COURT INTERPRETATION:  
THE TRIAL OF IVAN JOHN DEMJANJUK  
A CASE STUDY  
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1. Purpose of Court Interpreting  
The purpose of court interpretation is to guarantee due process, right of confrontation and other basic rights for language-handicapped participants in legal proceedings, as well as to allow the court to hear the testimony of and examine witnesses who do not speak the language of the court. Interpretation should be provided at all stages in legal proceedings where a language-handicapped participant is otherwise at a disadvantage, including pre-trial phases such as police interrogation, remand hearings and so on.

In this specific instance of the Demjanjuk trial, the purpose of the various interpretation arrangements was to ensure that the Ukrainian-speaking defendant could participate in the proceedings against him, by allowing him to follow both testimony and contributions by the court and counsel; to enable English- and Hebrew-speaking counsel to prosecute and defend him; to enable the presentation and cross-examination by witnesses in languages other than Hebrew; and to allow the bench to control the proceedings.

Ultimately, interpreted versions formed part of the Hebrew and English transcripts used by the prosecution and defence in preparing their summations, and by the bench in reaching its verdict and passing the sentence. The Hebrew record, including interpreted material, was reviewed by the Supreme Court of Israel in conjunction with the appealed heard in April 1987, as well as that scheduled at the time of writing for November 1989. The Hebrew record is available for use by other trial courts in their own proceedings. The status of the English transcript is unspecified.

2. Technical Aspects of Interpretation at the Demjanjuk Trial  
Three main modes of interpretation were used at the Demjanjuk trial: consecutive, simultaneous, and whispering, plus a modified whisper mode using headphones and microphones. The consecutive mode was that used on all occasions for the Hebrew rendering of all non-Hebrew material; interpretation into English was provided throughout the proceedings by means of the "electronic" simultaneous mode; while interpretation into other languages was given by means of a whispered version, with or without headphones and a microphone for listeners and interpreters. There was no flexibility in the interpreting arrangements relevant to different stages in the proceedings. Unlike the Eichmann trial court,1 the Demjanjuk bench refused to agree to flexibility in terms of the mode used at different phases of the proceedings.2

The exceptionally wide range of interpretation

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1 In contrast, at the 1961 Eichmann trial, interpreting arrangements were modified in various ways for the cross-examination of the accused by the Attorney-General, and in particular for the questioning of Eichmann by the bench.

2 Report of the US Comptroller-General (1977), p. 23: "Basic consideration of fairness, inherent in our system of justice, requires that language-disabled defendants be given the assistance necessary to assure the meaningful participation in judicial proceedings affecting their interests. In some instances, this may require that courts permit interpreters to have flexibility in translation techniques, perhaps varying with the phase of the trial itself."
modes used in the Demjanjuk trial can be used as a basis for a discussion of the relative advantages and disadvantages of specific interpretation options relative to different aspects of proceedings, such as direct and cross-examination, objections, questioning by the bench, control of witnesses and provision and accuracy of the record. Certain inherent features of interpretation modes inevitably affect participants' ability to follow and perform their roles in the proceedings.

The available literature indicates that in proceedings in the United States, full ("electronic") simultaneous interpretation is almost unknown. The same is probably also true of most other countries, with the exception of certain courts in Canada. Thus references in the literature to "simultaneous" interpretation frequently apply either to the "whispered" mode, or a form of simultaneous interpretation in which both versions can be heard live in the court at the same time. Inevitably, such an arrangement is confusing to all participants in the proceedings.

In contrast, at the Demjanjuk trial the use of an electronic system for the transmission of the simultaneous English version, provided by interpreters working in a booth above the courtroom, furnished language-handicapped participants with a version in the relevant language without any acoustic interference in the proceedings as a whole. Yiddish, German and Ukrainian-speaking witnesses also received interpretation in their own languages without such whispered versions intruding on other listeners.

The main features of the consecutive mode of interpretation pertinent to any assessment of its use in legal proceedings are the following: it requires no equipment; it can be easily monitored, as well as recorded stenographically or electronically; it is intrusive, inevitably causing interruption and a lengthening effect, as well as potentially acting as a buffer between two interlocutors. Interpretation in the consecutive mode can be electronically recorded, so long as a microphone is provided for the interpreter. No other equipment is necessary, but good acoustics are vital. If only a stenographic record is made, there is no need for a microphone. Normally only one interpreter is required when working in the consecutive mode. Strict discipline is required of those asking and answering questions, as they must wait for interpretation before proceeding, in order to avoid imposing a reporter function on the consecutive interpreter or altogether preventing the rendering of a version. In the case of consecutive interpretation of court proceedings, a complete version of material should ideally be provided. This contrasts with the normal consecutive technique based primarily on meaning rather than on specific words. In addition, in certain proceedings not all procedural material is interpreted for the defendant. At times the decision as to how much and what type of material is to be interpreted may be taken independently by the court interpreter.

