

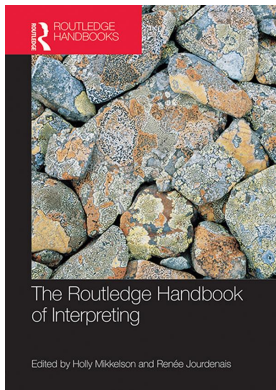
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COURT INTERPRETING

Jieun Lee

Introduction

This chapter aims to give an overview of the topic of court interpreting. It begins with the definition of court interpreting and court interpreters, and describes the different modes of interpreting used in court interpreting and the skills and aptitudes required of court interpreters. It briefly discusses different the legal systems in which interpreters are engaged, the demanding nature of court interpreting work, and court interpreter certification, training, and professional statuses. It provides a brief introduction to legal frameworks such as international and domestic law and regulations which govern court interpreting, quality standards, and others. It also describes how countries and different jurisdictions have tried to improve the standards of court interpreting, and discusses how domestic courts and international courts differ when it comes to court interpreting. Drawing on research findings and a review of the literature, this chapter discusses the issue of the quality of interpreting required in court interpreting settings and the intricacies surrounding the role of court interpreters. Finally, it suggests key issues and topics for further research, and concludes with suggestions for further reading.

Definition of key terms

Court interpreting and court interpreter

A narrow concept of court interpreting restricts it to courtroom settings, but it generally covers interpreting in a wide range of judiciary settings, from courts to tribunals and from police interviews to legal consultations. Thus, court interpreting is often considered synonymous with legal interpreting, forensic interpreting, and judiciary interpreting. It is not restricted to criminal settings, but it has drawn the most attention in the context of criminal proceedings. Court interpreters play an important role in removing language barriers during the interactions between court personnel and people who do not understand or speak the language of the court. In this chapter, the term court interpreter refers to those working in legal settings, not necessarily limited to certified court interpreters. The discussion here excludes police interpreting for the most part.

Modes of court interpreting

The modes used in legal settings include consecutive interpreting and simultaneous interpreting (see Chapters 5 and 6). Court interpreters also carry out various translation tasks from translating transcripts and legal documents to sight translating documents during the proceedings (González *et al.*, 1991; Edwards, 1995; see also Chapter 9). Short consecutive interpreting is used predominantly during the examination of witnesses and defendants from culturally and linguistically diverse (CALD) backgrounds, whereas simultaneous interpreting is often used during interpreting of proceedings. During the discussion of procedural matters and legal arguments and the examination of witnesses who speak and understand the language of the court, simultaneous interpreting is the preferred mode of interpreting. In most domestic courts, simultaneous interpreting may be delivered in whisper mode, rather than from booths, when there are one or two participants who do not understand the proceedings. Relay interpreting may be used when an interpreter is not available for a given language combination. In relay interpreting, interpreting is delivered first by a pivot interpreter into a third language, and this is relayed in turn by another interpreter into the language that the court or the speaker understands. Unlike conference settings, consecutive relay interpreting is more common than simultaneous relay interpreting in domestic courts. Since relay interpreting is more likely to entail problems due to the complicated interpreting process, both interpreters must be equally competent to convey the original utterances accurately (see Lee, 2014, and Chapter 11 for further discussion of these various modes).

In cases where a trial involves more than one defendant whose interests conflict with each other, where there are co-defendants speaking different languages, or where there is a large number of co-defendants, the court may have to provide a separate interpreter for each defendant (Hewitt, 1995: 143). It is also recommended that when the matter is of critical importance, or when the proceedings will last longer than an hour, there should be a team of interpreters who take turns in order to prevent interpreter fatigue. This is a common practice in sign language interpreting (see Chapter 7 for more on sign language interpreting), but not so much in spoken language interpreting in legal settings. In civil litigation, the parties often hire “check” interpreters to observe the opposing party’s interpreter during testimony and call attention to any errors (Lee, in press).

Aptitude and competence of court interpreters

Court interpreters should have a mastery of two languages, including regional varieties, swearing and slang, and formal registers like legalese and specialized terminology, since they have to interpret the testimonies of lay witnesses and expert witnesses as well as lawyers’ questions and legal arguments. Because they are expected to preserve propositional meaning as well as the registers, style, and tone of the speaker in interpreted renditions (González *et al.*, 1991: 36, 272; Mikkelson, 1998: 22), they need advanced interpreting skills. In addition to general interpreting skills such as concentration, memory, and analytical ability, court interpreters also need interpersonal skills, discourse management ability, and knowledge of the legal system (González *et al.*, 1991: 19; Hale, 2010: 443). Furthermore, strong nerves and flexibility in dealing with stressful working conditions are indispensable for court interpreters since they frequently work in highly contentious and tense environments, and sometimes deal with harrowing details of events while interpreting for people from all walks of life.

