English as a language but I don't think you can just take any lawyer or any Magistrate and go and train that person to be an interpreter you can't do that. Not because I went through the mill, no. But I think people with my experience should be the people who should do that job. I'm telling you if I could give take 3 or 4 interpreters at this court and take them to court with me and be an interpreter and say you watch what I'm doing. Because as I say you learn by doing things well, you don't learn by being taught. You can speak the best English on earth but that man won't really care unless you make him do what you are doing.

J: So possibly more effort should be made when training new interpreters to get the input of experienced interpreters.

M: Yes, yes. They should be monitored. Experienced interpreters should monitor those coming into the fold and sort of monitor their work. I don't know whether that would work but I feel this is what happened to me 20-30 years ago and I'm proud of what happened to me. Because I ended up being an interpreter of note. I interpreted throughout the old Ciskei then and some of the Transkei. People they they would phone the Magistrates and say 'who could come as an interpreter' and they would recommend me. I really, really, I was proud of what I was doing because I saw myself as a very important person who could link these two people who don't understand each other. To me that was very, very important. Maybe I was stupid but I felt I was doing a good job.

J: Do you think that because there are now more black lawyers, more black Magistrates that sense of importance has to a large degree gone away?

M: Ja, I think so. That's a big problem. It's because the Magistrate understands exactly what the witness is saying the lawyer, the black lawyer like me understands exactly so interpreting or interpreter really doesn't play that important role anymore. Those days you had to speak English, you had to speak Afrikaans you had to understand Xhosa very well and in order to be a good interpreter because the Magistrate relied on the interpreters to convey the proper message from the witness to the bench and *vice versa*. Without those interpreters the courts would be a shambles. Fortunately those people in those days I think that most of them you find one bad egg here and there, but most interpreters I knew of those days were really good people, really good people. Ja and they were people who were trained in those institutions that I have talked to you about, Lovedale, Healdtown, St Johns, Freemantle, you know in the Eastern Cape those are well-known black institutions and unfortunately these days you don't have that luxury. It's black teachers, with due respect some teachers are good University students products. Not speaking but understanding English as a language and then they teach students good English. But understanding English grammar and English rules is something else. Speaking is different. That's my problem. We might have good teachers in English, black teachers, but the product that comes out of the certain schools is terrible. And that causes the problems.

## Appendix E-6: Interview with Simon

- J: Could you start off by giving me a brief description of your history in the legal profession?
- G: I did my articles at Whitesides in Grahamstown 1995-97, then worked as a PA for a year. Then worked in Cape Town in '99 for about 4 months as a Professional Assistant and then went to London spent three years there working two years as a paralegal in London doing research, discoveries and that. Came back and I've been working 3 years in Grahamstown as a Professional Assistant doing a broad spectrum of law. In Grahamstown you don't really choose so its criminal law, civil law, matrimonial law, property law, whatever comes across your desk. But it's a broad spectrum there's nothing we don't do. We deal with criminal cases and basically whatever lands on my desk, or who comes to see you.
- J: How often would you say do you make use of court interpreters?
- G: For criminal work every case you do basically. Because the court provides you with an interpreter for that. So I mean criminal matters I would probably say – finalized matters – I do about 4 to 5 a month. A lot are postponed but I'd say I finalise about 4-5 a month. Civil matters, you'll have a civil matter and often you'll have one or two witnesses who need an interpreter then you've got to get an independent interpreter 'cause the court doesn't provide a civil interpreter. They only provide for criminal trial, so a few guys around town who offer that service. They have to be sworn in by the court that they will interpret correctly from the English language to the Xhosa or Afrikaans language to the Xhosa or Zulu or whatever it is. There is this guy, XXX, for instance that I pretty much only use 'cause I know he's pretty good. The only reason that I know that is by people. I don't understand the language so I can't tell you if he's interpreting correctly.
- J: Would all of these criminal matters involve the use of interpreters?
- G: Virtually all of them. You know the **majority of my criminal work is Xhosa-speaking people and even if they can speak English when they give you evidence they would naturally prefer to give it in their mother tongue. They're not comfortable. It also can be an advantage because they get time to think about their answer. If they get a translator, they've got that extra bit of time going to think of an answer.**
- J: So how important do you think interpreters are within the legal system?
- G: Vital, ja you can't do without them. You wouldn't be able to finalise 90% of criminal of your criminal court roll without them.
- J: There appears to be a perception that interpreting in the court is in a state of crisis. During the course of your work have you come across this concern at all?
- G: I haven't had too many major problems in Grahamstown. I've heard rumours you know I've heard stories that in East London, PE there are major shortages. There have been days in Grahamstown when a court just can't function because the interpreter's sick and there is no back-up. There are also cases when you are in a trial and the prosecutor happens to be fluent in Xhosa where he will tell you 'whoa, whoa, whoa' and stop the witness and actually say 'that's not what he said'. Ja. And so they're actually at an advantage 'cause a lot of the Magistrates don't speak Xhosa, I don't speak it so they can come and say well that's not what he said. But the interpreter will then say no that is what he said. They can actually get into arguments there about what was actually said. It has happened. But Grahamstown there's certainly not a crisis. The interpreters seem to be pretty good. There's never major problems. **You know they can generally be quite lazy 'cause I don't know how well they get paid but they've got a bit of a devil-may-care attitude.** And they can be late for court and court has to sit around waiting, but I have heard in the more major centers there are problems. Obviously I haven't experienced them.
- J: Who do you tend to hear this from?
- G: Other attorneys. You know just generally banter when you're chatting on the phone to an attorney. I've got friends who are attorneys in PE, East London and that. Like a friend of mine in East London told me a story the other day about an interpreter who was actually drunk in court. So I mean they had to send him home and the whole court came to a standstill for the day because without an interpreter you just can't go ahead. If, for instance they had to go ahead and the accused's mother tongue is Xhosa and it's the language he chooses and they had to proceed with the case in any event that would be an immediate grounds for review because it's an irregularity. It would go straight to the High Court on review so you just can't function without them.
- J: What types of discrepancies do you find?
- G: You know the guy will say something like 'he kicked him in the leg' and the Magistrate will say 'no, no, no, no he said this word'. And he'll say 'that's actually the arm'. And it can make a huge difference you know. Ja so he would get words mixed up you know like arm and leg. Often what also happens is the interpreter just won't hear the answer properly and then he'll just interpret anyway. And then the Magistrate will say 'no no that's not what he said'. Generally it will then be repeated to the guy, the question, he'll get the answer again and he'll give it correctly. But of course you're sitting with the situation where if you don't have a black Magistrate and you don't have a black attorney there you don't have someone who understands, the only person who could actually correct them would be your client sitting there. And generally your client is so nervous of course he is not going to tap you on your shoulder, he's not going to stop the court proceedings to say 'that's not what he said'. And the witness very seldom will do it either say 'no you've interpreted wrongly' because once they've said the answer they almost blank their mind out. They're not perturbed with what the interpreter is really saying. There are also things like time. They might get a time wrong you know like the guy will say 2am and they will say 2pm or 12pm, or they just make mistakes. **I think they on their feet, well not on their feet, but they sometimes are interpreting for 5 to 6 hours and I think they get tired, naturally.** There's no rota system, they are there for the day. If you happen to have a case that starts at 9am and goes to 4pm they're interpreting for that whole case. And I think they get tired and they just start making errors. So its general errors it can be anything, but generally it would be arm instead of the leg or that type of thing that's picked up by the Magistrate or the prosecutor if he understands.
- J: Are there any problems particularly when customary law terms are used?
- G: Not really, not that I've experienced. I don't do much have much to do with customary law. But you know what one problem can be is that we don't even understand what the interpretation is. You know they use 'township terms' you know, terms we just don't know. In shebeens they are drinking 'nqomboti' or something like that. I know what that is but there are people that actually don't. So I haven't really experienced any of those problems.
- J: What do you think are the general problems, besides those that you've mentioned that would face interpreters today?
- G: I think a lack of motivation. My opinion of the interpreters here is they just don't seem to have a lot of desire to be doing what they're doing. It's kind of like they're going through the daily grind. And as soon as you lose interest in your work you're not going to be as accurate and really what kind of back-up what kind of test is there for an interpreter if he has got a court room full of

English or Afrikaans-speaking people? Who's testing that interpreter and what he's saying, who says it's correct? No-one knows. For instance in C court there's a Coloured prosecutor and a white Magistrate. A lot of your attorneys are still white attorneys and generally we don't know if they're actually interpreting correctly. I don't know what their pay system is but I don't think it's that good so I think that could lead to a general despondency. When you're despondent you're not performing at your peak.