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3 Although Coughlin (1984: p. 420) notes that many North American courts are now equipped with portable simultaneous interpretation systems, no information is available on the actual use of such installations. However, the US Comptroller-General's Report (1978: Section 1928 (a)) specifies that a capacity for simultaneous interpretation services is to be provided in multi-defendant criminal actions and multi-defendant civil actions.

4 C. Bennett (1981b) and Roberts (1981: pp. 27-32). Also in Roberts (1981: p. 98) Wesenmael reports that the Supreme Court of Canada uses simultaneous interpretation exclusively. In multiple-defendant trials in Germany, simultaneous interpretation may be used (Driesen (1983) and Fuch-Vidotto (1982)). At the 1961 Eichmann Trial in Jerusalem, the simultaneous mode was used for interpretation into German for the defendant and his counsel, as well as into English and French for the press and others.

5 Generally in court trials, interpreters use the consecutive method when translating direct testimony for the court and the simultaneous method when translating for the defendant at the defence counsel's table. Exceptions were found in Los Angeles and San Diego where the common practice is to translate simultaneously unless the consecutive method is requested by a judge or counsel. Two officials and a report dealing with this subject noted that simultaneous translations during certain proceedings, such as presentation of testimony, tend to be confusing to both court officials and defendants because of the difficulty of listening to two persons speaking (in different languages) at the same time. Report of the Comptroller-General of the United States (1977), pp. 17-18.

6 In the discussion on this point in Roberts (1981: pp. 106-108), a practising court interpreter in an Ottawa County Court, Lisa Charron, indicates that she normally does not interpret bench-counsel discussions, unless the accused indicates interest. Sometimes she provides a summary of such discussion, or provides a "running commentary". When a French-speaking witness testifies, she provides a consecutive for the court. She interprets the summary or lawyers' addresses to the jury if so requested by counsel. She reports that two lawyers leave the decision up to her.

In the same discussion, Jean-Claude Hache, director of the New Brunswick Government Translation Services, reports that in New Brunswick everything is interpreted: testimony, bench-counsel discussions, and so on. Furthermore, under the Official Languages Law, both language versions are authentic. However, Leopold Saint-Laurent, Chief Interpreter of the New Brunswick Translation Services, reports that on one occasion he worked at a trial where it was decided not to interpret everything, and where finally he interpreted in full both counsel's summations and the decision handed down by the bench.

It should be noted that the situation in Canada is special insofar as in certain areas a defendant may well have considerable knowledge of the proceedings, but simply prefer to speak in the other official language (Charron reports...
At times the consecutive mode leads to interruption of speakers in mid-statement in order to facilitate not only accurate interpretation but also listener comprehension. Such interruptions of speaker flow may have a negative influence on thought processes and presentation of material. On the other hand, the extra time thus provided may be useful to participants by sometimes giving them more time to think. The consecutive mode enables the interpreter to query material which for some reason has not been heard or understood properly. In addition, the interpreted version can be monitored and corrected on the spot, on condition that a competent person is present and allowed to do so. One major advantage of consecutive interpretation is that it enables participants to listen to both the original and the interpreted versions. Given the potential importance of non-verbal features of discourse, it may be vital to hear and observe both the substance and the delivery of the speaker’s original utterance. It should be borne in mind, however, that it is not always easy to accurately evaluate the content or forcefulness of an utterance from the tenor of the delivery or the demeanor of the speaker, particularly where different cultures are involved.

that this is normally the situation for French-speaking defendants in Ottawa).

Discussing a particular court Interpreter’s failure to render into French the defence lawyer’s opening memorandum, Harris (1953; pp. 195-197) refers to the view she had expressed elsewhere, that the interpreter need not interpret what does not concern his clients’, nor technical legal arguments that would be above their heads even if he would. Whatever one’s opinion about this, a number of circumstances may justify its stance on this particular occasion: the French-speaking witnesses were not yet in court, the defendants were all Germans, the French partie civile was accompanied by German lawyers, some of the French people in the public understood German, the text was read out quickly and I had not been provided with a copy nor shown it beforehand. Finally, there could be no immediate consequences, since the judges were bound to reserve their ruling on such a complex point of law. Still the question remains, who ultimately bears the responsibility for ‘deciding to interpret or not to interpret’? The interpreter, who best knows the difficulty involved and the limits of his own capabilities? Or PJ? Would an interpreter who declined to attempt a difficult interpretation after the judge had requested it be in contempt?"

A similar question may be posed about the legal status of an interpreter who has taken an oath to render material faithfully, but who subsequently commits errors in interpreting legal proceedings. Could a charge of contempt of court be levied against such persons? While the scope of this and related issues exceeds the framework of this present study, it is an important element in any consideration of the validity but yet neglected question of the status of a record of interpreted proceedings.