Adversarial v. inquisitorial system

Legal systems are largely divided into adversarial and inquisitorial/non-adversarial systems. In an adversarial system, the court plays primarily the role of a referee between the prosecution and the

defence. The adversarial system is commonly found in Anglo-American common law countries, but it is also found in civil law countries such as South Korea and Japan. Adversarial parties offer their version of events and argue their case before a judge and/or jury. Evidence is primarily presented through examination-in-chief and vetted through cross-examination. In an inquisitorial system, the court is actively engaged in the fact-finding process. While there is no cross-examination and re-examination of witnesses in the inquisitorial system, witnesses are still questioned and challenged. However, the rules concerning admissibility of evidence in the inquisitorial system are considered more lenient than in the adversarial system. The inquisitorial system is widespread in many European countries such as Germany, France, and The Netherlands.

Court interpreters need to understand the functions and purposes of different phases in court proceedings and the discursive practices associated with them in these different systems. The language of witness testimonies is crucial in both adversarial and inquisitorial systems, and therefore accurate rendition by interpreters is of great significance. However, given that oral evidence is the primary type of evidence presented in the adversarial system, language is viewed as an important tool in the adversarial trial, and as such lawyers and judges pay a great deal of attention to getting an accurate verbatim transcript, to be relied upon in case of an appeal (Mikkelson, n.d.).

History/early developments

It is not possible to pinpoint the beginning of court interpreting, but it would be safe to assume that it has a long history spanning centuries. This section will focus on 20th century court interpreting, during which both court interpreting studies and the professionalization of court interpreting started. We will begin with a discussion of the legal basis for the provision of court interpreting and then move onto the issue of quality in court interpreting, both of which are recurrent themes in the literature.

Legal frameworks for the provision of court interpreting

There are various legislative frameworks such as international law, domestic law (including case law), and court rules and policies that govern the issue of court interpreting either directly or indirectly. International covenants establish the principle of respect for human rights and the right to freedom from discrimination and to a fair trial (e.g. the Universal Declaration of Human Rights of 1948, the International Convention on the Elimination of All Forms of Racial Discrimination of 1966, and the International Covenant on Civil and Political Rights (ICCPR) of 1966). Many of the provisions of international law “do not specifically refer to the right to an interpreter, but to make them effective such a right would need to be inferred” (Laster and Taylor, 1994: 75). Article 14 of the ICCPR and Article 40 of the Convention on the Rights of the Child of 1989, for example, specifically guarantee one’s right to the free assistance of an interpreter if one cannot understand or speak the language used in court. The legal interpretation and implementation of these international laws in domestic jurisdictions, however, is up to each signatory state.

Articles 5 and 6 of the 1950 European Convention on Human Rights (ECHR) set out that all persons who are arrested shall be informed promptly, in a language they understand, of the reason for their arrest and of any charge against them, and all those charged with a criminal offence have the right to be informed of the nature and cause of the accusation against them and to have the free assistance of an interpreter if they do not understand or speak the language of the proceedings. The European Court of Human Rights has made decisions that reflect the

principles set forth in the ECHR. In *Luedicke, Belkacem and Koc v. Federal Republic of Germany*, for example, the Court held that free assistance of an interpreter is unconditional regardless of acquittal or conviction of a defendant, and that the provision of interpreting extends beyond the trial per se to include a committal hearing as well as translation or interpretation of all documents used in proceedings that were necessary for a fair trial (Laster and Taylor, 1994: 76). Similarly, in *Kamasinski v. Austria*, the Court held that the interpreting assistance should include document translation during the pre-trial proceedings where this is necessary, so that the person charged can understand everything in order to have the benefit of a fair trial (Hertog and Bosch, 2001: 15).

There has, however, been a lack of consensus on the requirements of court interpreters among EU member countries, which has resulted in different standards and level of access to court interpreting. After a series of projects which examined the issues of equal access to justice and encouraged the establishment of internationally consistent best practice standards and equivalencies in legal interpreting and translation (see Hertog, 2001 and 2003 for Grotius Project, and Keijzer-Lambooy and Gsille, 2005 for AGIS project), the EU member states have agreed to set up common standards for legal interpreting and translation by adopting the 2010 Directive (European Commission for the Efficiency of Justice, 2012: 369). Article 2 (1) of the Directive provides that “Member States shall ensure that suspected or accused persons who do not speak or understand the language of the criminal proceedings concerned are provided, without delay, with interpretation during criminal proceedings before investigative and judicial authorities, including during police questioning, all court hearings and any necessary interim hearings.” Article 2 (8) provides that “interpretation provided under this Article shall be of a quality sufficient to safeguard the fairness of the proceedings.” Article 5 also reiterates the quality of interpreting and translation. The EU members have to incorporate the Directive into domestic law in due course, but it applies only in criminal proceedings and some EU member states are exempt from such a legal obligation under the EU legal framework. Consequently, the application of homogeneous quality standards throughout the EU may not be easy.

