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How does Interpreter's Role Influence the Judicial Process in Bilingual Courtroom?

Introduction

In traditional Chinese poetry translation, there is a triple principle introduced by thinker Yan Fu in Qing dynasty - “faithfulness, expressiveness, and elegance.” Faithfulness refers to accuracy in meaning; expressiveness refers to clarity and coherence of structure; elegance is what keeps the text’s original beauty. Correspondingly, these three goals for Chinese ancient work interpreting are especially important in bilingual courtroom discourse. In order not to interfere with the outcome of judicial process, interpreters face the challenge of how to balance between the three principles. Over the past 15 years, linguistic researchers have conducted studies on bilingual courtroom discourse and raised the issue of the complexity of decision-making by interpreters. Although interpreters are obligated to translate without additions, omissions and any other forms of explanation, some researchers claim that good interpreting hinges not only on linguistic content, but also on social and cultural context. This paper will examine how interpreter’s role influence the judicial process in bilingual courtroom by addressing the following questions:

1. Why is interpreter an essential role in bilingual courtroom?

2. What challenges do interpreters face and what decisions do interpreters need to make to maintain legal equivalence?

3. What are the implications for professional interpreter's language education?

Why is Interpreter an Essential Role in Bilingual Courtroom?

For interpreters, the concrete goal is to convert one language to another. More importantly, in bilingual courtroom, interpreters serve as a guarantee of legal equivalence and “power balance” between non-English speakers and English speakers (Berk-Seligson, 2002, pp. 112). One case that illustrates this point is Diana Eades's (1994) study into Aboriginal English in the legal system. She discusses a criminal case in which lack of contextual understanding of Aboriginal English distorts the defendant's defense in the murder trial – The Stuart case. Rupert Max Stuart, an Aboriginal English speaker, was convicted of murder of a nine-year old girl. The court decision was based on a translated “confession,” which Stuart claimed to be fabricated. After the linguistic expert Strehlow compared Stuart's normal language pattern with his “answer” in the confession, he found that the two are not consistent. For example, one feature is Aboriginal English speakers' use of masculine third person pronoun to refer to both women and men. One answer in the confession was “She went unconscious.” But Stuart's original tape record was “E went out” (Eades, 1994, pp. 245). The translated version of confession alters Stuart's original source language because it overlooked some special characteristics of Aboriginal English, which led to the final conviction of Stuart. Interpreters ensure the rights of vulnerable populations such as Australian Aboriginal English speakers and make sure that

they are not put in disadvantage in the English courtroom because of their limited English proficiency.

Similarly, translators must ensure that those from a lower socio-economic status are not put at disadvantage in the courtroom. In Walsh 's (1994) study on Aboriginal speakers with limited education, he suggests that these Aboriginal speakers are not able to understand everything that an English speaker has the privilege to understand; this prevents them from accurately defending themselves in the courtroom. He emphasizes that court interpreters play a critical role because they enable the judge and jury to react in the same manner to non-English speakers who have less linguistic strength speaking in their second language. Furthermore, Lee (2009) claims that “witnesses’ lack of familiarity with the courtroom discourse” tend to produce “non-standard and dialectically variant linguistic features” (Lee, 2009, pp. 4). In sum, interpreters ensure non-English speakers’ voices to be heard and their rights to be secured.

What Challenges do Interpreters Face and What Decisions do Interpreters Need to Make to Maintain Legal Equivalence?

In general, there are three kinds of challenges that interpreters face in a bilingual courtroom: linguistic, cross-cultural, and ethical challenges.

Leung and Gibbons (2009) suggest that “different language systems have different linguistic phenomenon which may be common in one language but non-existent in another” (Leung & Gibbons, 2009, pp. 190). One of the most typical examples is the utterance-final particle, a unique feature in spoken Cantonese. Leung and Gibbons studied the tape records of five rape trials in English/Cantonese courtroom in Hong Kong.