At the Demjanjuk trial, while participants listening to a simultaneous version through headphones are to a certain degree physically isolated from the proceedings, and thus further handicapped, those following through the intermediary of the consecutive Hebrew interpretation are also able to hear the original, at times reacting to it rather than to the consecutive version. An alternative scenario encountered in the Jerusalem proceedings, however, is where participants fail to pay attention to the original utterance, thereby possibly missing significant non-verbal components in the original which are absent from the interpreted version subsequently followed by them.

In the case of a witness who understands the original the provision of a consecutive version allows extra time for preparing a reply. The delay between question and answer may act as a buffer between witness and the examining lawyer. Such features may have a considerable impact on cross-examination. A conspicuous and major drawback of the consecutive mode is that it naturally lengthens proceedings considerably, a factor which is not always taken into account by participants when planning questioning strategies. A major characteristic of the simultaneous mode when assessing its use in legal proceedings is that it is usually far less intrusive than consecutive. Competently performed simultaneous interpretation minimally modifies the natural flow of exchanges, and requires no interruption of speakers. Thus question and answer exchanges can proceed unhindered. Simultaneously interpreted proceedings take virtually no longer than uninterpreted exchanges, and the technique lends itself readily to electronic recording. It does, however, require the provision of interpretation booths, as well as the use of equipment by both interpreters and participants. Speakers also need to observe a considerable degree of discipline. In particular, participants must not interrupt each other, nor speak over each other. They should keep their delivery down to a manageable pace for interpretation purposes.

In addition, the fact that a so-called simultaneous

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7 Chapter V, Section V.5. of Morris (1969) deals with this problematical issue at the Demjanjuk trial.

8 Writing about this buffering effect in the Eichmann trial, the Attorney-General, “In the course of the heated exchange of rapidly fired questions I switched to German, since it became exasperating to interrogate Eichmann through an interpreter. On the whole my questioning was in Hebrew, our usual court language, which, during the cross-examination, was filtered through the slow process of consecutive translation” (Haasner: 1977, p. 364).
version cannot be entirely synchronous with original material may lead to problems. Thus lag in the provision of a simultaneous version can complicate or make impossible the submission of objections. Known lag can provide speakers with a pretext for non-immediate answering of questions or approaches, so obtaining a respite from pressure in cross-examinations. Conversely, where original material is accompanied by gestures, the interpreted version may be difficult for clients to follow as a result of the imperfect synchronization between the speaker’s gestures and the interpreter’s words.

In the simultaneous mode the interpreter is unable to query material or slow speakers down. The version may therefore be less accurate, as the interpreter is forced to guess more often than in the consecutive mode. Language-handicapped participants (the only ones to hear the simultaneously interpreted version) are not always able or willing to react appropriately to any indication of problems by the interpreter. As a result, the simultaneous interpreter may often have no option other than to guess at material which is problematical for linguistic or acoustic reasons. Moreover, it is no easy matter to monitor and correct a live simultaneous version.

At the Demjanjuk trial it was also found that even indication to the court of such perceptual problems by the consecutive interpreter, let alone to clients by the simultaneous interpreters, did not necessarily lead to clarification of material by either speaker or bench. The upshot was reduced accuracy of the interpreted version, and consequently less effective proceedings, as well as an unfaithful record.

The related whispering mode of interpretation requires no equipment, but good acoustics are of the utmost importance. Headphones and a microphone may be used in the modified form where the acoustics are bad, or where it is vital that the interpreter speak very softly. As interpreters are seated with the participants, it is theoretically easier for them to query material than in simultaneous, but not normally in actual fact. In terms of intrusiveness, it may be equated with the simultaneous mode. Important, however, it can be used easily for lawyer-client consultations.

A major drawback of the whispered mode of interpretation normally used in courts for the language-handicapped defendant and witnesses is that it cannot be recorded for transcription. In contrast, both the “electronic” simultaneous and consecutive modes can be tape-recorded and subsequently transcribed, enabling later challenges to be made.9 (See also Section 6 below.)

While the literature sometimes refers to the specific uses of different interpreting modes,10 it rarely refers to the impact which such use can have on the role performance of different participants, as well as on the proceedings as a whole. For example, in the Demjanjuk trial the result of the court’s insistence on the provision of a consecutive Hebrew version was to impede the dynamics on a cross-examination in which both participants were receiving competent simultaneous interpreted versions.

The potential drawbacks of the simultaneous mode were clearly illustrated at the Demjanjuk trial when sometimes the lag occasionally associated with this interpreting technique impeded timely submission of objections by the American defence lawyer, who was thereby greatly frustrated. The defence team also feared that failure by their language-handicapped witnesses to answer a question promptly because of late interpretation might give the impression of slow-wittedness or evasiveness. The American

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9 “At this time, only the English version is preserved for the record in the United States. However, there is currently strong support for incorporating both the interpretation into English and the original foreign language testimony (including the attorneys’ questions which the interpreter interprets into the foreign language) in the official court record. In this way, the completeness of the interpreted material could be easily compared, analyzed, and verified so as to ensure an accurate record. Of course, while an accurate record does not guarantee due process of law to the non-English speaker, it is the essential basis upon which potential appeals stand”. Schwade-Nicholson (1985, Note 7, p. 154).