Some countries have statutory laws regarding the provision of court interpreting, whereas other countries do not have such laws but do have established court rules or policies. In the U.S., for example, the right to interpretation is not explicitly specified in the U.S. Constitution, but it is in the constitutions of some states (e.g. California). However, in U.S. District Courts, the right to an interpreter is recognized by case law based on the 5th, 6th and 14th amendments to the Constitution (de Jongh, 2012: 3). The Court Interpreters Act of 1978, which was enacted in order to ensure that a non-English speaking (NES) person has a certified court interpreter’s assistance, applies in federal criminal cases or in civil cases instituted by the U.S. government. Since it is a federal law, it does not apply in most civil matters or in state courts. Because the law permits courts to use an uncertified interpreter if the services of a certified interpreter are not available, there is a need for a stronger statute which requires courts to make vigorous efforts to locate and retain a certified court interpreter (Mathers, 2007: 30). Many state courts have joined efforts to facilitate non-English speaking persons’ access to court and to guarantee their right to a fair trial by establishing state court interpreter certification programs. There are also often state codes or statutes which regulate the selection and appointment of court interpreters (e.g. Ohio, Florida, and Texas). Other states have court rules which govern the qualifications and appointment of court interpreters (e.g. Maryland and New Jersey). Engagement of certified interpreters in court interpreting is common, but many states in the U.S. still do not have laws mandating the engagement of competent interpreters in police interrogation (*Chicago Tribune News*, 2012), and police officers are used as interpreters during several phases of a criminal case from investigation to interviews and interrogations (Berk-Seligson, 2009: 23). Given that police interpreting has legal consequences when the case goes to

court proceedings, it is very important that qualified professional interpreters who can maintain impartiality and accuracy are employed in police settings as well (Russell, 2000; Nakane, 2009; Lai and Mulayim, 2013).

Precedent decisions in individual court cases have also aided in establishing the right to an interpreter and meaningful participation in courtroom proceedings. The English Court of Appeal decision in *R. v. Lee Kum* (1916) is often cited as the basis for the common law approach to the right to an interpreter in a criminal case. Because the trial court did not provide interpreting for him, the Chinese defendant neither communicated with his counsel through an interpreter nor did he understand the evidence against him in his trial. The general practice in English courts at the time was not to provide interpretation of evidence to non-English speaking defendants who were legally represented. The Court of Appeal noted that “a failure to have the evidence interpreted would not result in the proceedings being invalid, unless a substantial miscarriage of justice had taken place” (Dobinson and Chiu, 2005: 33). Although the Court did not overturn his death sentence, it recognized the defendant’s right to a fair trial and his need to understand the case against him so that he could confront witnesses against him (*R. v. Lee Kum*, 1916, 1 K.B. 337 (C.C.A.)). This English case has been cited in a number of appellate considerations of the entitlement to interpretation around the world (Morris, 1999: 102).

A landmark case of Negron (*U.S. ex. rel. Negron v. State of New York*, 434 F.2d 386 (2d Cir. 1970)) changed the court’s practice in terms of provision of interpreting in the U.S. The prevailing practice at the time was that the court used interpreters to enable the court and the jury to understand the testimony of NES witnesses, but NES parties had to provide their own interpreter if they wanted to understand the proceedings (Mathers, 2007: 23). However, the federal district court noted that Negron, who was not provided with interpretation, was deprived of meaningful access to the proceedings and due process of law. The court said, “in order to afford Negron his right to confrontation, it was necessary under the circumstances that he be provided with a simultaneous translation of what was being said for the purpose of communicating with his attorney to enable the latter to effectively cross-examine those English speaking witnesses to test their credibility, their memory and their accuracy of observation in the light of Negron’s version of the facts” (*U.S. ex. rel. Negron v. State of New York*, 310 F.Supp. 1304, 1307 (E.D.N.Y. 1970)).

The concept of linguistic presence was further established in *Arizona v. Natividad* (1974). The Supreme Court of Arizona held that the NES defendant’s physical presence in the courtroom is not equivalent to meaningful presence, but that he or she should follow the proceedings and communicate in the courtroom proceedings (*Arizona v. Natividad*, 526 P.2d 730 (1974), de Jongh, 2008: 21). However, the notion that defendants must receive interpretation of evidence in order to understand the case against them generally applies only to criminal cases. In many countries, parties in civil cases do not have the automatic right to an interpreter, so they have to bring their own interpreters, or the court provides interpreting services and recovers the related expenses from the parties requiring interpreting. However, in some jurisdictions, parties in both criminal and civil proceedings are entitled to interpreting services, regardless of their economic status.

The determination of when to provide interpretation is typically up to the judge’s discretion, and the court must decide whether someone needs an interpreter based on the principle of a fair trial (Laster and Taylor, 1994: 78). Some U.S. state court rules provide questions judges may use when determining the need for interpreters’ service. However, the court lacks expertise to determine whether an interpreter is necessary for a defendant and who is qualified to serve as an interpreter (Benmaman, 2002: 2). In practice, courts tend to choose to err on the side of caution by providing interpreters. In Australia, since NES witnesses do not have a legal obligation to

prove their need for an interpreter, and they may appeal against the court's decision on their competence to speak and understand English, courts tend to provide interpreters when NES parties are involved. In Canada, based on case law, if criminal defendants state that they cannot understand the language of the court, the court provides interpreting without assessing their language ability.

