7.7.5. INTERPRETATION PROBLEMS IN THE COURTS

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7.7.5.1. INTRODUCTION

In Papua New Guinea the National Court is invested with complete criminal and civil jurisdiction and has at some time or other to cope with all or most of the 700 indigenous languages spoken in this country. The language of the Court and of the judges at present comprising it being English it must rely heavily on such interpretation services as it can command. The difficulties in this field are enormous and time-consuming.

The practice of the law demands precision in the use of language and many are the cases in which in the civil field words are scanned with great care to ascertain the meaning intended to be ascribed to them in the context in which they are written or spoken - e.g. in contracts, in cases of defamation, in the interpretation of statutes - whilst in the criminal field it is oft-times necessary and difficult to ascertain from the words of a penal statute its precise scope and so whether a person charged is within that scope. All this applies where the English language alone is concerned. Where as in Papua New Guinea the law has to be applied in the case of people who for the most part have no or none but a rudimentary knowledge of its function and it has to be written or expounded in a language with which, again for the most part, the people are totally unfamiliar, the importance of the task of the interpreter will be readily appreciated.

7.7.5.2. INTERPRETERS AT COURT

In Port Moresby - the central seat of the Court - there were, at the time of writing in 1974, two permanent interpreters, one fluent in Hiri Motu and the second in both Hiri Motu and Pidgin. The latter had a

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slightly better command of English than the former but of neither could it be said that they were good English-speakers. If interpretation into other languages was called for then an *ad hoc* search was made for an interpreter capable of interpreting from either Motu or Pidgin into that other language. Consideration had been given to the establishment of a central translating and interpreting service but because of the geographical spread of needs and the competing priorities for funds it had been decided that the formation of a centralised service would not be warranted at that time.

None of the *ad hoc* interpreters supplied to the Court could be described as trained. In the 50 or so other centres at which the Court sits it has to rely for the most part on the station interpreters referred to by W. Tomasetti in 7.7.4.3. This reliance frequently strains the resources of the station beyond its capacity in that it is undesirable that an interpreter who has taken part in the police investigation and who in the course thereof can be expected to have formed his own view of the facts should be used to interpret the evidence of witnesses at the subsequent trial. However, with the gradual spread of literacy there has been an increasing tendency in the case of the larger language groups (e.g. Enga, Medlpa, Kuman, Kuanua) to use interpreters able to interpret directly from those languages into English, and as W. Tomasetti has pointed out in 7.7.4.4.2., the parties in a case are themselves able to keep a reasonable running check on the accuracy of interpretation. This is an encouraging tendency because interpreters supplied are gradually obtaining a much better grasp of the nuances of the English language than is possessed by the station interpreters or tultuls.

7.7.5.3. INTERPRETATION AND THE CRIMINAL LAW

Nowhere in the life of the law are problems of interpretation of more importance than in the administration of the criminal law. Whilst my own experience has been confined to the National Court what I have to say has I think general validity in all courts. Offences against the criminal law of course range from the most minor (some would say trivial) to those of the highest concern to the State. But every offence may involve a defendant in risk to his property, reputation or liberty and in the most serious may involve deprivation of life itself. In every case the Court must be and is concerned to apply one of the great legal maxims - Not only must justice be done but it must be seen to be done.

It is in the application of this maxim in Papua New Guinea that problems of interpretation are most difficult of solution. Let me try

to explain by taking a comparatively straightforward murder case as an example. A person who unlawfully kills another intending to cause his death or the death of some other person is guilty of wilful murder. Where a person is charged with wilful murder it is essential that he knows precisely what the charge against him is so that he can make answer to that charge. It will be seen that the elements of the charge are the unlawful killing and the intention to cause the death of the person or of some other person. The unlawfulness of the killing involves that there be no lawful excuse or justification. Somehow all these matters have to be conveyed to the accused person. The presiding judge or magistrate while having these elements in his mind will in all probability rearrange the somewhat elliptical words of arraignment to fit in with the circumstances of the particular case. For example, his words of arraignment may run something like this:

> Aima, the Government says that you were in the big fight at Kumbai, and that you ran after a man from the Tangi clan and hit him several times on the head and neck with your axe and you killed him. It says also that when you did this you meant that this man should die.

Where the accused man has no familiarity with either Pidgin or Hiri Motu this charge must first be translated into whichever is appropriate of these two lingue franche.