10 “Three types of interpreting are described:
1. simultaneous—verbatim interpretation immediately after utterance—needed for testimony in which defendant has knowledge of important details
2. consecutive—interpretation following sentence or statements—most useful for interrogation of non-English speaking witnesses

“Translate as simultaneously as possible the opening remarks of the judge, attorney and District Attorney and the final summation. For direct testimony provide thorough consecutive verbatim translation of exactly what is said, no matter how irrelevant or unresponsive it appears. On plea of guilty, provide simultaneous translation of all the District Attorney’s statements concerning the charge and its particulars. Questions asked defendants and answers are to be translated using the consecutive verbatim (sic) method.” New York City: Guide for Criminal Court Interpreters, quoted in Report of the Comptroller-General of the United States (1977), p. 15.
lawyers in the Demjanjuk trial drew the court's attention to this state of affairs, and English-speaking witnesses on occasion attempted to exploit the situation.

Despite the lengthening effect of the consecutive mode, the Demjanjuk bench refused to endorse the proposal by the chief court interpreter of simultaneous interpretation into Hebrew of the English-language defence summations, on three grounds: that it was unacceptable for no Hebrew to be heard in open court; that it would be impossible to monitor the interpreted version; and that both versions would be heard at the same time, thereby confusing all participants. The English-speaking defence lawyers therefore benefited from extra time in presenting their summations, but at the same time were handicapped by the negative effects of interruptions for consecutive interpretation. The court also gained extra time for consultations. Alternatively, participants who understood English were able to listen to counsel's arguments twice.

3. Shifts In Interpretation

No matter how competent the interpreter, shifts in the interpretation of the original utterance occur on many levels, ranging from accuracy and completeness to paralinguistic and prosodic features. Inevitably such shifts modify the effect of various stages in legal proceedings. For example, the impact of an aggressive cross-examination may be palliated by a slower pace of delivery, or different tone or volume of the interpreted version of a question. The result may be that the witness feels less pressured than would otherwise be the case without the mediation of interpretation. By its very nature, consecutive interpretation is particularly likely to detract from the potential impact on a witness of a cross-examiner's forceful form of questioning (see Note 14 below). In addition, for linguistic or cultural reasons some types of questioning may be ineffectual or counter-productive if they have to pass through interpretation. This issue deserves further research.

The basic dilemma of court interpretation results from the double need for on the one hand dynamism in interaction, and on the other the utmost accuracy in rendering material. During the proceedings themselves, the communicative function tends to predominate, and it is this which acts as justification of latitude in interpretation, and renders the "faithful echo" approach invalid. However, this attitude must be judged, in the light of the fact that generally all material, including interpreted utterances, is transcribed and ultimately forms part of the written record, arguably bringing the oral exercise of court interpretation closer to the written one of translation, with its more stringent requirements in terms of paralleling the original.

However competent, any interpreter may inadvertently omit material or make errors. It is vital that monitoring be provided in an attempt to achieve the utmost accuracy. However, the danger exists that in the charged atmosphere of adversarial proceedings, other participants' corrections of an interpreted version may give the impression of overall interpreter's incompetence, or an interpreter's failure to provide a complete version of material. At times at the Demjanjuk trial this situation prevailed even when such correction applied to the original utterance and not to the interpreted version.

4. Interpreter Behaviour and Participants' Attitudes

An important aspect of situations involving interpretation is that of client's faith in the version being provided. Participants should have a proper grasp of the nature of interpreting, the practitioners of which are more than language-switching tape-recorders. The absence of one-to-one equivalence between languages may justify deliberate additions or omissions, particularly of culture-bound references. Interpreters may need to query material they have failed to hear, grasp or retain. The result of such behaviour is to confer upon interpreters a role which is not limited exclusively to reproducing participants' utterances, and which may involve their exerting the following:

"Experience shows that it is nearly impossible to break down a brainwashed dyed-in-the-wool Nazi in open court during a cross-examination. It is absolutely impossible if you try to make such an attempt through the medium of translators to a defendant in a special glass cage with whom you have never had any exploratory talks." See also Section 7 below.

Cabinet members, wrote the following: "Experience shows that it is nearly impossible to break down a brainwashed dyed-in-the-wool Nazi in open court during a cross-examination. It is absolutely impossible if you try to make such an attempt through the medium of translators to a defendant in a special glass cage with whom you have never had any exploratory talks." See also Section 7 below.
some degree of influence over the proceedings proper, including exercising control over speakers. The result of such a situation is to increase the intrusiveness of the interpreter.