In some countries, however, one's right to an interpreter is not explicitly stipulated, but in practice, the free assistance of an interpreter is provided for criminal defendants. For example, in South Korea and Japan, provision of interpreting is not fully recognized as a matter of CALD defendants' rights or entitlements but it is mainly for the benefit of the court in obtaining evidence. Whether access to court through interpreter is a right that a CALD person is entitled to or instead, a favour granted by the court, may make a big difference in the attitude of the court and, subsequently, in the quality of court interpreting. In the latter case, the concept of linguistic presence may not be upheld and some judges ask for summary interpreting or even ask that interpreting not be provided when defendants or witnesses are not directly addressed (Lee *et al.*, 2013).

Quality of interpreting

One's right to a fair trial cannot be divorced from the quality of interpreting. Mere provision of interpreting does not necessarily guarantee a fair trial or equal access to the court, and it may, in fact, hinder the court's access to legal evidence in a language it does not understand. There are various legislative formulations that define who provides interpretation in legal settings, but vaguely worded requirements such as a "competent interpreter," a "qualified interpreter," or simply "an interpreter" may impede due process, especially when there is no certification system for court interpreters. This is why Laster and Taylor (1994: 91) rightly state that "the right to an interpreter would be an inconsistent entitlement of variable quality ... and the right to an interpreter should specifically articulate the right to a professional, accredited interpreter."

The problem is that inadequate interpreting may go unnoticed in many cases. The quality of interpreting is sometimes questioned in courtrooms and may eventually lead to appeals; however, courts rarely accept that poor interpreting hampered the course of justice, and appeal cases based on incompetent interpreting rarely succeed (see Dunnigan and Downing, 1995; Benmaman, 2000; Hayes and Hale, 2011). In fact, in South Korea and Japan, appeals based on inadequate interpreting are often rejected, and inadequate interpreting is not seriously considered as grounds for appeal or retrial (Lee *et al.*, 2013). (For more information on quality in interpreting, see Chapter 23.)

Current situation of the profession

For conference interpreting, there are comparatively uniform worldwide industry standards (see Chapter 11). For court interpreting, on the other hand, some countries have established systems while others are still lagging behind. In countries which have a relatively well-developed court interpreting system, professional organizations of interpreters have played important roles in advancing the standards of the profession, professional responsibilities and training.

Court interpreter certification systems

Not many countries have an established court interpreter certification system. The U.S. and Canada do, for example, whereas countries such as the U.K., Denmark, and Australia do not,

although they do have a public service interpreter or community interpreter accreditation system (see Chapter 14 on community interpreting). In Australia, there are distinct accreditations for interpreters and translators. An interpreter cannot provide official translations to be submitted to courts unless they have accreditation in translation. Certification is often associated with training and thus contributes to the improvement of service quality. On the other hand, there are many countries, such as South Korea, Japan, and China, which do not have a court interpreter certification system or any other type of community interpreter accreditation. Many countries do have a nationwide sign language interpreter certification (see Chapter 7), although few have a specialized sign language interpreter certification for court interpreting.

In countries which require court interpreter certification, like the U.S. for example, in order to practice court interpreting as a certified interpreter, interpreters have to pass an examination. The U.S. has several types of court interpreter examinations. The federal court interpreter certification examination was introduced in 1980, but it is limited to a few languages. State-certified court interpreter examinations are available in diverse languages, but given that there are hundreds of languages spoken in the country, still only a fraction of languages are tested in the U.S. court interpreter examinations. The court interpreter examinations in the U.S. may be administered by different entities, but they are similar in that they consist of written tests on language proficiency and interpreting performance tests. Test subjects, methods, and pass requirements do differ however. For instance, some exams test simultaneous interpreting skills in both language directions while others do not. The court interpreter examination given by the National Association of Judiciary Interpreters and Translators (NAJIT) includes a translation test, but federal and most state court interpreter examinations do not include translation. A distinction should also be made among different skill requirements for interpreting and translation, as a court interpreter may be asked to both translate and interpret, but there is no clear distinction between the two in the examination system. By comparison, in Australia, there is a separate accreditation for interpreting and translation, and interpreters are not asked to undertake translation of trial-related documents unless they are qualified in specific language directions. (See Chapter 24 for more discussion of interpreter assessment.)

In places where there are certification or licensing programs for court interpreters, credentialed individuals are often required to revalidate or renew their certificate or license regularly. In order to maintain a valid certificate, they have to practice for a minimum number of hours, attend training, and abide by codes of professional ethics. Where there is a lack of court interpreter certification system, there is a high chance that untrained and often incompetent interpreters will be employed, and *ad hoc* interpreters and even volunteers allowed to serve, regardless of their interpreting competence (Lee 2012, 2014, 2015).