J: Do you think that any problems that do occur are serious enough to jeopardise the administration of justice in the courts.

G: Not problems I've seen but I do believe that it could easily happen. I mean the interpreter is a vital cog and a lot of people, your prosecutor and Magistrate just see your interpreter as the person over there. But they actually are the court without them it's just not going to run. **So if they had to come in there and give incorrect interpretations all hell could break loose. I mean there could be wrong verdicts.** That's not picked up on the mechanical recording which is another problem. If XXX Recordings for instance, do all our transcriptions of the case. They will do a transcription, you don't get what the guy said in Xhosa and then the English interpretation or Afrikaans interpretation you merely get the English or Afrikaans. So even if it goes to High Court on appeal that's what was interpreted so that's what the client said. If they could transcribe in Xhosa and then have the interpretation, the interpreters interpretation, in English then you'd have a kind of test you know was that accurate? The judge could get an interpreter to look through the record and make sure its accurate but then there's no system like that. It is all in English and all in Afrikaans. So its what the interpreter said that is taken as law. That is what was said by the witness.

J: Do you see any evidence of observation of interpreters or mentoring by the more experienced interpreters?

G: Not in the court, nothing, no. Each court has his or her interpreter and that is the interpreter's main court. I've personally never seen someone. I know there is a sort of Chief Interpreter but from what I know he sits in his office. He delegates interpreters to courts, makes sure it's all running, you know the courts are running with the interpreters, tries to find a spare interpreter if one is sick. That's his job. I haven't actually seen him in court listening to make sure that those interpreters are doing their job accurately. I've never seen it myself.

J: From what you've said it would appear that maybe a possible solution would be to encourage more African-language-speaking people to enter the legal system?

G: Absolutely. That is happening. I mean it's happening quite quickly now. Take Grahamstown as an example there are probably now about 9 or 10 black practicing attorneys in this town. When I did my articles here I think there were 2. So the percentages are growing and that's just Grahamstown which is still quite predominantly white. I think all you need to go to a Horters (sic) which is your legal guide for attorney's firms and you look at places like East London and you'd will see that probably close to a good 50% if not more of the attorneys there are now black attorneys. So I think it is happening. Of course the thing is another thing that would be very good is to include an African language specially Xhosa because it probably is the main one in South Africa in the University curriculum for law. You used to have to do Afrikaans for one year to get your LLB. Why not make Xhosa now compulsory? The majority of your clients you are going to meet one day are probably going to be African so why not be able to speak to them? I wish I'd done it, I mean I could still do it, I haven't but I think it's something that Universities or the regulating body of whoever decides these things should think about.

J: What do you think could be done to help officials in the court be more effective in identifying interpreter errors?

G: It's very difficult because of limited staff and obviously you then have much higher government wages being paid out. But you almost need an interpreters watchdog so to speak. Maybe one interpreter, your Chief Interpreter should be a bit more 'hands-on'. He should maybe twice a week go to different courts, just go sit there for an hour. Not making himself obvious, just go sit in the back row and just listen and see. With a notepad or something and make notes of any errors that have taken place or etc. etc. And then sit down with the interpreter and say 'listen you've made these errors today, I was sitting in court you know, sort it out. You're not doing the job you were contracted to properly'. So something like that, a watchdog for them. It's easier said than done because of staff shortages, I mean the courts have shortages of interpreters, prosecutors, Magistrates half the time. So to actually find that extra person is not always possible, but it would be a solution if one could.

J: In general what do you think of the standard of English that is used by interpreters in Grahamstown.

G: **Reasonably good. Reasonably good I would say. The majority of them actually come across fine.** I often ask them in court 'sorry can you repeat that, just what quite do you mean by that?' because their grammar can be slightly off especially if they go onto a long sentence and you're suddenly sitting there and you don't know what they're on about. Often I have to ask them to just try explain it again and the court certainly does allow you that. But in general in Grahamstown their English is pretty good. They might battle one or two of them with Afrikaans and that is one of their requirements for qualifying as an interpreter especially to know Afrikaans because it is at this stage still an official language of the court whereas Xhosa isn't which is quite bizarre. But I think it will change but who knows when. I have found they're pretty good, but definitely at times you have to ask them to repeat themselves or rephrase it or something.

## Appendix E-7: Interview with Jeff

- J: Could you start off by giving me a brief description of your history in the legal field, where you are today, what you do?
- M: I graduated in 1997, I did articles in 1998 for 2 years, '98 to 2000. Then 2000 in December I got admitted as an attorney. I have practiced as a professional assistant and then on the first of July (2003) I was promoted to a partnership.
- J: How often in the cases that you take on are court interpreters used?
- M: Well I do mainly civil work so there are trials in the High Court, where I mainly practice, which we don't need to use them any longer. The interpreter is actually used when one of your clients is one of these people do not understand English or can't express themselves properly. So when we use them we hire private interpreters or so we call them freelancers from the township.
- J: In general how important do you think the interpreter is in the courtroom?
- M: Well he is important because without the interpreter it would be extremely difficult for the court to ascertain for certain what witnesses said. They don't understand the evidence of the witness first of all. **So the interpreter sort of acts as a mouthpiece of the witness and we rely on them entirely because some of us don't understand what he (the witness) is saying depending on which kind of person is there, what language he speaks.** Some Judges don't have a clue of, for instance, Xhosa so they rely entirely on interpreters. So they are very crucial.
- J: There is a perception out there that interpreting in the court is in a state of crisis. Have you come across this concern?
- M: I am not sure really because in civil matters we pay them so we expect them to interpret properly they are sworn in and they take the oath etc. etc. So far as criminal matters are concerned I don't know.
- J: The interpreters you use from the township, have you personally experienced any problems with them?
- M: Yes, at times.
- J: What types of problems?
- M: As far as we are concerned they won't translate, for they are translators you know, they are supposed to be translating. These guys translate things wrongly, probably not understanding the question from the judge or from the advocate. Or they can't translate properly what the witness was saying. I don't know what the solution is. It's difficult, to me, to be on you feet, but what I normally do is simply alert the advocate to what the witness actually was saying and then the advocate will perhaps put it to the interpreter that what he is saying is wrong. Yes there have been problems in the past. Not major, major problems though.
- J: Not problems that would jeopardize the administration of justice.
- M: No not at all, no. That's why you do have to beware and listen to what the interpreter is saying and it's a pity that some people don't understand the language of the interpreter because knowing that enables me to assist my advocate in that particular situation.
- J: What types of errors do you find? Are they careless errors, mistranslations, legal terms?
- M: No when we ask questions we try and make the questions as less technical as possible so you leave that for arguments not for witnesses. So it's mainly factual things, it might be careless, I don't know. Or they are just not competent so to speak.
- J: Have you heard from any of your colleagues at your firm about interpreters, what they think of them?
- M: No problems, we have always used trained, excellent interpreters, and they have never given us problems. I am not sure about other firms.
- J: Do you think there's a general awareness about interpreting problems in the legal profession?
- M: Not, I have heard some stories, but I can't verify them.
- J: So in your personal experience there are no problems?
- M: In my experience, well I remember conducting a trial in the Magistrates court where I battled to get a proper answer from the witness. I realised that the interpreter was not putting the question the way I wanted I wanted it to be. He sort of took the sting off my question.
- J: Do you think it would be an advantage if all lawyers were forced to take an African language for a year?
- M: I think, my view is that the language is not something that you can know by one year or something, because the language itself is very complicated and its quite complex. I don't know to what degree your course would help you to understand the pro's and cons of the language itself, but maybe it would give you a rather vague idea of the language, but I don't think it will cure the problems. If you are for instance doing Xhosa from school, and then they go to Varsity, they will be far better off than a person who has done that course for one year.
- J: Do you think it is problematic translating English terms into Xhosa, so the witnesses understand them?
- M: Ja. The thing is the interpreters that we have are just people who went to school, they are not trained interpreters or trained translators as it were. So perhaps maybe they have gone to school up until Std 10 or something and they have worked with various people etc. and they have a clue of the English language. So they have not actually trained, well they have not been trained and they are not proficient in the English language either, so they themselves do not understand exactly how to translate a particular sentence from Xhosa to English, but they do have an idea which is good enough to assist the court.
- J: What do you think could be done to improve interpreters?
- M: Well I am not sure what interpreters do. I presume they attend courses at Justice College from time to time, whether or not they are taught by people to help them translate from English to Xhosa or Sotho whatever. I am not sure what goes on in that area. But they do attend courses. I don't know to what extent they help them. I really think it's got to do with your growing in the knowledge, in the language itself. You try to read, try to understand do everything. I don't know, I don't have a clue how try to improve the interpreting skills of an interpreter other than that he must read and certain phrases of the English language they must know when they are translated from this particular language to another language. Because most of them you put a question to your witness, and the interpreter will struggle to put that question the way you want to put it. But at least he will be able to, it won't be a direct translation he will give an idea to the witness what they question is. At least the moment you are trying to decide whether the witness understood the question is when he gives you an answer, and then you will realize he didn't understand my question so let me rephrase it.
- J: One of the ways we could possibly get around errors is by getting more black South African lawyers, Magistrates and judges into the system.
- M: Well we have 3 Xhosa judges, and then a couple of Magistrates. By the way we have a number of white judges who understand Xhosa quite well. In fact, you are often corrected by a judge. A court interpreter has been corrected a number of times by a judge. He says 'no, I don't think that is what the witness was trying to say'.
- J: Can give me any examples of mistranslations or interpreter errors?