As in other proceedings, the various participants at the Demjanjuk trial reacted differently to such interpreter behaviour. A participant might accept certain behaviour from one interpreter, but reject it from another; or a lawyer might choose to object to interpreter control of his witness at one point, but agree to it later. Overall, participants’ attitudes to the interpretation were pragmatic. They might choose to comment on it or not according to whether this suited their purposes at that particular time.

Different participants in the Demjanjuk trial showed varying degrees of awareness of the need to tailor their delivery to the requirements of interpretation. Even repeated admonitions from the bench to slow their rate of delivery proved ineffective in the case of certain speakers. Whereas some witnesses were constantly interrupted for interpretation, others benefited from indulgence of the court, which realized that interruptions for consecutive interpretation compounded the strain of what was already a trying experience. One of the identified factors in such variations in the court’s approach was the degree of apparent competence and concomitant presumed reliability of the interpreter providing a version of the speaker’s words.

5. Alleviation of Language Handicap at the Demjanjuk Trial

The degree of language handicap at the Demjanjuk trial varied widely. While the proficiency of the three judges hearing the case varied individually and between the various languages, in general they could all follow English-speaking defence lawyers in the original, as well as witnesses testifying in English. The members of the prosecution team had far fewer linguistic handicaps than their defence counterparts.

At times all participants in the proceedings needed interpretation; at others, the immediate participants in an exchange required no interpretation, and the provision of a consecutive Hebrew version was a formality designed to provide a complete record of the proceedings, as well as enabling the public to follow. In contrast, on occasions when a genuine need for interpretation did exist, as in the case of lawyer-client communication difficulties, no such service was available, the interpreter on duty working only from Hebrew into Ukrainian.

While the Demjanjuk court tried its best to alleviate the effects of the language handicaps of the various participants, it was unable to provide experienced interpreters into Ukrainian. The initial quality of the interpretation received by the defendant was therefore certainly unsatisfactory. The use of the whispering technique made it impossible to evaluate the accuracy and completeness of the subsequent interpretation received by Demjanjuk. The bench had no way whatsoever of evaluating the basis of the defendant’s numerous complaints about interpretation, which were both general as well as specifically about one particular interpreter. Moreover, many factors affect a particular client’s assessment of interpretation quality, including the speed of delivery of the interpreted version, its audibility (determined by factors such as volume and tone) and register. The interpreter may be able to vary some of these factors, but others may be beyond his or her control. What one listener finds acceptable may be unacceptable to another. A high-speed accurate

14 "Judges, on the whole, seem to show good-natured comprehension of the interpreter’s situation and problems, but attorneys can be quite hostile in their attitude. This is usually motivated by a feeling of frustration because the need to have everything interpreted either (a) cramps their style and the impressiveness of their eloquence (b) prevents them from browbeating the person who is being questioned, or (c) simply gives that person more time to think before answering a question, or (d) is, in their opinion, unnecessary since the person speaks the language of the court perfectly well, and is just sheltering behind interpretation as a delaying tactic. For the interpreter, such hostility is unfair, but it obviously comes with the job.

One of the most delicate parts of a court interpreter’s work is doubtless performed when he interprets during cross-examination by a good attorney, as the attorney’s questions are probably phrased with great care and often with a deliberate vagueness or ambiguity that he hopes to use to demonstrate some point or other. To put these questions into another language without distorting them in some way (such as making some of them less ambiguous or less subtly nuanced) in a daunting task, especially as the interpreter probably does not know where the questions are leading. It is in such circumstances that the competence of the interpreter may be directly challenged by an attorney (judges also sometimes intervene in this way), who will usually claim that the interpreter has mistranslated something." Bennett (1981a), p. 16.

"Il y a des avocats qui n’aiment pas les interprètes. Alors ils vous mettent à l’épreuve chaque fois qu’ils vous voient à la cour...Quand les juges s’en rendent compte, ils les remettent à leur place, surtout s’ils vous connaissent et ont confiance en vous. J’ais même jusqu’à dire que they side with you, if they think it’s justified or they think you’re right." Lise Charmet Roberts (1981), p. 144.

15 See Appendix, Languages at the Demjanjuk Trial.
version of technical or high-register material may be difficult or impossible for an uneducated participant or non-native speaker to follow.

In the absence of available experienced interpreters from Hebrew into Ukrainian, the Demjanjuk court adopted the expedient of simply paying no immediate attention to such comments by the defendant, other than to instruct the persons engaged to assist the defendant to attempt to provide as complete a version as possible. A curious related arrangement which prevailed throughout most of the trial was that of the ostensible monitoring by the defendant's son of the interpretation into Ukrainian. However, Demjanjuk Jr. was strictly forbidden to assist when a problem arose in lawyer-client communication. Moreover, since his language skills were restricted to Ukrainian and English, for any Hebrew material, he was forced to rely on the English simultaneous version. The irony was that while the Demjanjuk court genuinely wished to satisfy the requirements of due process, it was unable to provide a satisfactory solution. Unless sufficiently competent interpreters with the appropriate language skills are available for court work, the best legislation will be ineffective. The mere provision of a person with knowledge of certain languages to assist a language-handicapped defendant does not guarantee that person due process.