Certification systems are often linked with codes of ethical practice and discipline as well. In countries where there is a professional accreditation or certification, interpreters' compliance with ethical codes is encouraged by stipulating that breaches of the code of ethics are subject to disciplinary actions which may include license suspension. (See also Chapter 20 on ethics.)

Training

Currently, court interpreter certification is not linked to formal training in most jurisdictions, and there is no compulsory pre-service training in many countries. This partly explains why the quality of service is inconsistent and varies greatly according to interpreters' competence. That said, while formal training is not required to work as court interpreters, many interpreters do pursue training specific to this environment, and this can come in a variety of formats. Formal training over a medium to long term is offered at universities as part of a degree or a certificate

program or as a non-degree program, and this training may include training specific to court interpretation. Private training institutes and interpreters' professional associations also provide training in preparation for certification examinations. Informal training offered on a short-term basis includes a pre-service induction on basic interpreting skills and work ethics and on-the-job training. In the U.S., courts or court-authorized agencies and institutions provide one- or two-day court interpreter orientation workshops. This is a requirement in most state certification programs because of the importance and benefit of an orientation program, particularly for new interpreters. However, a court interpreter orientation program is a short workshop, not a systematic course of training for professional interpreters.

Generally speaking, training opportunities for court interpreters are limited in many countries because there are few courses. Where they are available, they are offered in major foreign languages, and minority language speakers do not have access to them. Therefore, non-language-specific or language-neutral training courses may be a viable option as an alternative method of teaching interpreters of a variety of minority languages. (See Chapter 24 for further discussion of training of interpreters.)

Across the world, many interpreters at work in court proceedings are untrained, yet expected to perform complex tasks of interpreting and even translating. The current status quo of court interpreting in many countries reflects a lack of understanding of the complexities and professionalism that come with proper training (see Hale, 2010). Court interpreting researchers and interpreter trainers strongly recommend specialist training for court interpreting given the demanding tasks associated with it.

It is also important that court interpreting service users understand the process of interpreting and the role of court interpreters in order to work effectively with interpreters in legal settings. That is why the National Center for State Courts provides judges with a guide to standards for interpreted proceedings. For example, in the states of New York and California, judicial officers and administration staff have opportunities to attend training for better understanding of interpreting, qualifications of court interpreters, and procedures in utilizing interpreting services (Mathers, 2007: 34). In Australia, a number of initiatives have been implemented to educate legal professionals and the judiciary on the work of interpreters, interpreting process, and how these parties can best work together (Hale, 2007: 93).

Employment

Countries with a long history of immigration and multiculturalism have established court interpreting systems, including accreditation, certification, training, and remuneration as described above. In contrast, countries which have experienced an influx of foreign population only in recent decades have just begun to cope with the increasing demand for court interpreting, often meeting the need for interpreters on an *ad hoc* basis. Overall, this means that the profession is at varying stages of development in different countries. The majority of court interpreters working in domestic courts are freelance interpreters who are hired either on a contract or an *ad hoc* basis. In some countries with a high demand for court interpreting, for example Spanish interpreters in the U.S. courts and Chinese interpreters in the Hong Kong courts, staff court interpreters are employed on a full-time or part-time basis. In Malaysia, on the other hand, court interpreters are public servants, and they also serve as clerical staff and paralegals on top of their interpreting duty (Ibrahim and Bell, 2003).

These varying employment statuses lead to varying remuneration practices. Some countries have set fee schedules for court interpreters while others do not, leaving it to each court's discretion. For example, both federal and state courts in the U.S. have separate rates, offering

different levels of payment to certified interpreters and uncertified ones. Court interpreters in countries like the U.S. and Australia are allowed to charge for overtime and cancellation fees, and are provided compensation for travel expenses and mileage in addition to interpreting fees. In the New Jersey state courts, interpreters are even offered payment for preparation time. By comparison, in some countries, interpreters are not compensated when the booked appointment is cancelled at no fault of their own, and are not even paid for working overtime. Because of variations in court interpreter remuneration, it is not easy to compare interpreting fees across different jurisdictions. Generally speaking, court interpreters working in domestic courts are not well paid, despite the skills and professionalism required for the accomplishment of the job; for instance, the current fees for court interpreting are far lower than for conference interpreting and business interpreting. It is ironic that despite the high expectation for accuracy in court interpreting, courts do not seem to be willing to pay reasonable fees for such professional services.

Court interpreters often receive better payment for civil cases than for criminal ones because the parties, rather than the state, bear the cost of interpreting and they may select their own interpreters as long as they can afford to pay the fee demanded. However, in some countries, where interpreting is provided in some civil cases, the same rate applies to both criminal and civil cases (Dosal *et al.*, 2007).