M: It was a 'crash and bash' trial and I was trying to demonstrate to the witness, who was not my client (my client was the defendant) that he was negligent in the manner in which he drove his vehicle. I was trying to put the witness onto the scene, saying that my vehicle was coming from this other direction, and I stopped, he said he was stopping he was coming from this direction and he had the right of way he was going to reach a four-way stop in the township. He had reached the four-way stop first and then my guy didn't stop. So I was trying to demonstrate to him how far was your car from my vehicle from my clients vehicle, because your vehicle was damaged on the front, not on the side. It was damaged only on the front in other words the probability is that it hit my guy and not the other way round. So the poor bugger (sic) was trying to translate that and he kept saying 'you were swerving' and I said 'no I never said swerve, I never used the word swerve'. So we struggled, and struggled and we couldn't exactly agree on that one to the extent that the Magistrate was cross not only with me but with my opponent as well. The Magistrate said 'no, if you do not trust this interpreter go and find another interpreter'. So when it come to those finer details which are very, very crucial in your evidence you know you get uptight because if a wrong message goes to the Magistrate, it might be judgmental towards your case. So the position of the vehicles after an accident is very important to know exactly how were the vehicles after the accident to determine perhaps who might have been on the wrong side of the road. So the interpreter's always got problems in that regard. Unless you demonstrate it by showing with some drawings, or graphics in order for them to see exactly what you are talking about.

## Appendix E-8: Interview with Peter (Summary)

Mike worked as a State prosecutor for 2 years starting in 1992. He moved into private practice in 1996. Most of the work that he does is criminal work in the High, Regional and District courts. As he doesn't speak Xhosa or any other African language he relies heavily on the court interpreters. He believes that interpreters are a vital part of the legal system in South Africa. This is because a large number of the cases that he tries involve Xhosa-speaking participants and witnesses. While working as a prosecutor, he would make use of court interpreters to consult with his clients, as well as using them to address Xhosa-speaking participants and witnesses.

While employed as a state prosecutor, he found the interpreters to be extremely helpful. He states that they were always willing to help consult, and were generally good in court. He does say that there were good interpreters and bad interpreters. He feels, however, that this has changed. Many of the interpreters today are only interested in fulfilling their job descriptions. During his time in private practice he is also dependent on the court interpreters to relay questions to participants and witnesses.

Mike hasn't come across a perception that interpreting is in a state of crisis. He reiterated that there are good and bad interpreters, lazy interpreters and hard-working interpreters. There have been occasions where the interpretation given by an interpreter has been questioned. This largely occurs where a black attorney, Magistrate or Judge is presiding over a case. Where the interpreter is questioned, there are usually two reasons: The interpreter has not put a question to the witness properly, or the interpreter has mis-interpreted the response by a witness. Generally, Mike doesn't believe that these mis-interpretations are overly prejudicial to the fairness of a trial. He feels that such mis-interpretations occur naturally within any type of speech. He does not believe that there is a problem where legal terms need to be translated into Xhosa, as he tries to use simple language when questioning witnesses. He feels that 'it is pointless using legalese when questioning as this could confuse the witness'. Similarly, when officials in the court use legal language, it is often not necessary to interpret this. Thus, interpreters are not often called upon to translate difficult legal terms into Xhosa. A more pressing concern he has with court interpreters is the fact that they sometimes don't show up for work. If an interpreter doesn't arrive for work, a trial cannot proceed. The court then needs to find another interpreter, or to find a freelance interpreter. He feels that this is a particularly pressing problem in the High Court, where he feels that there is a lack of organisation amongst the interpreters. As said earlier, he also feels that interpreters are not as helpful as they once were. He does admit, though, that while he was working for the state as a prosecutor, interpreters might have been more inclined to help him as he would have been on 'their side'. One of the biggest problems identified by Mkie is the relative lack of proficiency, on the part of the interpreters, in Afrikaans. This is particularly problematic in that Afrikaans is still one of the official court languages.

Mike feels that it might be helpful if it was compulsory for all law students to take a course in an African language. He does, however, stress that such a course should prepare the student to communicate in the language. He states that people who did well in Xhosa at school were not necessarily competent Xhosa SPEAKERS. If students were taught to communicate this would be more helpful. He feels that it would be useful to be able to translate legal terms from English to Xhosa, however this is not a priority. While the focus in the courts is on the law, very little of the legal discussion is relevant to the witness. He also felt that more black magistrates and lawyers need to be brought into the system, as this might cut down the incidence of interpreter errors. However, he stresses that the court system should not compromise on quality. He believes that, above all, appointments need to be made on merit.