In Pidgin the proper translation of 'intent', i.e. 'meant that he should die' could cause difficulties. So can the word 'killed'. In the Gazelle Peninsula of New Britain in a recent case a good deal of evidence and argument was directed to whether **kilem** would adequately convey the idea of death or whether it would mean to the listener merely striking or wounding and whether or not the proper interpretation should have been **kilem em i dai pinis**. The importance of this can be realised when the words occur in a confessional statement. Can the Court be satisfied that the accused person is admitting to murder or merely to striking? When this arraignment has to be interpreted into another language and as has been known on rare occasions into yet another then of course the Court has no idea or control of what is being conveyed. In such circumstances it normally solves the initial difficulty by entering a plea of not guilty, but this is only the beginning of the difficulties because it is the Court's task to listen to the evidence which in its turn may have to go through one, two or perhaps three interpreters, none of whom except perhaps the first will have had any education and all of whom as far as I can judge frequently are hard put to persuade the witness to separate direct evidence from hearsay (that is, evidence of what he has seen or heard himself from what he has been told by others).

Again it is quite common for the interpreter to have difficulty himself in separating the responses of the witnesses from what he himself may have learned of the case. Often an interpreter will assist a witness by filling in the details of that witness' testimony either from his own knowledge of the circumstances or from what he has learned from the interested parties who have come to the Court.

7.7.5.4. PROBLEMS OF CHAIN INTERPRETATION

I have said that justice must be seen to be done and this involves conveying principally to the person or persons charged but also to the villagers or townspeople who have a real interest in the outcome of a trial what is going on and what is being said. The problem becomes acute when different language groups are involved. It may be that a person from one area is accused of killing or doing some harm to a person from another area. Witnesses may be called both for the prosecution and the defence. Evidence for the prosecution may be given in a language not that of the accused. That evidence will have to be translated from the witness' language into, say, Pidgin and then into English for the Court and to the language of the accused so that he will know what is being said against him to enable him to assist in the conduct of his defence. Similarly if evidence is given by witnesses of yet another language group then one further step is added to the complication. When evidence is given for the defence that may also have to be translated into the lingua franca and English and also into the language of the victim's clan or tribe. One can readily appreciate the time that this procedure involves and the way in which proceedings of the Court are slowed.

When the case is concluded there is a salutary burden cast upon the judge in that he has, first having decided what his decision should be, to formulate his decision and the reasons for it in the simplest language possible for easy translation into the lingua franca.

7.7.5.5. DEFINITION OF 'REASONABLE DOUBT'

In the criminal law one of the basic principles of criminal justice is that it is for the prosecution to prove guilt and not for the person accused to prove his innocence. Further the tribunal must be satisfied beyond reasonable doubt before it can pronounce a person guilty. The words 'reasonable doubt' have occasioned some trouble in English courts although the High Court of Australia takes the view that it is a phrase incapable of definition and every juryman knows what it means. Notwithstanding this authoritative pronouncement some judges have attempted

at least to explain the phrase. It connotes a very high degree of persuasion to the mind. One does not treat it as a mathematical proposition. 'Reasonable doubt' betokens a degree of satisfaction something less than absolute certainty but something much more complete than acceptance as a matter of probability. Of course it involves a conception known for centuries to English law of the 'reasonable man'. For my part I do not think that the conception as known and applied in English law has entered into the thinking of the villager of Papua New Guinea and in any event what is reasonable to him may be entirely unreasonable to one trained in the common law. Be that as it may the judge or other tribunal has to try and explain that he must be satisfied beyond reasonable doubt and whether and why he is or is not so satisfied.

I recall a case some years ago when I had as an interpreter a young Madang girl who had been brought up in an Australian household and who throughout the trial of a case which I was conducting had interpreted as I thought impeccably into English and Pidgin. However, the phrase 'reasonable doubt' was beyond her. There is no exact equivalent for either word in Pidgin and I had to essay the task in a circumlocutory fashion of trying to do what some Australian judges have been criticised for doing, that is attempt to explain the meaning of the phrase in a fashion which I thought could be satisfactorily rendered to suit the comprehension of the accused person and of the audience in Court. From memory the solution I adopted was to try to bring home the meaning of reasonable doubt by analysing the evidence with a view to showing the lack of conviction it brought to my mind and that it should have brought the same lack of conviction to the minds of those in court had they been discussing the events at a village meeting and were careful to disregard rumours heard and prejudices held, at the same time looking for an innocent explanation of the accused man's actions. I cannot say that I was completely satisfied with the result of my attempt but this may be an acknowledgement of the power of human prejudices rather than a confession of linguistic failure.