International courts and tribunals, however, provide an illustration of model practices for court interpreter employment. While domestic courts often fail to recognize that interpreting is specialist work and may provide less than adequate working conditions, international courts and tribunals have long provided adequate working conditions for their interpreters (Hale and Stern, 2011). The first major international trial, which took place in Nuremberg in 1945, was a historic event in many aspects. The international war tribunals organized by the victorious Allied Powers required interpreters who could provide simultaneous interpreting. As such, the event contributed enormously to the development of the professions of conference and court interpreting. The arrangements that the tribunal made to ensure accurate record-keeping and support for the interpreters set a precedent for the current practices at international tribunals. In recognition of the complexity of the interpreting work, international tribunals usually employ a team of experienced conference interpreters and provide remunerations befitting conference interpreters. Such differences between international courts and tribunals and domestic courts are attributed to funding (Hale and Stern, 2011: 78). Given that poor working conditions do not attract competent interpreters, which in turn negatively affects the quality of interpreting, domestic courts and tribunals should emulate the international models (Hepburn 2012: 67). (See Chapter 1 on the history of interpreting and Chapter 11 on conference interpreting.)

Ethics

It is extremely important for court interpreters to adhere to professional ethics. Violations of professional code of ethics could endanger due process, affecting the outcomes of cases, life and liberty, and properties of the parties concerned. Codes of ethics for court interpreters and their professional responsibilities include accuracy, impartiality, confidentiality, limitations of practice, protocol and demeanour, and maintenance and improvement of skills and knowledge (de Jongh 2012: 183–187; see also Chapter 20). As defendants and witnesses from CALD backgrounds access the court through interpreters and vice versa, court interpreters should provide accurate and faithful interpretation without editing, summarizing, deleting or adding, while conserving the register, style, and tone of the speaker (González *et al.* 1991: 16). Not only addition or omission, but also explanation or paraphrasing, are prohibited according to the professional code of ethics.

Instead of guessing at meanings, interpreters should ask for clarification in order to avoid misinterpretation; they should also be quick to correct errors.

When court interpreters have any reservation about their ability to satisfy an assignment in a competent manner, they should immediately inform the appropriate judiciary authority and bring to the court's attention any circumstances that impede full compliance with the code of ethics. Court interpreters should also remain impartial and neutral in proceedings where they serve, and they should disclose any conflict of interest. They must maintain the appearance of impartiality and neutrality, avoiding unnecessary contact with the parties to the matter. They should not disclose information they have obtained in the course of interpreting or translation and they should focus on their role as an interpreter, avoiding any inclinations to play the role of a legal adviser or a lawyer. Lawyers may work as interpreters if they have the qualifications for the job, but should not play dual roles as interpreter and legal representative in the same matter, in order to avoid conflict of interests.

The principal role of the court interpreter is to remove language barriers, so that a person from a CALD background is not at a disadvantage or at an advantage (González *et al.*, 1991: 155–6). It is on the basis of that argument that court interpreters are expected to provide a faithful reproduction of original utterances, maintaining the discourse style of lawyers as well as witnesses, regardless of the comprehensibility of the interpreted renditions. Another important reason why interpreters' faithful rendition is vital is attributed to the findings that the content, coherence, and speech style of witness testimony influence the impressions formed by jurors regarding the witness credibility and trustworthiness (Conley *et al.*, 1978; Conley and O'Barr, 1990; Berk-Seligson, 2002).

The norm in court interpreting is often construed to be synonymous with the verbatim requirement in the legal sector. Understandably, the court is wary of any alterations by the interpreter to the original evidence given by witnesses. However, a strict verbatim requirement does not ensure effective communication across different cultures and languages. The institutional demand for accuracy in court interpreting is an objective which is often complicated, rather than facilitated, by the constraints on the professional role of the interpreter in the courtroom context.

The very restrictive role of the interpreter as a conduit, or a translation machine, may seem very fitting in order to prevent interpreters from playing a potentially intrusive role as a would-be mediator or cross-cultural consultant (Morris, 1995: 26; Marzocchi, n.d.: 97). Nonetheless, the interpreter's role in dealing with cross-linguistic and cross-cultural issues is very important in bilingual courtroom proceedings. The interpreter should act to facilitate communication in the courtroom between speakers from different linguistic and cultural backgrounds (D'Argaville, 1991; Laster and Taylor, 1994; Gentile *et al.*, 1996). This facilitator model for the role of the court interpreter is regarded as a fuller and more elaborate view of communication, which embraces both verbal and non-verbal messages and also addresses the cultural dimension of human interaction. This model recognizes the latitude of interpreters based on the expertise of interpreters (Laster and Taylor, 1994: 126–127). However, there is some confusion over the use of the term “facilitator”, and maintaining such a position is not without some controversy. There is apprehension that such a *facilitative* role might undermine the central norms of accuracy and the impartiality of the court interpreter when the court interpreter concentrates on comprehension more than faithful rendition of original utterances (e.g. González *et al.*, 1991; Mikkelsen, 1998: 22, 2000: 39; Hale, 2004: 10, 2008: 112–114). There is also the possibility that interpreters serving as “facilitators” may overstep their bounds when there is a lack of training and a lack of uniformity in the entry requirements to the profession.