## Appendix E-9: Interview with David

- J: Please give me a brief history of yourself as lawyer.
- D: After getting my academic qualification I was in East London for about 6 months doing my articles. Whilst there, I was approached by someone telling me that there was someone in Grahamstown who needed another assistant. So I came over and worked for them. In 2000, in Grahamstown, I resumed as an articled clerk. Then I was admitted in 2001. Since then I have practiced here in Grahamstown. For some time, 2001/2002, I was in Umtata, where I was approached by another firm. I came back late towards the end of last year. I have since opened my own practice, here in Grahamstown, which is the office that I have now. I got my BJuris from Fort Hare and my LLB from Natal/Pietermaritzburg University.
- J: What types of cases do you do?
- D: My office is called that of a general practitioner we do all sorts of cases. But most cases that we do are criminal cases, administration of estates, wills and so on, transfer of property. We also do debt collection at times, and then some civil action, litigation like divorces, claims against the State, MVA matters and that type of thing.
- J: How often is it necessary for you to use an interpreter?
- D: With criminal cases we do it all the time. That is the system that the courts are designed around. All the criminal cases they have interpreters. It's only then that the person, if he speaks Afrikaans or English, can waive the services of the interpreter. But with all other cases where the accused people or witnesses are Africans, black people, speaking other languages than English or Afrikaans then you have to use interpreters. Sometimes even if the parties are speaking English or Afrikaans but the attorney or Magistrate does not understand those languages perfectly then the interpreter can still be used. So we use them all the time. Then with civil cases the attorneys themselves, more specially those of the claimant or the plaintiff, will secure a private interpreter. For those cases, the State does not provide for those cases. But for criminal cases the State provides you with an interpreter.
- J: So how important are interpreters in the courts?
- D: They are crucial in criminal cases because sometimes even if the participants are there, the accused, the witnesses are there present in court, the professionals deliberate in English or Afrikaans other than their original mother tongue. Sometimes you don't have to tell them afterward what had happened, or beforehand what is going to happen. Some of them they need to know what is going on in their presence during the proceedings, whether this tallies up what was told to them beforehand. Sometimes you tell your client that 'this is going to happen in court, I am going to say this and this for you'. Or she will ask you 'say this and this for me'. So they need to hear that you are doing that presently in court. Don't tell them afterwards 'I did it or I could not do it because of that'. They need to know what are the developments as the court progresses, so it is very critical. Because it is to do with their liberty. In criminal cases once you get a case against you, your client will be convicted that may mean going to prison or paying a fine or having a sentence that is suspended above your head for a long period. So it is very, very critical in criminal cases.
- J: Have you come across the perception that court interpreters aren't as good as they should be?
- D: You sometimes can't help if you can understand the language of the witness or the person testifying. For instance, I am Xhosa speaking. If they translate in Xhosa and I hear that this person is speaking in Xhosa I sometimes understand what the person is saying, or what the interpreter is saying to that person, and on some occasion I can say that the interpreter is not saying what he should have been saying to the person, or he is not conveying what the person actually said. I think that is quite interesting because when I discussed this thing with my other colleague we had a difficulty that the people who are there are there are they interpreting or translating. I think my friend said that there is a possibly a distinction between the two. Either when you translate or interpret, whatever he meant, **sometimes you convey the general meaning of what has been said, and sometimes you have to convey the literal translation of the words that were used.** So I think that that is their challenge as interpreters, or translators, that sometimes you have to convey the general meaning and sometimes you have to give the actual meaning of the words used, irrespective of what they mean. Because sometimes you can hear that a person wishes to say this thing but cannot express himself or herself sufficiently. Then the interpreters will take sufficient measures to supplement that person. Sometimes it's wrong to do it, sometimes it's right. If I am in court, I see that their interpretation is not to my advantage, it does not assist my client in any way, I sometimes object to the court and say 'This is not what I heard the witness saying. The interpreter should be saying that'. Then the court will confirm with the interpreter 'Is that what he said'. Because, at the end of the day, the court will never accept my own interpretation over that of the interpreter. It will never do that because that person is the official person, appointed for that purpose. So what he says is always held.
- J: Do any of your other colleagues say the same thing?
- D: I don't think they complain. They sort of seem confused about the way the interpretation is being made. So sometimes they understand the direction that a person is taking or whatever. I don't think they are complaining, but I also don't think they are condoning. **But I think they do not want to disrupt the process because you are not always in court. If you complain and you don't hear another person complaining, then what is the use complaining? It would be as if it is you, in particular, who is having a problem. Now we have never sat down and deliberated over this issue, so we talk about it informally, sometimes we comment to the person, the interpreter afterwards that 'You were not saying what you were supposed to say', or, 'You were good today, what you said in court', it's sometimes like that. It's not a formal thing that we sit down.**
- J: Do you think the errors made by interpreters are vital errors?
- D: **I don't think so, because if there were such there would be complaints. Because if they were vital it would mean that the essence of what has been translated or interpreted would not have been in the interests of the case under hand. I don't think they are so vital that they frustrate the whole tenor of the proceedings.** I think, in the end, because you say that the interpretation was good or bad, does not damage the essence of the proceedings. That's why you sometimes let go of the errors and don't complain.
- J: What kinds of mistakes do you tend to find?
- D: Sometimes it's the language. Sometimes a witness may testify that a person was like you say in Xhosa, for instance, when you describe a person you do not distinguish between genders, between he and she. Now the interpreter, when they translate that into English they must make that distinction. **Now the distinction is sometimes not of the gender that was being said by the witness. Now the court will always, sometimes in rape cases, be under the impression that a particular person was doing the thing or is being referred to whereas that is not the case.** Sometimes it is the issue of the he's and the she's, genders, because in Xhosa there is no such distinction. You refer to a person as 'a person'. The other thing is the language in the sense that the tenses tend to overlap with interpreters, and once they do that sometimes it can distort the essence of what is understood by the

presiding officer, especially if he is not a Xhosa speaking person. Because he will rely exclusively, solely on what is being interpreted to him or her. Now if some things do differ in a particular context, he may take that as testimony given to him and throw out the proceedings. At the end of the day it may, or may not affect the outcome.

J: Is there a problem translating legal terms from English into Xhosa?

D: There is but I am sure that normally what the interpreters interpret is what is being said to witnesses by either of the parties, the prosecutor or the attorney. Now, in those cases, both professionals do not use technical legal terms, they do not do that. If one is compelled to do that, he is then compelled at the same time to simplify. He may refer to the phrase or term, but at the same time simplify it. Because sometimes a person who is critical is a witness, so the witness must understand. Now the legal terms you mostly use them when you address the court before the proceedings start: 'This is going to be my case, I am going to rely on this'. You also use them at the end of the testimony by witnesses, during arguments, they will use them. But normally the interpreter, may translate to the accused person, or may not. Sometimes she will wait for the entire argument to be made and then just translate afterward. Thus, they translate the general meaning of what has been said. Normally afterwards they will convey the general meaning of what has been said because it may take a very long time to argue for your side and he may not understand all of what you were saying. But when the Magistrate is saying you are acquitted of this count and this count, not saying the words that I have used. Even the State will say the person should be committed on these grounds, in terms of the points of law, and he will give the general meaning. Now even when the presiding officer gives the judgement of the ruling, he may refer to legal terms, technical terms but in the end is he acquitting or convicting? And the reasons for the decision will be given by the interpreter, 'because of this, this and this'.

J: Do find that there is a clash between customary law and common law?

D: There is a clash, a conflict and most of the time the conflict is in private law, most specially, the issues of the maintenance of children, custody of children, the rights of wives in their marriage, rights of husbands in their married context, division of assets of the estate after divorce or death of a partner. Especially after the death of a husband because sometimes the family of the husband may say you have been married to him in terms of customary law so therefore you simply have to remain within the family, they will sustain you. Whereas, in terms of the civil law, the wife has got the separate assets of herself and the husband, and she can dispose of them at will. So I think there are such things. We do not get too much of criminal-related matters anymore in customary law and the like. I know sometimes that in the rural areas, one person gets a cow and the other person says the cow is mine, it was lost, and you take it back. It would be criminal to take someone's property, but they dispose of it there, they have to take it to the chiefs. What we normally get here in court is the customary law of marriages, custody of children, maintenance because the person they refuse to pay because customarily he can get away with it, but in civil law he cannot get away with it.

J: How often are the mistakes picked up by the officers of the court, and who would pick them up?

D: I can say they are picked up if the presiding officer does understand both languages. The language of the person testifying and the language into which it is being translated, then it is normally picked up. **Now if she doesn't understand one of the languages, we will simply sit in court, and only pick it up when we think it assists us, whatever has been said.** Other than that, if we feel the general meaning is there we will just let it go. But if even the general meaning tends to adversely affect the case, surely you will stand up. You will want the actual general meaning to be given, or the literal meaning. Normally when you do, you suggest what should be said, this is what has been said, this is how it should be interpreted. Because you need to commit these to the record, just in case you appeal, because once you appeal you don't use the actual voices, you use the parties on record. So one should get on record, so once you get on record you can go that way. When the presiding officer understands the languages being used, that is good, as he can say 'That is not what was said, it was this and this'.

J: If the officers of the court are all white is there a high possibility that mistakes will not be noticed.

D: I think it happens. Although I may be wrong but I think it happens even when the court is familiar with both languages. I think it would be worse when it is just one person to rely on for the interpretation. Because you see if the attorney's white, the presiding officer's white, so is the prosecutor. It is only the interpreter and the witnesses that are black. I am sure between the witness and the interpreter some vital evidence could be lost. Sometimes you even get an interpreter suggesting to the witness, like 'What is it that you are saying? Are you saying this?' Because some of the witnesses are not good in conveying what they want to say. So when the interpreter suggests to him 'What are you saying, is it this?', then the witness might think that that is how to say something and say that they are saying that. You see, it could be lost. I think it could possibly be lost a lot of the time.

J: Do you think that officers of the court should also be negligent, as they haven't picked up the languages in the court?

