

Crossing Linguistic Barriers: The Court Interpreter's Balancing Act with Limited Language Proficiency in Legal Discourse

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Abstract: *The influx of international students, businesses, and immigrants in China has led to a surge in civil, commercial, and criminal cases involving non-Chinese speakers. Magistrate courts in many Chinese cities began to offer Chinese-English court interpreting service. But many defendants at the court are not native English speakers. This paper delves into the intricate roles of court interpreters, particularly in the context of limited English proficiency (LEP) defendants. It scrutinizes the social, ethical, and interpersonal dimensions of interpreters' responsibilities, highlighting the pressures they face and proposing solutions to the challenges they encounter. The analysis is grounded in the case study of the Intermediate Magistrate Court of Guangzhou's drug smuggling trial involving an Ethiopian defendant with minimal English proficiency, which took place on August 12, 2019. The study underscores the interpreter's critical function in facilitating cross-linguistic legal interactions, and discusses the various roles interpreters may assume, such as the non-person, advocate, gatekeeper, filter, and faithful renderer, each with its own set of ethical dilemmas and pressures. The paper also addresses the inherent difficulties of court interpreting, such as the complexities of legal language, which can be perplexing even to native English speakers. To mitigate these challenges, the paper suggests the need for better regulations and formal recognition of the court interpreter's profession. It advocates for comprehensive training programs that include legal language and concepts, the use of visual aids, and the education of court participants on the interpreter's role.*

Keywords: *Courtroom Interpreting, Limited English Proficiency (LEP), Interpreter's Roles, Interpreter Training*

1. Introduction

Increasing international communication has led to an enormous growth of cross-linguistic legal encounters throughout the world. The interpreter plays an important role in such communication. By a closer analysis of the Intermediate Magistrate Court of Guangzhou V. TILAHUN NATNAEL SOLOMON drug smuggling trial taking place on 12 August 2019, this essay tries to explore multiple roles the interpreter plays in the courtroom when dealing with the Ethiopian defendant who speaks little English, and to argue that being a faithful renderer is not adequate. This essay also identifies the pressures and difficulties resulted from the complexity of roles and climate of the court, putting forward potential solutions.

Court interpreting usually refers to simultaneous and consecutive interpreting, sight and written translation provided for court officials and minimal or non-English speaking litigants during evidentiary and non-evidentiary proceedings, which also includes interviews in case-related matters outside the courtroom (Benmaman[3], 1997). As China welcomes a large number of international students, businesses and immigrants, it also faces an increasing number of civil, commercial and criminal cases concerning non-Chinese speakers. The total number of such cases has reached 384,000 during 2013-2022[14]. Many cases use English as another working language when the native languages of foreign participants are too rare to match with a qualified interpreter. But some of the defendants may be defined as Limited English Proficiency (LEP), an individual who speaks primarily a language other than English, which causes much pressure to the interpreter, such as the ethical dilemmas between staying impartial and facilitating the conversation.

2. Conflicts of Roles

Role of the court interpreter is a hotly debated issue among academics and practitioners. Court interpreters may often find themselves at the crossroads of different roles, including the non-person, the advocate for the powerless or powerful participant, the institutional gatekeeper, the filter and the faithful renderer, as summarized by Hale (2008)[8]. Accentuated consequences of role adoption bring tremendous pressures to the interpreter.

2.1. Social Role

When investigating the social role, we need to consider the group and its member at the same time, because only a relevant audience can attribute someone a social role. From the viewpoint of the court, including the judge(s), the prosecutor and the council of defense, court interpreter is supposed to be a non-person, the servant of law whose sole task is conveying the message. According to Berk-Seligson (1990)[4], this understanding is widely adopted by the US courtrooms, clearly laid down on the 1978 Federal Court Interpreters' Act. Australian and British scholars also tend to see court interpreters as "mere ciphers" (Fenton[6], 1997).

On the contrary, Zhao (2008) [11] found in his research that many court interpreters in China have been adopting the role of gatekeeper, assisting the court in expressing power and control over the LEP defendant, who, for example, may find it hard to follow the lengthy pre-translated statements read aloud by the interpreter, and can only say yes or no as response. But sometimes the interpreter may be the advocate for the minority language speaker. Here is an example of such practice.

Example 1

1 Chief judge: (In Chinese) This is end of the oral arguments. Now the defendant shall make the final statement. Defendant, do you have any thoughts or understanding on the way the case is handled, specific understanding or requests from the court.

2 Interpreter: (Interprets accurately)

3 Defendant: (.)No.

4 Interpreter: You got nothing to say.

5 Defendant: [Hum?]

6 Interpreter: You got nothing to say?

7 Defendant: No.

8 Interpreter: [Like] how you wish the punishment be like. Or you would like to express your regrets. Your...you-you would plea for forgiveness, or mercy from the present judge. Or anything you want to say.