Determining when to intervene is not simple, but one may argue that interpreters should be on the alert for cultural and linguistic pitfalls that would create possible misunderstanding; it is

also argued that when interpreters face interpreting problems arising out of cross-linguistic/cultural issues, they may have to interrupt the proceedings at times and draw attention to themselves in order to provide an accurate and faithful rendition (Lee, 2009a, 2009b; Hale, 2010). Not disclosing linguistic or cultural issues relevant to meaning may have the effect of impeding or distorting communication in the courtroom (see Lee, 2009b). A complexity arising from this dilemma is that the onus on determining the gravity of any potential miscommunication rests solely with the interpreter, who is often the only bilingual in legal proceedings.

Moreover, a faithful rendition of original utterances, given the grammatical and syntactical differences between languages involved in interpreting and the pressure the interpreter is under to provide immediate oral interpretation, is not a simple task which any interpreter can complete. The issue of untranslatability or inaccuracy of interpretation will inevitably arise in the course of interpreting because of the lack of equivalent words and concepts in different languages and different legal systems. When the interpreters do not alert the court to such issues, the other courtroom participants may not know whether or not the inconsistency or the lack of logic in the interpreted evidence is related to problems occurring in cross-linguistic and cross-cultural communications.

Preservation of styles of original utterances in court interpreting is stressed to the extent that non-fluency features, which are often edited out by interpreters in conference settings, are considered important, and listener-oriented qualities such as comprehensibility, coherence, and clarity are by and large considered less important. Nonetheless, double standards can be found when it comes to the norms in court interpreting. The court, which expects the verbatim requirement to be met in court interpreting, also considers in fact the clarity, responsiveness, and coherence of the interpreted renditions as criteria by which to judge the adequacy of interpreting, largely because it cannot judge the key aspect of accuracy in interpreted renditions (*Perera v. Minister for Immigration and Multicultural Affairs* (1999) FCA 507 para [41]). The professional norms that can be found in the Code of Ethics and Professional Responsibilities of NAJIT also indicate that the interpreted rendition should sound natural, while conserving all the elements of the original message accommodating the syntactic and semantic patterns of the target language. The implications of such apparently complex norms for court interpreting are significant, because the court interpreter may feel tempted to shy away from faithful renditions of unresponsive answers, or ambiguous/incoherent remarks, or ungrammatical utterances of CALD witnesses as a means to avoid suspicion or mistrust in regard to their own professional competence.

Research findings

Most empirical studies of court interpreting have shed light on the current state of affairs, often suggesting potential implications for legal proceedings. Numerous studies, including Berk-Seligson's seminal work *The Bilingual Courtroom* (2002), have demonstrated that interpreters fail to conserve the propositional content and the pragmatic effect of the witnesses' original utterances and thus unwittingly influence courtroom examinations in one way or another. Such deviations from the norm in court interpreting may be attributed to their lack of awareness of such norms or of the communicative needs of CALD witnesses. Studies indicate that interpreters frequently simplify complex questions and shift the register of lawyers' and judges' questions in order to facilitate comprehension of witnesses from CALD backgrounds. They often modify the pragmatic force of speech in terms of politeness, ambiguity, and reported speech without fully realizing the potential implications for legal proceedings, (e.g. Jansen, 1995; Pym, 1999; Rigney, 1999; Berk-Seligson, 2002; Jacobsen, 2003, 2008; Hale, 2004; Lee, 2009a, 2009b, 2010;

Angermeyer, 2009). As a result of the interpreters' modifications, CALD defendants and/or witnesses may appear more or less polite, or more or less certain or detailed in their recollection than originally intended, which may influence the impression of the listeners. Since the jury and judges take into account one's demeanour and manner of speech, as well as the content (e.g. Conley *et al.*, 1978; Wodak-Engel, 1984; Penman, 1990; Hale, 2004), the interpreters should provide faithful renditions of the original utterances, and elements of ambiguity or polysemy should be handled with the utmost care (Lee, 2009a; Ng, 2013a).

As discussed earlier, different modes of interpreting are deployed in court interpreting. The appropriate mode of interpreting at different stages of proceedings should be chosen for the sake of facilitating accurate and complete renditions, because it may influence the quality of interpreting and the courtroom interactions. Jacobsen (2012) finds that Danish interpreters' preference for interpreting in whisper mode, which is condoned by courts, causes information loss and incomplete translation during the dialogue in courtroom proceedings. Lee (2012) demonstrates that the court's lack of understanding of interpreting hinders accurate interpreting through an illustrative example in which inaccurate summary interpreting was largely due to delayed interpreting. Because the interpreter was given a chance to interpret for a CALD defendant only after many turns had lapsed during the examination of his co-defendant, where simultaneous interpreting was more appropriate, information loss and mixed persons in the interpretation resulted. When legal professionals, including judges, are not aware of the various modes of interpreting and the process involved, turn taking between interpreters and the other participants may not occur in a way that is most conducive to accurate and immediate interpreting. Therefore, both legal professionals and interpreting professionals need to cooperate to ensure full and complete provision of interpreting during the proceedings.