D: You see, with us as attorneys, we come from this school of thought, that says when we get to court, all of the officials there are professionals, and work in the interests of justice and uphold the law. **So you tend not to wish to upset anyone because you think no-one is going to come your way the next time. So if I go to court and report or complain against an interpreter I am not saying that I may not be in some extent contributing in an irresponsible manner to justice, I am trying not to create a personal conflict between myself and them. I think, what I do is simply focus on my case and that of the accused. If the interpreter does, in the course of his or her interpreting make mistakes you are responsible for letting go this irresponsible thing. But I always look each side of the case. The interpreter, sometimes you say to them afterwards 'This thing you are not supposed to say these things'. You just have to speak afterwards. You find that they are hostile to the idea that you are critical of them, and 'What is it you want from me?' It gets into that dimension and then you tend to withdraw and then you say that they are just not saying what has been said. I think maybe we could be responsible for contributing to that state of affairs. But sometimes you want to appease the other people for the sake of our cases and our official relations with them. You don't want to upset anyone - I wouldn't like to upset anyone for myself. Sometimes you ask favours from them. Sometimes that you are going to continue into a lunch hour, because you want to finish this case today. Sometimes they say they can give you ten minutes during a lunch hour or coffee break, so you have to maintain relations with them at some level.**

J: Do you think potential lawyers should be forced to take an African language?

P: That is difficult. I think it would be an advantage for such a person if he understood the African languages, but to make it compulsory for one, to make it part of the curriculum at Varsity would be too much. At the end of the day, for the time being, our judicial system is in English or in Afrikaans, as the official languages. Now the country itself has got other official languages. Sometimes we as attorneys move from one place to another place. So if I am studying in Natal, what language should I be taught there? Because I may be coming down to the Eastern Cape, as it happened to me. Or if I go and study at Wits in Johannesburg too many African languages exist there, Sotho, Xhosa, Zulu, Tswana. They exist within the Gauteng area, so what language are you

going to ask that person to learn? Now what if that person moves from that area and comes to the Western Cape, where it is dominantly Xhosa. So I think it may be asking too much. But I think that what instead we could do is invest, or the State could invest, in helping an accepted manner of translation or interpreting by their officials. Because I don't know whether they translate or interpret, I am just there accepting what they give to me in court. Even if it is not what I expect, from there I don't know why I should complain because they will say that they conveyed what was being said. What should I complain about, is it the literal meaning or the general meaning? I don't know what. But if they could invest in that, the State, and we could be informed of such things.

J: Do you think the answer would be to get more lawyers, Magistrates etc. who speak African languages then?

D: You see, once you have a particular person appointed as a presiding officer, that person, being in the employ of the State, is then confined to a particular area. It is the same problem we have talked about. Then the State could invest in that person, that as part of the process of him being appointed to the bench then he could be made to learn an African language of the area in which he is going to. It could be easier that way because that officer there is the one who is supposed to be fully informed of the proceedings before him. At the end of the day, he is the one who is going to apply the law, and give a ruling. He is the one who is supposed to understand and be fully informed of what happened. Maybe when I ignore these things because it assists me, it does not assist him as the one who is going to make a ruling. He must be the one who is fully informed what happened. So maybe the State could then invest in those officers. Because once they go for the appointments, they are told they are going to be appointed in a particular area. If he is going to be sent there then the State should maybe ask that person to acquaint himself with the dominant language spoken there. Because I am sure that once it's like that, those officers will always pick it up if they have the basics.

J: What do you think of the standard of English amongst the interpreters here?

D: It varies, it varies. Some interpreters are alright, some not. It depends where they were at school, how good they were at school and how frequent do they use the English or the Afrikaans in their general socialising - with friends. It depends, because I understand that there are interpreters who are interpreters, but their level - even with the attorneys sometimes, I just find some attorneys even when they speak English for instance it is not good. It depends how often is he made to use or converse in that language. There are good interpreters, who, for instance coloured people, who are Afrikaans speaking. A person who understands Afrikaans as a language, to me can be a good translator into English. That is my perception. A person who understands Xhosa as a mother tongue sometimes cannot be a good translator into English.

J: Do you think it is more difficult, or maybe that Afrikaans and English are 'European' languages?

D: Ja, I think it is because of that and sometimes because people who tend to speak Afrikaans are comfortable speaking the white man's language, even to go to the shops, speak to these people. You are comfortable. Sometimes when you are Xhosa, in the old days our mothers used to tease us that they only started in Standard 4, but when they go to shops to pay accounts or to open accounts they are speaking English. They have learned from their domestic work, working from white people in their homes. We are used to speaking with white people. We learnt English up to Grade Twelve, but we are not comfortable speaking that language. So when you are speaking that language you tend to be so cautious, I must use the right word, the right tense, everything. You are always so careful about it. But those that can speak Afrikaans are used to, are so casual about it. They say what has to be said.

## Appendix E-10: Interview with James (Summary)

### Appendix E-2 James

James graduated with a law degree from UNISA, and has worked as a state prosecutor since 1987. As he deals exclusively with criminal trials, he makes extensive use of interpreters - particularly in court. Outside of court, he doesn't often use interpreters to consult with witnesses as he has picked up enough Xhosa to understand them and to be able to communicate with them. He does, sometimes need to use them though when dealing with complex cases. He believes that interpreters do play a vital role, but they are only one part of a team. They talk more than anyone else in the court - because the languages of record (English and Afrikaans) are not first languages for the majority of the population. However, all of the participants in a criminal case play an equal role.

He has definitely come across the perception that court interpreting is in a state of crisis, and has experienced this situation first-hand. He believes that it is shocking what goes on in court - particularly what gets to the accused through the interpreters. He also states that the mistakes that are made are often picked up. He feels that there is a particular problem when interpreters are trying to explain legal rights to the accused. At times he estimates that only 30% of the message is getting across to the accused. He doesn't believe that the problems are due to deficiencies in language. He identifies two main causes of interpreter errors, laziness and a lack of professionalism across the board. He says that members of the legal profession don't really talk too much about the state of interpreting. He says that they are so used to it, people just live with it (bad interpreting), and they don't really talk about it. He is confident that the mistakes made seriously jeopardise the administration of justice - particularly where legal rights are not explained properly.

James doesn't believe that interpreters are looked down upon by other members of the legal system. As he explained earlier, interpreters are equal members of the court, and they operate as part of a team. He believes that any negative perceptions of interpreters are caused by their lack of professionalism. In particular, he feels that interpreters are guilty of not paying attention in court. This, he feels, is often due to laziness. He also identifies Afrikaans as a big weakness amongst interpreters in Grahamstown. Although Afrikaans is not used a lot of the time, they need to improve their skills in this department. He feels that this deficiency in Afrikaans can often rob a prosecutor or lawyer of effectiveness when asking questions. This deficiency is inexcusable because the interpreters have access to dictionaries, and they get sent on courses. So he doesn't see why language skills are so bad. Besides the problems encountered when explaining legal rights, he doesn't believe that there are many problems involved in interpreting legal terms. He also maintains that interpreters are well remunerated, so this cannot be a cause for the problems experienced by interpreters. Above all, he believes that a culture of responsibility needs to be instilled in interpreters. This, he believes, might be achieved by providing them with a professional qualification. He states that there is a definite inferiority complex amongst interpreters, and this has often led to alcohol abuse.

He believes that interpreters should be interpreting rather than translating. He doesn't expect a word for word translation, but does demand that the specific ideas need to be communicated to the witness or accused. If this does not happen, the witness or accused will not be able to answer questions properly, and will not be able to contribute to the administration of justice. This, he feels, is a big problem, and it often happens that the witness clearly doesn't understand the proceedings.

When asked whether other members of the legal profession should be made to learn an indigenous language, he argues that because there are so many different languages it would be difficult to decide which language to learn. Additionally, it is quite expensive to learn another language - he has made enquiries and says that it would cost him up to R12 000. If, on the other hand, the government were to provide funding, language courses could be an option.