9 Defendant: No.

10 Interpreter: Nothing?

11 Defendant: Yes.

12 Chief Judge: (In Chinese) Got nothing to say, right?

From line 2 to line 11 in this example, the interpreter engages in private conversation with the defendant back and forth for five times, trying to make sure the defendant know what the meaning of final statement, even though the defendant clearly says "No" for three times. It is understandable that the interpreter tries to explain the legal term, because he has identified the defendant as LEP from previous strenuous interactions. But he could have interpreted the first denial into Chinese and let the judge decide the necessity of further elaboration.

Here, the interpreter's behaviours falls into the description of Hale (2008) [8] on the "advocate role for the minority language speaker" who has in his heart the defendant's interests and tries to speak for him, and such behaviours are not restrained by the court. Admittedly, in a drug smuggling case when facing an Ethiopian defendant who has prepared to plead guilty, the interpreter is not likely to be questioned whether he is "helping his countryman". But taking the role of advocate is still risky, as it obeys the ethics of the profession of a court interpreter.

2.2. Ethical Role

The work ethics of public service interpreters, including impartiality, confidentiality and accuracy, are clearly laid down on the UK Visas and Immigration Code of Conduct for the Home Office Registered Interpreters (Home Office[5], 2008), as well as on the guidelines written by the interpreting service institutions in other countries and locales such as Court Interpreting Guidance and NIS Code of Practice for Interpreters. The three requirements or instructions imply that court interpreters should be a non-biased renderer and a secret keeper.

Zhang et al. (2015) [12] studied five courts in China and found the judges have hardly questioned about the ethical role of the interpreter. The judge of primary courts, Chinese equivalent of Magistrates' courts, would only verbally remind the interpreter not to discuss the case with anybody outside the court, but the interpreter would not be asked to sign any form of non-disclosure document, and the requirement of confidentiality is not written down in formal provisions.

Hale (2008) [8] views faithful renderer as the only adequate role for court interpreters. But this essay argues that it is not sufficient in dealing with LEP defendant, because the interpreter is a inevitably a part of the conversation, and they need to put interpersonal role into consideration .

2.3. Interpersonal Role

Court interpreting is included in the broad umbrella of public service interpreting, for which it is important to be sensible to cultural differences and human suffering, to build rapport and establish rules. But courtroom setting are very unique in its disregard of conventional norms of face-to-face communication[10]. Therefore, courtroom interpreting may differ from other dialogue interpreting such as that of medical in terms of interaction mode. Pre-court communication with the defendant is prohibited in most of the court interpreting guidelines[1]. There is no way to win the trust of any party, or educate the main participants about proper cooperation with the interpreter.

Chinese court interpreters often adopt the role of communication facilitator in their interaction with main inoculators at the court, helping them to filter out “irrelevant” information and achieve the ultimate goal of communication. Interpreter may use all kinds of communicational skills towards this end, such as interrupting for clarification, identifying a problem and reporting to the court, paraphrasing, explaining legal terms to the defendant or witness. Here is an example of a successful attempt of facilitating conversation.

Example 2

- 1 Chief judge: (In Chinese) Have you received the duplicate of the indictment?
- 2 Interpreter: (Interprets accurately)
- 3 Defendant: What?
- 4 Interpreter: Have you received the duplicate, or the copy of the indictment?
- 5 Defendant: What?
- 6 Interpreter: (repeats line 4)
- 7 Defendant: Erh...
- 8 Interpreter: [the document] called indictment.
- 9 Defendant: What document?
- 10 Interpreter: (In Chinese) The defendant may not be familiar with the English word indictment
- 11 Chief Judge:(In Chinese) that means
- 12 Interpreter: (In Chinese) You can just show him. (In English) This is called indictment
- 13 Defendant: Ah. Yeah.
- 14 Interpreter:(In Chinese) It has been received.

In this example, the interpreter does not simply interpret the words of either side faithfully, but tries several different ways to help them understand each other better, In line 4, the interpreter uses the synonym “copy” to explain the legal term “duplicate” after the accurate rendition in line 1 failed. When

the defendant seems confused, the interpreter addresses directly to the chief judge, saying his assumption on the cause of the defendant's silence, which is "not familiar with the English word", as shown in line 10. When the judge is about to explain the term "indictment", the interpreter further suggests that he should just show the defendant the document. Once the defendant sees the document, he nods and confirms that he has received it.

In the pragmatics' view, the interpreter notices the illocutionary act of the question in line 1, which is to walk through the procedures quickly, because according to an informant from a law firm in China, the defendant must have received the indictment, or the trial would not begin at all, or begin without his presence. The mindset of the judges in this case is to confirm all the gathered information is true and adequate, request from the defendant heard, and justice achieved. Anything that helps the procedures go smooth is good, and anything that does not, superfluous. Therefore, even though the interpretation in this example is not faithful or accurate in strict sense, it is a success, because the communication would otherwise be stuck.