Even had a competent monitor been provided in Jerusalem, such monitoring and the attendant corrections would probably have affected the proceedings to an unacceptable degree. In addition, the most likely monitor in the proceedings under review in this study was himself a biased party: a policeman. The latter had previously acted as interpreter at Demjanjuk pre-trial police interrogation, a situation which itself may be considered unacceptable under certain countries' codes on police and court interpretation.

The upshot of this dilemma was that the issue of unsatisfactory interpretation for Demjanjuk became a spectre which haunted the proceedings in Jerusalem, as it did previous proceedings against him as well as related proceedings with many of the same witnesses in the United States. Nothing can be proven one way or the other, however. Certainly no proof can be adduced to serve as a basis for an appeal on the grounds of inadequate interpretation for the defendant, i.e. into Ukrainian. In the area of interpretation from Ukrainian, i.e. of the defendant's own utterances, the situation is more public. Electronic recordings (but no written transcripts) exist of Demjanjuk's Ukrainian original answers and the Hebrew interpretation. In addition, a certain amount of monitoring and control by the interpreters into Ukrainian, as well as other informal monitors, improved the accuracy and completeness of the Hebrew version of the defendant's testimony.

No electronic recordings or transcripts whatsoever were made of the whispered Ukrainian, Yiddish and German interpretations, nor was a transcript made of testimony given in those languages. Therefore even if a subsequent appeal were to refer to inadequate interpretation from or into languages other than English and Hebrew, proving such a claim would be almost impossible.

No satisfactory solution is available to the dynamism/accuracy dilemma. In the case of co-speech by two or more participants, as sometimes happened even with members of the bench, or when speakers forgot to wait for the consecutive version, the result was often inferior quality and quantity of interpretation or, at the very least, late provision of a version. On the other hand, the observance by speakers of strict discipline for the sake of complete and accurate interpretation would have tended to detract from the dynamism of the proceedings. This study would seem to suggest that certain participants were, however, worse offenders than others in terms of turn-taking and delivery discipline. This being the case, it might be possible to institute certain technical arrangements as a way of imposing the requisite discipline on all participants with the all-important aim of facilitating accurate and timely interpretation. Thus a simple installation to indicate to the court when the simultaneous interpreter is still delivering a version of the previous speaker's material would avoid the embarrassing situation in which the English-speaking defence lawyers at the Demjanjuk trial found themselves fairly frequently. The issue of using technical means for slowing down excessively fast speakers is a more delicate one.

The seminal question is whether it is in fact possible to make arrangements for language-handicapped participants which would allow them to participate on the same footing as non-language-handicapped participants and permit the trial proceedings to be run in exactly the same
way as no-interpreted proceedings. On the basis of the findings of this present study, the answer appears to be that this is not possible. Whatever the mode of interpretation selected, there are always certain drawbacks which modify some aspects of proceedings involving language-handicapped participants. Certain trade-offs have to be taken into account.

Thus the cumbersome and extended nature of proceedings interpreted using the consecutive mode with its attendant interruptions, is the price to be paid for the important possibility of monitoring the interpreted version, and the consequent improvement in accuracy likely to result. Where experienced interpreters are allowed to exert control over speakers and practice a certain degree of latitude in their renderings, the result may be more efficient communication. In the hands of an incompetent or unscrupulous practitioner, however, such delegation of power by the bench may possibly be harmful for the running of the proceedings, and ultimately for the doing of justice.

On the other hand, over-insistence by the court on the “faithful echo” and “alter ego” approach in interpretation can be counter-productive. Near-perfect paralleling in a consecutive version of a badly worded question cannot be expected to result into successful communication. “Interpretation” in the true sense, i.e. a rendering by the interpreter of the speaker’s intended message, is far more likely to be successful. However, the sanctioning of any such approach by the court is tantamount to recognizing the interpreter as a participant in his or her own right, an acknowledgement which judicial authorities are generally loth to make.

The highly intrusive nature of consecutive interpretation contrasts with the quasi-invisible characteristic of the simultaneous mode (which term is here used exceptionally to included the whispered technique also). This major advantage is accompanied by its inevitable and almost equally major drawback of being extremely difficult if not impossible to monitor. In order to make this mode a feasible one given the exacting accuracy and completeness standards of legal proceedings, speakers must be particularly scrupulous in observing certain requirements, such as those of audibility and speed, as well as avoiding co-speech situations.