## Appendix E-11: Interview with Andrew

- J: First of all could you just give me a brief description of your history in the legal profession?
- A: I studied in Cape Town at the University of the Western Cape, doing a BA LLB. I am actually from the Eastern Cape, so thereafter I worked in East London for about a year and a half, did my articles and then I had my articles ceded to Mr Sandi who is now a judge. I worked for about another 6 months there as an articulated clerk and was admitted as an attorney. About 6 months after that I started my own practice. I was in private practice from November 1997 up until June of this year. Then I decided to join the State and I have been a prosecutor for the past two months.
- J: In general how often is necessary for you to make use of court interpreters? What is the nature of your interaction?
- A: Well I interact with interpreters on a daily basis. Most of the clients, accused and witnesses are Xhosa speaking and it is necessary for Xhosa interpreters to be utilised to interpret the evidence. I interact with them not only in court, but also out of court, they prepare the court book which goes to the Magistrate and also assist with getting charge sheets and so on. So on that basis I mingle with the interpreters.
- J: Do you use them to interview witnesses?
- A: Only sometimes. What happens is I grew up in the Eastern Cape, and I got to know a bit of Xhosa but I am not fluent in Xhosa. I also did a Xhosa course at University so I can help myself, and in that way I am in a position to consult with witnesses and get their various versions. But if there is something intricate and that I need to get specific assistance with then in those circumstances I would call for the interpreter to make sure that what is being interpreted or said I understand properly and fully.
- J: On a scale of 1-10 your Xhosa is?
- A: Probably about 5.
- J: How important are interpreters in the legal system?
- A: **They are a vital cog. Yesterday, we had a gathering with our Magistrate and it was the court staff including the interpreter. At that stage I described the functionaries of the court as almost being similar to a watch. You have big wheels and you have small wheels, big cogs and small cogs. The bigger the cog is doesn't mean its more important – even a small cog is important. Without that vital part the watch is going to stop and interpreters are quite often overlooked but they are a vital part. If there are not interpreters these courts are going to come to a standstill.**
- J: You say interpreters are overlooked, how are interpreters viewed by other members of the legal profession?
- A: **I think they are quite often looked down upon as merely being an administrative, or similar to somebody doing an administrative task.** But in fact interpreting is actually a profession in my view and I hold the view that interpreters should get formal qualifications. They should get a BA in those languages that they are going to be interpreting. It's not just sufficient for somebody to be in the position to communicate. For what its worth I am sure that I would be able to make an interpreter, but there are certain terms of art that one needs to be in a position to express properly. I know that they get some training on occasion but I think a formal qualification would also elevate their status, and people would then come to realise how important they are.
- J: During the course of your duties have you come across a concern about the state of interpreters?
- A: No I wouldn't say the state of interpreters in general. I think you are going to have certain problems with certain interpreters that are not maybe as well versed in various languages as one would like them to be. For example you find some of the interpreters would instead of saying 'he' for a gentleman or a male would say 'she'. You find little things like that, but I won't say that there is a broad, general problem with interpreters. **There are individual problem cases but generally the interpreters do a good job.**
- J: Why do you think then that there is this theoretical perception that interpreting is in a crisis?
- A: Well I have not had access to these theories. I am not sure whether the people who see problem are not possibly objective third parties, or objective parties. Then they are overly critical of the system. But from my experience, and I can only speak for the last two months where I have been actively working with interpreters I don't see any major problems with interpreting in South Africa.
- J: What particular problems do think there are that might face interpreters in a court room?
- A: **Well I think one of the problems is the fact that interpreters are required to concentrate for long periods at an end and it can tax any person's powers of concentration. If you look at it, on average one has to sit for about 4h45 minutes in court.** As an attorney, prosecutor or Magistrate at certain stages of the proceeding you can sit back and relax and somebody else is going to do the job. It is almost like a relay. For interpreters they don't have that luxury. It's almost like having to stand up in court and speak for the entire 4h45 minutes and sometimes a bit more and that can be very taxing. I think that they should look at possibly using a few more interpreters for shorter periods. What happens at some stage or the other one tends to lose concentration and if you lose concentration then you find problems with interpretation that may later be exploited in terms of cross-examination. That is basically the only problem that I foresee.
- J: Are there no problems with language, for instance translating from English to Xhosa?
- A: What happens is if you have a particularly foreign concept legal concept in English, what the interpreter would do is explain the concept to the satisfaction of the accused or the witness and then that person would then be in a position to understand what is being conveyed. Really, what happen if you have a rape case or a case involving medical injuries, you move into using terms of art which are very specific, and in those circumstances then you may find problems with interpreting if the interpreter had not had formal training. Sometimes what can happen is that the J88 is a medical form that gets filled in by the doctor if someone gets assaulted, or raped or stabbed and the interpreter would take it and say to the accused 'this is a form that the doctor has just testified about, what I am going to do is I am going to tell you generally what is contained in the form and we will deal with the most important aspects' – not dealing with them in as extensive way as the doctor had. In some of those instances as a result of the fact that they may not have had the type of formal training to deal with it effectively and to explain. One has to understand that, other than Afrikaans, many of the indigenous languages have not been developed linguistically to express scientific terms or science. **Interpretation and translation is very ambiguous and imprecise because you have to convey something to someone that is not there in language.** You can try and make something up, almost like a pidgin language or the other way would be to explain to the person in a round about way what is actually being conveyed.
- J: It is interesting that you use 'interpretation and translation' in the same sentence. When you are operating through an interpreter what do you expect?
- A: What I expect is almost a merging of the two. **You stick as close as possible to the literal translation, but in instances where the literal is insufficient to convey the essence of what is being put or what is being asked. For example if a witness makes a gesture, for example then the interpreter has to say 'your worship the witness has made a downward stabbing motion with**

do it. I don't think there is much emphasis on them to say that this is how you should do it and this is the professional standard required. You should dedicate yourself to this. I just think that some of them just take it easy.

J: Why do you think some are dedicated and some aren't?

P: I think it is the type of person. A dedicated interpreter should carry out all the parts of the job. But with some of them you are struggling trying to get them to write the criminal cases on the court book. Thereafter they will disappear. Then you will go to the courtroom and he is nowhere to be found. You go round, running around to find them, but some of them will always be there on time, to help you if you have a witness to interview in Afrikaans. You start the court and you go until tea-time, when you adjourn until quarter past 11. At quarter past 11 the interpreter is in the courtroom. When you walk in he or she is there. With the others you get that at quarter past 11, everyone is there but the interpreter. You have to go around looking for them. I believe that they are not dedicated to their work and they are not taking it seriously the fact that nothing much can be done without them. They should know that they are there to help everyone. But you get the other ones who are even prepared to work through lunchtime, not moaning. You get those that you won't even attempt to ask to stay, they will obviously say no and after the break you will still have to go and find them.

J: Do you think that interpreters are looked down on because of their lack of a professional qualification?

P: In my case, I don't think so. I don't look down on them because of their qualifications. It is a matter of how does one behave because they are still as important as other court officials in the courtroom. But if, every time you want to start the court, you have to go around looking then his credibility goes down and down. The Magistrate walks in and the interpreter is nowhere to be found. The public is there, the defence attorneys are there, everybody is there. So the Magistrate has to send the court orderly to find the interpreter. He loses his credibility to the members of the public, to everybody.



**his right hand' and that has to be conveyed. Obviously you cannot interpret a motion, so the essence of what is coming across has to be reflected onto the record. So I think if you are going to go for one or the other then somewhere along the line you are going to lose out on the kaleidoscope, the fullness of what is actually being communicated.**

J: During a trial have you ever found yourself listening to and understanding an interpretation that is incorrect?

A: Yes.

J: Could you describe an example?

A: More often than not it is a shortened translation of what has been said. For example, if the question would be 'Did you see him that evening at that place?' then it may be interpreted as 'did you see him that evening?' Now in those circumstances I would then emphasise 'at that place' and at that stage the interpreter would then also interpret that.

J: Is there a general awareness of these types of problems in the court, does everyone experience them?

A: I am sure everyone would. I cannot, obviously, speak about other people. I've not really discussed these issues with other people but I would imagine that other people would experience similar problems. A concern would be if a prosecutor or an attorney is not proficient in Xhosa, or has some understanding of Xhosa, then that person would be at a disadvantage because if there is an incorrect translation that person either is going to get frustrated because if the interpretation is incorrect the interpreter for example doesn't understand the question that is being asked, then the person who is asking the question is not going to get the answer that he or she wants which is then going to frustrate the cross examiner. If you have some knowledge of Xhosa it will allow you then to almost correct the interpreter if the interpreter is imprecise in his or her interpretation.

J: Who picks up on the errors?

A: It all depends on the level of knowledge. I know that Mr Dungwa, he is one of our Regional Magistrates, he comes from the Transkei, Xhosa is his mother-tongue and he is exact and precise. He requires the interpreters to be precise.

J: Do you think that, given the fact that most of the lawyers and Magistrates in Grahamstown are white and probably don't speak Xhosa, these errors might affect the administration of justice?