7.7.5.6. THE RECORD OF INTERVIEW

7.7.5.6.1. *GENERAL REMARKS*

In a great many cases proof of guilt of an offence depends upon admissions made by a person during police questioning. Of recent years there has grown up a technique known as the Record of Interview. This is a technique which subject to proper safeguards has acquired acceptance in the Australian courts and also in those of Papua New Guinea.

This is not the place to discuss the adequacy of the safeguards nor difficult questions of admissibility of evidence which may arise when a Record of Interview is tendered to the Court, but shortly stated the Record of Interview is the written record of a series of questions put by the interrogator and answers given by the person being questioned as to his knowledge of a criminal offence. It is of particular importance that the person suspected or being questioned understands the question and that the questioner understands and accurately records the answers. It will be readily appreciated that where an interpreter or interpreters have to be used the opportunities for error are legion. Most police officers and investigators are able to speak Pidgin and quite a few Hiri Motu but their degree of skill in the spoken language varies widely and skill in making a written record is even more varied.

Generally speaking the technique is to type or write the question first in English then ask it in Pidgin (or as the case may be Hiri Motu), listen to the answer in Pidgin and record the answer in English. If the person being questioned acknowledges the correctness of the Record then he is asked to sign or make his mark on the document and it is tendered to the Court. All this seems simple enough but the Court of course has not any idea of the actual words used by the interrogator or the person questioned and if guilt is denied and if there be a denial of admissions set out in the Record then the interrogator has to be examined as to the actual words in Pidgin which he used and as to the actual words spoken to him by the accused person. This leads to a most unsatisfactory situation because the police interrogator when he comes to give evidence days or even weeks or months later is most unlikely to remember the precise words used and indeed it is more than likely that during interrogation he has framed his questions in more than one way. What of course happens is that he has the Record (in English) before him and then attempts to reconstruct what he feels he must have said and likewise what he feels the answer must have been. It is not unknown in these circumstances for an independent interpreter to be in Court making a re-translation into English of what the witness has reconstructed in the witness box. In many cases no harm is done because by the time a serious criminal case reaches the Supreme Court defence counsel is fully aware of the accused person's story and is satisfied with the substantial accuracy of the admissions contained in the Record of Interview.

However in some cases, and this is a course favoured by the National Court, the Record of Interview is taken in Pidgin and a translation into English is supplied to the Court. The Court is able with the

assistance of experts to assess both the accuracy of the translation and the facility of the questioner in using and understanding the Pidgin language. I should interpolate to say that I am not aware of any Record of Interview having been recorded in Hiri Motu nor in any other of the languages of Papua New Guinea so of necessity I must confine myself to Pidgin.

7.7.5.6.2. *A CASE STUDY OF PROBLEMS WITH THE RECORD OF INTERVIEW*

In a comparatively recent lengthy trial conducted before me in Rabaul and in which there were a number of people charged with wilful murder the case against each one was made principally by his own confessional statement so recorded. A good deal of time was of necessity devoted to an analysis of what each accused man had actually said during questioning. I should explain that each accused came from the Kabaira area of the Gazelle some 20 miles from Rabaul where a local language is spoken which is incomprehensible to the Tolai people of Rabaul and of the other parts of the Gazelle. However, all the Kabaira people speak Kuanua (with a local pronunciation) which is a lingua franca of the Gazelle and a language with a literature of its own. A high proportion also speak Pidgin. The procedure generally adopted in police questioning in this case was that a European police officer would conduct an interview or interrogation in Pidgin and type the Record in that language. There existed quite marked differences in skill amongst the several officers engaged. It was initially sought by the prosecution to tender the interrogator's translation of these statements. Some of these translations were made at a considerable time after the actual interrogation and some were remarkable for their inaccuracy. The course eventually adopted was to have an expert accepted by the Court prepare an independent translation. Two significant features of these translations were, firstly, the inaccuracies of the police translations which I have noted, and, secondly, the number of significant alternative interpretations into English of the Pidgin used during interrogation - significant in the sense that they required the Court to carefully consider the whole context of the document to attempt to conclude what was really meant by the accused man. The whole of the evidence given in respect of the taking of these Records of Interview and the attack on their contents was interpreted directly into Kuanua for the benefit of the accused men by a Tolai primary school Principal, and I might add by one of the most skilled interpreters I have heard in my experience. It might occasion surprise that I am able to pronounce on the skill of an interpreter when I have no familiarity with the language into which he was interpreting. Before calling on him