Even when an interpreter is able to provide an adequate version of high speed material, the language-handicapped participant may find following at such velocity difficult. In addition, even if the interpreter is able to understand utterances by two people speaking at the same time, it is impossible for one person to render co-speech in real time. Inevitably lag will result, a smoothing effect will occur or material be omitted: or a combination of these factors. The crux of the issue here is that the discipline required from speakers for the sake of interpretation may be disruptive of the dynamic flow of exchanges at certain stages in the proceedings.

6. Interpretation and the Record

The literature indicates that for the purposes of the record of the court proceedings in the United States, England, Germany and Israel, it is the interpreted version of court proceedings, not the foreign-language original, which is transcribed and becomes part of the record. In England, however, only the interpreter can testify in court as to what was said by a suspect in a police interrogation conducted through that interpreter. This state of affairs is a result of a 1958 ruling that evidence by the policeman who received the interpreted version is hearsay. This ruling is closer to the position on documents in Israel, where legally the original is the exhibit and translations are only aids to understanding. However, no provision appears to exist under English law for the status of interpreted material included in an English-language record of proceedings to be treated differently from original English material.

In contrast, a widely accepted legal fiction maintains that what the interpreter says in court is to be equated for all purposes with what the original speaker says. This legal fiction emphasizes the dubiousness of holding multilingual interpreted proceedings without proper monitoring arrangements.

Any attempts at the Demjanjuk trial by participants to speak to interpreters directly

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16 Or to put it another way, “interpreter no speak with forked tongue”.
17 See Note 9 above.
18 In R.v. Altard (1956), 43 Cr. APP.R., 90, where Gorman held that the testimony of the police officer conducting the interrogation through an interpreter would be hearsay only (Archbold (1973): 346a).
19 Demjanjuk trial 11.3.87 12:24.
20 Exceptionally in the Eichmann trial (Session 103, July 1961) the court decided that in cases of doubt the original German is to be followed.
were ruled out of order by the bench, as opening a
dialogue on the subject of equivalence of terms
focuses on the interpreter as a participant in the
proceedings in his or her own right, which runs
counter to the prevailing philosophy on the
position of court interpreters.21 This attitude
increases the likelihood of uncorrected errors,
and concomitantly of negative implications for the
doing of justice, occurring in both the consecutive
Hebrew interpretation, which forms part of the
official record, and the simultaneous English
version. The court's refusal to sanction such
direct communication between interpreters and
participants is probably also related to a desire
on its part to maintain control of the proceedings
in its own hands.

In addition, as indicated above in Section 2,
various modes of interpretation cannot be readily
recorded, a factor which may be relevant in any
decision as to which modes are to be used.

7. Interpreter Neutrality

Opinions vary between both users and
practitioners of court interpreting as to the
precise role of the court interpreter,22 What is
not necessarily realised is that any and every
action (or at times failure to take action) by the
interpreter affects the proceedings. Following
Berk-Seligson (1985), Morris' 1989 study shows
that the very presence and involvement of the
court interpreter modifies legal proceedings,
regardless of the complexity or otherwise of the
interpreting arrangements.

For example, in striving to achieve the

21 Lang (1976: p. 373) makes the point that in all liaison
interpreting there is a very real danger that the partners to a
conversation find themselves not partners to a conversation
with one another but rather with the interpreter.

22 See discussion in Roberts (1981), pp. 55, 59, 135-143. In
particular, the following extract highlights the two opposing
viewpoints: that of the court interpreter as a translating
machine, or as someone who must understand and transmit a
meaningful message, as opposed to mere words.

Participant: Maîle il faut tout de mème comprendre le sens de
cé qu'on Interprète. Sinon, on est une machine à traduire.

Léopold. Saint-Laurent: C'est exactement ce qu'on est dans un
tribunal.

Raymond Robichaud: Notre rôle est de faire passer le
message: je regrette de la dire, mais il arrive assez souvent
que le témoin et même l'avocat ne lisent pas de message! Ils
disent des choses totalement dépourvues de sens. Alors, il n'y
a rien à faire. On ne peut pas repérer des mots.

Léopold. Saint-Laurent: Au tribunal, c'est le cas. En simultanée,
je suis parfaitement d'accord avec vous, mais au tribunal, je
m'exuse, je ne vous suis pas.

Raymond Robichaud: Il n'est pas interdit, à mon avis, de se
considérer de temps en temps comme le collaborateur du
tribunal plutôt que comme un simple perroquet.* (From

optimum accuracy vital for legal proceedings,
interpreters may wish to clarify material. By
indicating such problems to the court, they draw
attention to their presence as supernumerary
participants in the proceedings. If, instead, they
clarify material with the speaker, they are taking
an initiative to which they are not strictly
speaking entitled. The third option, to venture an
educated guess, is non-intrusive and more in line
with the supposed neutral position of the court
interpreter, but is likely to have further negative
effects if the guess is incorrect.