A: I think so, I think that they may have a bearing on a matter. Especially, for example, I adopted a case recently where the complainant (it was an instance of rape) and the complainant said that she was forced by this person to take off her clothes and then to lie on the bed. Now what had been written in the statement was 'Take off the clothes, get into the bed and slept' and that was what the policeman who took down the statement had written. 'Slept' for him was equal to 'lie' and not equal to 'sleep', so what had happened was that even though the complainant when she testified or made a statement to the police had said that 'He told me to take off my clothes and lie on the bed', the policeman wrote it down as 'take off your clothes and slept'. That was an aspect which was picked up in cross-examination and a big fuss was made about that. Eventually it transpired, and I actually pointed it out to the court, the problems with the policeman taking down the statement, there were other grammatical problems and one could quite clearly see that his English was poor. So, to make a song and a dance about something which is not really material is a bit unfair in respect of the witness. This is something which comes to mind but where a policeman was involved. However **something like that can obviously happen in court, where as a result of imprecise interpretation a different sense or something else is being interpreted and that can then be used to either discredit the witness or not. What one tends to find that if you were to bring out a contradiction that a witness is not in a position to explain it is downhill from there throughout the evidence. Then the witness will feel intimidated and will get into his little shell, and then you won't get the type of evidence that you should. That is why it is critical and important for practitioners to make sure and to be vigilant that interpretation is proper and that little errors like that do not creep in, and if they do they are immediately corrected because ultimately it may have a bearing on the case. The effect that that might have is that either a person who ought to be convicted gets acquitted, or a person who ought to be acquitted gets convicted.**

J: Given the fact that there is this possibility what could be done to improve interpreting?

A: Probably better training of interpreters firstly, and secondly, I would imagine some sort of language training for prosecutors and lawyers and Magistrates, the requirement that they should have some additional language skills as well to guard against some of these things. I can tell you part of the reason that I can pick up if there is a problem is because the type of Xhosa which is spoken in Grahamstown is very much a watered down, almost a tsotsi language, and township language, but if you were to go to the Transkei, and somebody were to speak Xhosa in the Transkei, I doubt if I would be able to understand because the Xhosa which is spoken in the Transkei particularly is very proper and very precise. I think that people will have problems in following. I would have problems. Generally I would suggest though a broadening of language skills. I've been a lifelong supporter of the fact that if you live in a certain area of South Africa, you should know the indigenous languages of the area. I don't know what they are going to do in Gauteng, where all 11 languages are spoken, but in a place like the Eastern Cape, English, Afrikaans and Xhosa are imperative. Most of the interpreters here come from the Karoo, where places like Middleburg, Graaf Reniet, Cradock, where the home language is Xhosa and you also speak Afrikaans at school. It is also the other language which is being spoken. Then they pick up English at school, university or wherever. In that way they can then interpret. Formal qualifications for interpreters I think that should be the next step as it will raise the skills of interpreters as well as their status.

J: A few years ago you were required to do an English course, an Afrikaans course and Latin to get an LLB. Is this still the case?

A: I am not sure what the language requirement are, whether you need to do English or whether you would need to do an additional language course. I know that the requirement in respect of Latin was dropped about two years after I passed it.

J: Are there any other areas where interpreting could be improved? There have been complaints about professionalism, attitudes etc.

A: I have picked up some of that but, as I indicated, it is mostly individual instances where you have one or two individuals having a very lackadaisical attitude as far as what is happening in court. I think that one of the problems is also because of the fact that lay interpreters are being used, that may have a bearing. If people had some formal qualification in interpreting then I would imagine that the levels of professionalism would improve.

J: Are you aware of the training that an interpreter receives?

A: I don't know as a matter of fact. I know that you have to be able to speak the languages. I don't know what tests are being performed, but I do know that on occasion I believe it's at Justice College in Pretoria they receive some or other training. I also know that at the High Court there is an interpreter who is studying through UNISA. I am not sure though what the training requirements are.

J: Do you think that it might help to encourage more Xhosa speaking prosecutors, Magistrates and lawyers?

A: Yes, but then what you are going to do is almost job reservation. What I would suggest is rather to utilise the current pool, to allow the people who are there currently to expand their repertoires, to make it an additional requirement within 5 years from a specific

date you have to do an additional course in this language or in that language. In that way you would build towards the rainbow in South Africa. If you are going to say that people who are Xhosa speaking, encourage more of them, apart from the job reservation issue, it may be that you find somebody that is not committed to the job who is Xhosa speaking, for arguments sake. Even though he knows there is a problem with interpretation would allow that problem to be perpetuated. So, my view would not necessarily be to employ more people who speak the indigenous languages, not necessarily.

J: If, for example, you are in a case and you hear a mistake which is prejudicial to the defence, but greatly improves your case is it your duty to point that mistake out?

A: I would imagine so. I know that there are ethical standards for prosecutors and I am not sure if it is contained in there but I would not sleep well as a person if I allow a person to get convicted where that person may be innocent or where that person may have been found not guilty. As a person I would not sleep well. So even if it is prejudicial to the State case, and it's a mistake I would draw the courts attention to that. I think that that's the proper thing to do and the ethical thing to do, and I would imagine that that would be my duty as an officer of the court.

J: If you pick up a mistake, do you have the right to challenge that mistake?

A: Yes, I do it quite often. Even if it is during the questioning of, for example the defence and there is something that comes up I would stand up and object on and the basis of my objection would be that the interpretation was incorrect. If it is while I'm asking questions, either cross-examining or in chief, then I would deal with the issue with the interpreter at that stage.

J: Whose version would be accepted at the end of the day?

A: It's difficult to say whose version. What the court will do in those instances is to ask the interpreter 'Mr Interpreter, the prosecutor has said that your interpretation is not correct, what do you say about that?' And then the interpreter can say 'Your Worship it is a specific term that is being used, there may be a secondary meaning that the witness is alluding to' - which I as a prosecutor am not familiar with. If it is being used in that sense then the interpreter would then point it out because ultimately the interpreter is the language expert. If I pick up something and the interpreter feels that he/she is correct, then obviously then he would then state his view. If I disagree with him which I have never come across, what I imagine would happen is that for the matter to adjourn for another interpreter to be called in and for that other interpreter to listen to the first and then basically to adjudicate on the matter.