3. Pressures and Difficulties

Role confusion causes much pressure and difficulty for court interpreters, such as the ethical dilemmas resulted from both self-struggling between roles, and diversified and sometimes unrealistic expectations from the court. But even without the confusion and conflicts of various roles, court interpreting is still difficult because of the intrinsic characteristics of legal language.

3.1. Ethical Dilemmas

Every practicing interpreter has an ideal role in their mind, and main interlocutors in the court also have different expectations on them. Interpreters may often find themselves in the dilemma that what they believe contradicts to what they have to do.

If the interpreter decides to take the role of a faithful renderer, he or she is facing the question of how to define faithfulness in legal context, to be more specific, how to choose between literal faithfulness and pragmatic faithfulness. As mentioned, many legal practitioners expect the interpreter to be absolutely accurate, because omitting tag questions may make the question raised by the attorney less coercive, thus influence the pragmatic force of the utterances (Hale[7], 1999). But Barsky (1996) [2] argues that it is the interpreter's moral obligation to make necessary changes, additions, omissions, embellishments in favour of the communication.

Many court interpreting training programs would emphasize on the importance of not engaging in private conversations at court, which is in accordance with the requirement of impartiality. But Hale (2008) [8] finds that references to the judiciary instructing interpreters to help or assist the defendant are common in courtroom data. Magistrates may be suspicious of the professionalism of interpreters because some of the utterances had been significantly reduced or lengthened. That makes them lose faith in the ability of the interpreter to convey the message accurately, and as a result, affects the credibility of the defendant in their perception.

Sometimes, because the trials that involve interpreters still occupy a small portion of the total number, many judges and barristers lack the experience of working with interpreters. They may ignore the needs, the memory capacity and even the existence of the interpreter. So they speak very fast, overlap with each other, interrupt the interpretation, or go on and on without a pause. The non-person role ignores the fact that interpreters are inevitably taking part of the dynamic interaction at the court.

3.2. Legalese

Legalese may be the most intrinsic difficulty of court interpreting. English used in legal sphere may confuse even English native speakers. Based on previous literature, Li and Zhang (2006) [13] sorted out ten characteristics of legal English:

- Frequent use of common words without common definition
- Frequent use of archaic words
- Frequent use of Latin
- Frequent use of uncommon French words

- Massive legal terms
- Frequent use of jargons
- Formal expressions
- Intentional use of vague vocabulary.
- Attempts of using succinct words to express legal concepts.
- Massive use of verbose words in expressing simple concepts.

In some cases, legalese is not nuisance for well-trained interpreters, but is for LEP individuals.

4. The Way Out: Enhancing Courtroom Interpreting Practices

The landscape of courtroom interpreting can be transformed by measures including enhancing the professional status of interpreters, improving the quality of training, and promoting active communication strategies. By implementing these changes, the legal system can better serve the needs of all participants, particularly those with limited English proficiency, and uphold the principles of justice and fairness.

4.1. Regulations and Recognition

One of the primary issues within the field of courtroom interpreting is the lack of comprehensive regulations and professional recognition. In China, as in many jurisdictions, interpreters are often hired on an ad hoc basis by the court, with few having specialized training in legal translation and interpreting. This situation underscores the need for better regulations that not only formalize the role of the interpreter but also acknowledge the complexity of the task at hand. Recognizing courtroom interpreting as a specialized profession would pave the way for formal training programs and certification standards, ensuring that interpreters are equipped with the necessary skills to navigate the intricacies of legal language and procedure.

4.2. Professional Training and Development

To address the gap in specialized knowledge, it is crucial to incorporate legal terminology and concepts into the training of court interpreters. This would involve not only the study of legal jargon but also an understanding of the legal process and the cultural nuances that often accompany it. Such training would enable interpreters to provide more accurate and nuanced translations, thereby facilitating a more just and efficient legal process.

4.3. Utilization of Visual Aids and Active Communication

In situations where the legal language becomes too complex for a verbatim translation, the use of visual aids can be an effective tool. Interpreters can express confusion on behalf of the individual by providing a verbatim translation and then allowing the legal professionals to clarify. Alternatively, interpreters can serve as active communicators by informing the judge of their objective observation that the individual may not comprehend certain terms. This approach respects the judge's authority while ensuring that the defendant or witness understands the proceedings.

4.4. Educating Courtroom Speakers

Interpreters must also take on an educational role, particularly when it comes to managing the pace and style of speech used by lawyers, judges, and other participants in the trial. By politely interjecting with a simple "sorry" and employing hand gestures, interpreters can request that speakers slow down, pause for clarification, or rephrase complex statements. This not only aids in comprehension but also promotes a more inclusive and accessible legal environment.