Further results may ensue from such tactics.
The effect of clarification procedures for
interpretation purposes may be to unwittingly
assist a witness to improve presentation of an
answer, thereby giving a more positive
impression through the interpretation than in the
original. Similarly, interpreters' latitude in
improving on unclear or badly phrased questions
from lawyers, while improving communication
with witnesses, also modifies the impact of
examination.

Both the Demjanjuk trial court and the Israel
Supreme Court recommended the use of simple
questions by counsel examining witnesses through
an interpreter. It should be pointed out, however,
that this area involves the broader issue of the
use of certain deliberately complex and possibly
deliberately ambiguous forms of questioning by
lawyers.

A scenario available in interpreted procedures
is that of interpreters who simplify such question
for witnesses, whether they are specifically so
authorized or who do so on their own initiative.
Various interpreters at the Demjanjuk trial
adopted this approach at various times. Although
the chief court interpreter's request to be so
authorized was refused at the outset of the trial,
after numerous instances of unsuccessful
communication with witnesses she subsequently
adopted this approach without any complaint from
the bench. Similarly, the German interpreters
decided independently of the court to apply this
technique when they realized that otherwise
communication with their client was often
unsuccessful.

In addition to such semantic modifications,
Morris' study of shifts in interpretation at the
Demjanjuk trial also identifies some willingness
by certain interpreters to provide a certain
amount of intercultural mediation. It is on the
basis of this assumption (that the interpreter is
an intercultural as well as an interlingual mediator) that these interpreters allowed themselves, for example, to provide a summary of a lawyer’s question, give explanations of terms known to be unfamiliar to the language-handicapped addressee of the utterance, and add or omit culture-bound references in order to make communication more effective.

Such approaches, like overt or covert control of speakers by interpreters, involve issues of interpreter neutrality or otherwise. At times the interpreters at the Demjanjuk trial might be said to have manipulated the proceedings with no intention of exercising power; at others they exerted an influence on the proceedings precisely because they failed to intrude, for example by guessing at acoustically unclear material instead of indicating the difficulty and asking for a repetition. In addition, interpreters’ passivity at times led to time-consuming and intrusive interpreter-generated incidents.

In theory it is incumbent upon the court interpreter to provide a complete version of original material, but in practice constraints beyond the interpreter’s control may prevent such complete rendering. Thus by interrupting the consecutive interpretation, participants inadvertently or deliberately prevented the provision of a Hebrew version of the original, thus striking the uninterpreted portion from the record. Even when time was eventually allocated for interpretation, the interpreter might be forced to adopt a reporter function, thereby acquiring a position other than that of the speaker’s alter ego. In addition, the chief court interpreter at the Demjanjuk trial tended to apply a considerable amount of latitude in consecutively rendering utterances by the English-speaking lawyers, while being more punctilious with regard to material from witnesses. It should be noted that initially the bench itself instructed the court interpreter to edit defence counsel’s utterances, a practice subsequently modified somewhat as a result of the latter’s vehement objections to it.

Berk-Seligson’s work on evaluative reactions to interpreted testimony indicates that shifts in interpretation, whether deliberate or inadvertent, do in fact affect participants’ evaluation of the original speaker.²³ Pending further research into this issue, the findings of Morris’ 1989 study of the Demjanjuk trial point to interpretation at legal proceedings acquiring a persona of its own. The study shows that the interpreters and their performance at the Demjanjuk trial are far from neutral elements in the proceedings. Throughout the trial, it was clear that the non-linguistic participants’ role performances were affected in many ways by the provision of interpretation. In line with Berk-Seligson’s findings, the author of this paper believes that this state of affairs applies, to varying extents, to all interpreted proceedings, but considers that the degree to which court interpretation affects proceedings probably varies widely, depending on major factors such as interpreter competence and the modes of interpretation used for different stages.

References


Bennett, John (1981a), The role of Court Interpreting and the Work of Court Interpreters, in Roberts (1981), pp. 11-18.


Harris, Brian, (1981), Observations on a

²³Berk-Seligson (1988). She finds that even bilingual mock jurors, w.h.o have understood the original testimony, evaluate the witness differently following an interpreted version with a different degree of powerfulness from that of the original.
Cause Celebre: Court Interpreting at the Liechka Trial, in Roberts (1981), pp. 189-201.
Kempner, Robert M.W., Readers' Letters, Jerusalem Post, 1.8.81, "Questioning the Brain-Washed".

APPENDIX

<table>
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<th>Languages of question/answer</th>
<th>Interpretation requirements for purposes of examination</th>
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<tr>
<td>English/English</td>
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<td>Yiddish/Hebrew</td>
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<tr>
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</tr>
<tr>
<td>English/Yiddish</td>
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<td>Ukrainian-English</td>
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</tr>
<tr>
<td>English-Ukrainian</td>
<td>Ukrainian whispered</td>
<td>Hebrew consecutive</td>
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