## Appendix E-12: Interview with Penny

- J: Could you start by telling me how you came to be a prosecutor?
- P: It was my goal to be a prosecutor, but it didn't work like that. After I completed my degree, I was employed by the Registrar of the High Court. At that time it was not a matter of what job do you get, not what really do you need. But it was then when I was at the Registrar's Court, they asked for prosecutors, I applied and got it. That was in January 2001 when I went for training as a prosecutor in Port Elizabeth.
- J: How often is it necessary for you to make use of interpreters?
- P: Every day, because you can get there, everything is ready but if the interpreter is not there, nothing ever happens. So when you start thinking about starting your court you should be aware that your cases are entered into the criminal record book, which is the basic thing. Your interpreters are there and you get going.
- J: You don't need to use them outside of the court then?
- P: Very rarely, when you get an Afrikaans speaking witness then you have to ask the interpreter to come and help you.
- J: So how important do you think the interpreters are in the legal system.
- P: **I think that they are very, very important because they are the engine of communication between everybody in the courtroom, so they are very important. The courts would not be able to function without them.**
- J: There is a perception that court interpreting is in a state of crisis. Have you come across this perception?
- P: Yes, I have been with some of the interpreters. I think the basic thing is that they don't take their work seriously. **They are not, most of them, really competent. With the exception really there are those who take their work seriously and they are doing an excellent job,** and it is very important that your interpreter should do their work properly because whatever is written in, whatever the interpreter is going to say that will go to the judges for review and appeal. So it's very important that their work is correct.
- J: Do you people talk about interpreters at all? Who expresses concern about the interpreter?
- P: I don't think that it is a matter which has been officially taken up, but this is a problem with interpreters. Amongst the prosecutors we do chat, and sometimes with the interpreter and say that 'Ag I had a bad day with whoever today, he didn't do his job properly all the time'. But I don't think this is a matter which has been officially taken up but this is a problem.
- J: If you have a case where an interpreter is really bad, what measures can you take?
- P: With the interpreters that I have worked with I happen to understand them. I know those who have an excellent potential, I know those who are negligent, I know each one of them. If I am dealing with those who are not really good, I open up my eyes each and every time he or she interprets. I listen and if that is the case it means that I have to make a follow-up question and try to raise something that she did not say, or I just say 'Your Worship that is not what the witness was saying', then the Court will ask, then the interpreter will have to say it over again.
- J: But could you report an interpreter for bad interpreting?
- P: Yes, they do have supervisors but **it has never been practice that you really report that this is happening. I think it's all about communication with that particular interpreter that 'You didn't do well'. You speak to him or her and you try to help. I have never been trained that you report to the supervisor and that kind of stuff. And you really get good interpreters that you sometimes feel that even those that are that bad maybe they will come up to that standard because you can see who is that committed to it and they take their work seriously. We just have to hope that those who are bad come up to the standard.**
- J: Do you think that this concern is valid?
- P: Yes, it is there.
- J: Are the mistakes that an interpreter makes are bad enough to seriously affect the administration of justice?
- P: **Sometimes they are very, very bad that they affect everything - especially if the witness speaks a language that is not known to the prosecutor, not known to the presiding officer, not known to the defence.** Then it becomes a problem because if at least one of the court officials besides the interpreter can understand the language they can stand up and say 'Your Worship that was not what the witness was saying'. And if that is the case when the witness says something and the interpreter says something else then it takes a totally different train.
- J: How are interpreters viewed by the legal profession?
- P: **I regard them as court officials, but I think it depends on the behaviour of each particular interpreter as how they are viewed by other court officials, because if you get that interpreter who does his work properly and know what he is doing you will see that the court officials will respect that person. I think it is all in their hands because if you are going to start your court and the interpreter is nowhere to be found, everybody is there but you, what are they going to think about you? It really depends on how one behaves himself, how one does his job.**
- J: Do you know of any measures that are being taken to address these concerns?
- P: No, not at this stage.
- J: What particular problems do you think face interpreters in a courtroom today?
- P: I can't really say because one will get this one not performing so well when they have been to the same courses with the others, whereby they are taught to study the witness, understand the witness so that she can be able to say exactly what the witness has said. Listen to what type of language the witness is using so that she can be able to interpret exactly what it is according to that standard. I really do not know what the problem is there. At times they are sent to courses in which they will learn about the terms of the experts and things like that. I really don't know what is the problem.
- J: How often would you say you get these mistakes?
- P: It also depends on whose there, the interpreter in that particular room, because if you get that good one, you can safely say that it's perfect for the whole day, and you get another one and say that everything was just bad. But at times you get 60% they are lots of mistakes. At the end of the day if none of the court officials don't understand the language which is used by the witness, and cannot say to the Court 'this is what the witness said' then it is a problem.
- J: Do you think there are conceptual differences between English and Xhosa that are difficult to get from one language to another?
- P: I always find that very difficult even in the sense that at times a witness, a Xhosa speaking witness, will say something in Xhosa that I will, as I am listening to the witness, I will sit there and wonder what that really mean in English. I do understand as that

person is saying that, but I wonder how the interpreter is going to convey this message. At times, however, they do that very successfully.

J: Where do you think the biggest conceptual differences lie?

P: There are basically those Xhosa words where we do not find a word at all in English vocabulary.

J: Is there a problem with the cultural and traditional customs and language?

P: Yes there is. When I was prosecuting in PE, that was my first experience to be on an investigation and I would sit there, the witness would say something and I said "What is this?" I am also Xhosa speaking, I don't even know what the witness is saying then the interpreter would come to my rescue. And I think that is very important to understand the culture around that area, the surroundings of that area, how do the people live because if you move from this place to another there are some things you won't understand because you are not from that particular area. That is where the interpreters fill in the gap and facilitate the court process.

J: What about the language of the law?

P: I think most of them they do have that expertise of trying to convey the message as the witness will understand, as the seriousness of the less seriousness of all the consequences or whatever. I think most of them do have such expertise from the language of the law to make the witness understand this is what the court has said, the consequences and this is what is going to happen.

J: Do you have to adjust the way you are speaking because of an interpreter?

P: Yes, with witnesses you have to adjust because from the first instance you consult with the witnesses and it's when they need to be able to understand that maybe the witness has a poor IQ, this witness is brilliant. Then even when you ask questions the interpreter is not doing that. But you have to ask questions for the standard of the witness, the language of that witness. You have to understand, or bear it in mind at least what should be the standard expected in the court proceedings.

J: What could be done to improve interpreting in South Africa?

P: I think the first thing is interpreting should be taken seriously by the interpreters themselves, and understand how important it is. I think that most of them think that it's just a job that you can do. I think it's high time that we consider them, and they must consider them as important court officials, just like anybody in court. They must consider them very seriously.

J: When you hear an interpreter making a mistake, what do you do?

P: Say the witness says something and the interpreter says something but does not complete the whole sentence or the whole version of the witness, I just say that 'Ma'am, maybe you said that, this and this and then what?' And then the witness will automatically start exactly where I ended and complete the thing. Then you will get the complete sentence. But at times I find out that she says something completely different, and then I stand up and say 'Your Worship, that was not what the witness said'. At times I find that this is now gross interpreting, this is extremely bad. I find a way to sort it out, but sometimes you just have to listen to them saying that when they have said this and this and you say what happened. Or you say something, the interpreter interprets it and you feel it is not exactly what this meant, then you ask 'What did you mean when you said that?' Then the witness will say 'I meant ABC' and it is also clear to the court. Maybe the Magistrate is not Xhosa speaking, and has not understood so it won't convey the same message if you don't clear it up.

J: What do you expect an interpreter to do when you ask a question, interpret or translate?

P: I don't expect a word-for-word translation, but I expect the interpreter to convey the real message in the question. For example when I say "What is the relationship between you and the accused?" And then simply interpret what the relationship is, not with translation of the words. Sometimes in the courtroom, though, you begin to see that she is no longer interpreting, she is translating. You then become bored, because you don't get exact. She is translating and the witness will never come to exactly the point because of the translation. But what is important, what exactly the real message, the real question, the real answer.

J: Could you give me an example where something has really gone wrong in a courtroom?

P: I once asked a witness 'Ma'am do you know the accused?' and she said 'Yes, I know him'. Then I said 'What is your relationship with the accused?' and the interpreter interpreted her reply as 'We are working together your Worship'. I felt like this was not what the witness was trying to say. I said 'Ma'am when you say you are working together' – the Magistrate was sitting there, listening because he is English speaking he does not know what is going on – and she said 'No, I meant that we are in love'. I knew from the onset that that was probably what she meant, but the interpreter was so negligent and said that they were working together – just translating exactly what was said instead of trying to find out from the witness, what exactly what was meant so that she could convey the proper message to the court.

J: Is it difficult sometimes distinguishing between the literal meaning and the figurative meaning?

P: Yes but even with that other interpreters can really convey exactly, or at least give the court a picture, of what the witness is trying to say, and we say I am happy. Maybe in other cases you can't really find a word from Xhosa to English, but when she explains it you find out what the witness is trying to say. It can normally be put in a different way.

J: If there are these problems, do you think an answer might be to encourage more African language speakers into the court system?

P: Yes, I think that could be a solution. Thinking on the idea of this, if the Magistrate is Afrikaans speaking, let the prosecutor speak that and another language, so that if the witness is saying something in Afrikaans at least the Magistrate will probably understand what the witness is trying to say. If, on the other hand, the witness is Xhosa speaking, at least the prosecutor can be sure to check that the interpreter interprets what the witness is trying to say. I think that balance could help.

J: Should law students be required to do an additional language?

P: Not really required, but I think that they should be encouraged to learn other languages. Like, with my case, I do understand Afrikaans and it has been the attitude of my colleagues to get to know Afrikaans so that you can know exactly what the witness is trying to say. That helps a lot, when you know what the witness is trying to say. To say that they should be required, I don't know. It's a matter that they should say that it is really important that they should go for other languages. It should be something that should be encouraged especially when one is inside the system and can see what is going on inside the court.

J: Are there any other problems that you think occur in courts with interpreters?

P: There are but I can't really think of any now. I have not done Regional Court, but I think there might be a problem when dealing with witnesses of 6 years old, for instance, for that particular interpreter should go to the language of that 6 year old, and be able to communicate – not according to the standard of the court, but according to what the 6 year old is saying. To be able to say what that 6 year old has said to the language of the court, which really is a skill. But some interpreters can do that. I think it is something that the seniors within the interpreters should take up and there should be a standard. Make it clear to interpreters that this is the standard expected, so that if one of them can be professional and dedicated to that standard, it means that all of them can