4.5. Advocating for Interpreters' Needs

Interpreters should be empowered and encouraged to advocate for their needs within the courtroom. This includes setting expectations about the time required for interpretation, the importance of

uninterrupted speech, and the necessity of clear, non-technical language whenever possible. By doing so, interpreters can help create a more conducive environment for effective communication.

5. Conclusion

As Vilela-Biasi (2003) [9] well put, “justice can only be demonstrated through linguistic understanding”. Decisions made by the interpreter in the court have potential impact on someone’s life. That makes the role of interpreter significant during the procedures of truth seeking and justice achieving.

By analyzing the interpreter-intermediate behaviours in a drug smuggling trial with a LEP dependant at Guangzhou intermediate court, this essay finds that Chinese court interpreters take a mixed role that combines social, ethical and interpersonal aspects. That means they can be the advocate for the defendant, the gatekeeper for the court, the faithful renderer, and most of the times, the communication facilitator.

The conflict between each role brings great pressures and difficulties to their work, such as ethical dilemmas and diversified expectation. Apart from the inevitable pressure, court interpreters also face multiple challenges such as coping with legal English. Outside the court, the difficulty of legal jargons may be solved by adding law studying as a component in court interpreting training programs, while in the court, the interpreter may use communicational techniques such as visual aid, or inform the court this problem in order to avoid lengthy and confusing explanations done by themselves. To deal with expectations that are too demanding, court interpreters should inform the participants their Code of Practice, their responsibilities and limitations. To some extent, interpreters are guarding the human rights by facilitating communication between the court and non-English speaking witnesses and defendants in the courtroom.

References

- [1] Angermeyer, P.S. (2015) *Speak English or what? : Code switching and interpreter use in New York City courts*. Angermeyer, P. S. (2015), *Codeswitching in the courtroom*, *Speak English or What? In Angermeyer, P. S. (Ed.), Codeswitching and Interpreter Use in New York City Courts, Oxford Studies in Language and Law*(pp.142-190). Oxford University Press, New York.
- [2] Barsky, R. F. (1996). *The Interpreter as intercultural agent in convention refugee hearings*. *The Translator*, 2(1), 45-63.
- [3] Benmaman, V. (1997). *Legal Interpreting by Any Other Name Is Still Legal Interpreting*. In Silvana C. R. P., Roberts, A. D., & Steyn D. (Eds.), *The Critical Link: Interpreters in the Community* (pp.179-190). John Benjamins, Amsterdam.
- [4] Berk-Seligson, S. (1990). *Bilingual Court Proceedings*. In Levi, J.N., & Walker, A.G. (Eds.), *Language in the Judicial Process. Law, Society and Policy*. Springer, Boston.
- [5] Home Office. (2008). *Code of conduct: interpreters working for UK Visas and Immigration*. <https://www.gov.uk/government/publications/code-of-conduct-interpreters-working-for-uk-visas-and-immigration>
- [6] Fenton, S. (1997). *The role of the interpreter in the adversarial courtroom*. In Silvana C. R. P., Roberts, A. D., & Steyn D. (Eds.), *The Critical Link: Interpreters in the Community*(pp.29-34). John Benjamins, Amsterdam.
- [7] Hale, S. (1999). *Interpreters’ treatment of discourse markers in courtroom questions*. *International Journal of Speech Language and The Law*, 6, 57-82.
- [8] Hale, S. (2008). *Controversies over the role of the court interpreter*. In Garcés C. V., & Martin, A. (Eds.), *Crossing Borders in Community Interpreting* (pp.99-121). John Benjamins, Amsterdam.
- [9] Vilela-Biasi, E. (2003). *Court interpreters as social actors: Venezuela, a case study*. *Critical Link*, 3, 239-245.
- [10] Yu, L. (2015). *Caught in Dilemmas: A Linguistic Analysis of the Role Played by the Interpreter in Chinese Criminal Sessions*. *Journal of Zhejiang International Studies University*. (2), 1-9.
- [11] Zhao, J., & Zhang, J. (2011). *Court Interpreter as Institutional Gate-keeper*. *Chinese Translators Journal*, 32(1), 24-28.
- [12] Zhang, X., Gong L., & Zeng, X. (2015). *On Communicative Strategies of Court Interpreters for Foreign Defendants of Limited English Proficiency*. *Journal of Zhejiang International Studies University*. (2), 17-22.
- [13] Zhang, X. & Li, K. (2006). *Legal text and legal translation*. China Translation & Publishing Corporation, Beijing.
- [14] Zhou, Q. (2023). *Report of the Supreme People's Court on the Work of People's Courts in Foreign-related Trials*. *Bulletin of the Supreme People's Court of the People's Republic of China*. (2).