to interpret I satisfied myself that he had a good comprehension of and fluency in English. His native tongue was Kuanua. It was clear from the outset that he appeared to have no difficulty in interpreting and from my observation of the accused men their interest in what he was saying was patent. At the end of his first day's interpretation I asked counsel to enquire of their clients as to their satisfaction with the interpreter and all expressed their ability to follow and understand all that he was saying. I should also say that counsel had available the services of interpreters who were able to keep a check on the court interpretation and, as far as I can recollect, there was no occasion on which his interpretation was queried at their instigation.

In the case of one person accused in this trial the Record of Interview was made in Pidgin although this language was not spoken or understood by the person being interrogated. Here the technique was to use the services of a police constable whose mother tongue was Kuanua and who was said to be (and appeared to me to be) reasonably fluent in Pidgin. The police officer interrogating asked the questions in Pidgin which were translated by the constable into Kuanua, answered by the person being questioned in Kuanua and those answers interpreted into Pidgin which was recorded by the police officer. The person accused placed his mark upon the written Record of Interview, allegedly acknowledging its correctness. I refused to admit the document, not being satisfied that the accused was able to acknowledge the Pidgin as being an accurate interpretation of what he had said in Kuanua nor indeed an accurate record of the Pidgin used in the interrogation as he was unable to read or understand the words on the document. The Kuanua constable was called to give evidence of the Kuanua words that he had used in interpreting the Pidgin. Understandably (the interview having taken place months previously) he was unable to recollect anything beyond the fact that he had acted as interpreter and the device adopted was to have the Pidgin question by question read to him and to ask him to translate or to interpret into Kuanua what he would have said to the accused. Eventually the Court was able to be satisfied that he had interpreted with substantial accuracy but it was a process which took an extremely long time. Indeed more than a Court sitting day was devoted to this task. I felt myself that as Kuanua has been a written language for many years it would have been preferable to have recorded the whole interview in that language.

I have spent some time on this technique because from the point of view of the Court it is important to have an adequate record made at the time which can be relied upon as being made while memories of events

are fresh. Properly used it provides a safeguard for the accused person in that it tends to prevent the addition of things which the interrogator thinks ought to have been said and with the passage of time is convinced have been said.

7.7.5.7. AN EXAMPLE OF LANGUAGE PROBLEMS IN DEFINITION

Perhaps by way of light relief and to further highlight the difficulties which the courts may face I recall a civil case which I had to try some years ago in Rabaul. It was an action for defamation, the defamation allegedly being words spoken by one woman of another impugning her moral character. Both women bore names redolent of Irish ancestry but to my surprise on coming into court each was of distinctively Chinese appearance. I learned that one wanted to give her evidence in Cantonese whilst the other required a Pekinese interpreter. To finally confuse the matter the defamatory words were uttered in Pidgin and the word containing the core of the insult was capable of two interpretations, one being highly defamatory, the other being quite innocuous. After a veritable feast of language, most of which in its original oral form was completely incomprehensible to me, I felt compelled to find for the defendant.

7.7.5.8. CONCLUSION

I see no early nor easy solution to the problems of interpretation in the courts. It behoves judges and magistrates to acquire some expertise in the lingue franche. All of the judges of the National Court have been careful to acquire a good comprehension of Pidgin and with the eventual localisation of all tribunals this comprehension can be expected to become widespread. However, as I saw the situation in 1974 it appeared to me that for the foreseeable future it would be necessary for members at least of the then Supreme and now National Court to have a good comprehension of English and to have the assistance of as capable interpreters into the other languages of Papua New Guinea as can be obtained. The language in which the law is generally expressed, being English, it seems to me too that the same consideration will apply to the magistrates of the inferior courts except perhaps for the Village Court. It may be that I seem to be making out a case for the universalisation of Pidgin but I do not really think this will provide the answer to the problems I have sought to outline.

P A R T 7.8.

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