While many studies have focused on less than satisfactory performances of court interpreters, some studies have investigated top-level interpreters (Martin and Taibi, 2012; Lee in submission). Martin and Taibi (2012) examine high-profile court interpreting which engaged experienced conference interpreters. Their study highlights the interpreters' awareness and confidence about their professional role and capacity, which heightened the awareness of other court professionals with regard to interpreting. Lee (in submission) analyses the meta-discourse in interpreter-mediated expert witness examinations and points to expertise in interpreting expert testimony, which then contributes to efficient resolution of interpreting issues and accurate interpretation of expert testimony.

In recent years, researchers based in non-English speaking countries in Europe and Asia have started to contribute to a growing body of literature on court interpreting (e.g. Jacobsen, 2008, 2012; Martin and Taibi, 2012; Mizuno, 2008; Leung and Gibbons, 2008, 2009; Ng, 2013a, 2013b; Lee 2012, 2014, 2015, in submission). Even now, a large portion of court interpreting centres on language combinations involving English, but research into court interpreting involving non-English languages is expected to expand our understanding of diverse cross-linguistic and cross-cultural problems posed in court interpreting.

Future directions

Countries which have seen increasing demand for court interpreting over the years are looking for models from abroad. The existing body of literature may serve as a guide for them in formulating and establishing good practices. However, regardless of the developmental stage of each country, all countries need to make further efforts to enhance professional standards in court interpreting based on the recognition that quality impacts equal access to justice and a fair trial. As evidenced in the U.K. in recent years (see Kaszyca, 2012), when cost-efficiency is prioritized at

the expense of service quality, declining professional standards and quality in the practice of court interpreting occurs, which may easily roll back years of progress toward the professionalization of court interpreting.

Another topic that deserves more scholarly attention is remote interpreting, which includes telephone interpreting and video-conferencing (see Chapter 22 on remote interpreting). Remote interpreting is very efficient in utilizing a limited supply of court interpreters in widely dispersed courtrooms. With an objective of improving cost-effectiveness and timely access to qualified interpreters, countries such as the U.S., U.K, Australia, and Canada have used remote interpreting on a limited scale, and telephone interpreting has been used selectively in short court sessions, mainly non-evidentiary procedures in the U.S. The EU is considering the use of remote interpreting as a part of the E-justice project. However, empirical data suggest that technical problems may complicate the interpreting process and impact the quality of interpreter-mediated communication (Braun and Taylor, 2012; Fowler, 2013). Before any large-scale implementation of remote interpreting in legal proceedings takes place, many questions need to be answered, such as how technological mediation through video-conferencing affects the quality of interpreting and courtroom communication in general, and whether remote interpreting is appropriate in legal proceedings which are aimed at evidence and information gathering and decision making (Braun and Taylor, 2012: 1). Further empirical research needs to be conducted to assess the impact of remote interpreting on the quality of interpreting performance in legal settings, and a proper set of rules and guidelines should be developed for procedures and technical requirements.

Shortages of interpreters in minority languages or rare languages are chronic problems in all countries, including countries which have a relatively long history of court interpreting. Given that speakers of minority languages should not be placed at a greater disadvantage merely because of the unavailability of competent interpreters, interpreter trainers and researchers should seek collaboration with international and domestic authorities in order to promote the training of interpreters from such linguistic backgrounds. Above all, government funding and collaboration with non-government organizations (NGOs) are crucial to training interpreters of languages of limited diffusion. Minority language interpreter training programs, which are often non-language specific, deserve scholarly attention in order to share know-how and accumulated experience in selecting qualified students, staffing, and materials development (see Lai and Mulayim, 2014). More research needs to be done to explore effective teaching and training methods for such rare language groups.

Further reading

de Jongh EM (2012) *From the Classroom to the Courtroom*. Amsterdam/Philadelphia: John Benjamins.

This book serves well as a practical guidebook and reference for prospective court interpreters, particularly for those planning to work in the U.S. justice system.

Elias-Bursac E (2012) Shaping international justice: The role of translation and interpreting at the ICTY in the Hague. *Translation and Interpreting Studies* 7(1): 34–53.

Based on a case study set against ICTY, this paper effectively describes the role translation and interpreting plays in international justice.

Lee J (2013) A study of face-work in interpreter-mediated courtroom examination. *Perspectives* 21(1): 82–99.

This paper provides an analysis of face-work when miscommunication arises in interpreter-mediated courtroom examinations. Illustrative examples demonstrate that a part of the habitus of the interpreter is to engage with issues of face.

Morris R (2010) Images of the court interpreter: Professional identity, role definition and self-image. *Translation and Interpreting Studies* 5(1): 20–40.

Discussing some landmark cases ranging from the seventeenth to the twenty-first century, this paper reveals a gradual change in attitudes toward court interpreters and their roles.

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