When the Cantonese speaking prosecutors were asked to describe particulars of the defendant's crime or answer to a yes-no question about whether the defendant did something, they usually add the word “𠵼(ba)” at the end of a sentence. “𠵼(ba)”, a typical utterance-final particle, represents important emotion and attitude such as uncertainty. When encountered with particles with multiple meanings, interpreters face the task of explaining the emotion followed in the message, as well as “maintaining the coherence and modality of all the participants' languages” (Leung & Gibbons, 2009, pp.191).

Cultural differences can also be a challenge for interpreters attempting to understand and incorporate the cultural context into translation. Lee (2009) examines Korean/English courtroom and points out that because of Korean etiquette culture, sentence-ending forms indicate various degrees of deference and politeness. Unlike English, verb form in Korean does not relate to plurality/singularity, gender or person. Therefore, decontextualized interpreting cannot give English speakers comprehensive information about defendants' testimony for the courtroom proceedings. In addition, since the cultural-specific features are mostly revealed in details or even utterances, interpreters may not be able to accurately translate these cultural nuances into English.

Another cultural challenge is that interpretations of metaphors appear in accordance with cultural and social difference. Yanping (2008) reports that most rhetorical expressions generate from people's interests and observation to their own daily work, which explains why metaphors bear huge amount of cultural connections. She demonstrates her argument by comparing a Chinese idiom, “巧妇难为无米之炊” and its English translation. A verbatim translation would be “You can't cook a meal without

rice.” Rice, as a metaphor for pivotal part of a task in this idiom, is one of the most important dishes in Chinese cuisine culture, yet in English culture people cannot understand the essence of the idiom by connecting “meal” with “rice”. Yanping suggests that better translation might be “You can’t make bread without flour” (Yanping, 2008). However, she admits that this translation takes away the information about Chinese culture embodied in the original idiom and might convey inaccurate cultural message that bread is also essential food in Chinese culture. Comparatively, court interpreters face the challenge of accurately interpreting cultural-bond metaphors in cross-cultural courtroom and not affecting the source language’s cultural message.

Ethical issues are the crux of interpreter’s dilemma: to be a microphone or an advocate. Mikkelsen (2008) differentiates basic interpreting from advocacy: “Interpreting in this context means a close rendering of what was heard with cultural adjustments strictly limited to linguistic elements, while advocacy includes interventions by the interpreter on behalf of the clients and for their perceived benefit” (Mikkelsen, 2008, pp. 81). One of the most widespread means of interpreter support for clients is to “dress up” the source language. Zambrano-Paff’s (2011) study exemplifies how interpreters may lengthen the source language’s testimony from fragments to narrative by clarifying and repeating. Also, the interpreter may add information that is not explicitly stated. However, this violates the legal interpreting rule established by the Federal Judicial Center (1989) that interpreters must “accurately reflect a speaker’s nuances and level of formality” (Federal Judicial Center, 1989, pp.7).

However, alterations of the defendant’s source language may in fact be necessary for interpreters to make the target language more accurate. For instance, Hale (1999)

notes that discourse markers such as “well” and “see” reflect speaker’s particular intention such as disagreement, and “mark progression in the story-line” (Hale, 1999, pp. 66). In her further study on interpreters’ treatment of discourse markers, she finds that interpreters predominantly neglect or mistranslate these discourse markers. This is also an imbalance between advocacy and verbatim translation. As mentioned above, interpreters face the challenge of deciding to what extent they should compensate for the defendant’s utterances or errors. An appropriate solution for interpreters is that they could make the decision based on the type of courtroom procedure – “proceedings interpreting” or “witness interpreting.” According to Mikkelsen (2008), proceedings interpreting is generally provided in the simultaneous mode, while witness interpreting is performed in the consecutive mode with a pause between the source language and the target language. It may be necessary, therefore, to enforce “different standards of accuracy for proceedings interpreting and for witness interpreting” (Mikkelsen, 2008, pp. 86).

What are the Implications for Professional Interpreter’s Language Education?

Despite these linguistic, cross-cultural and ethical challenges to a successful interpretation in the bilingual courtroom, to fully embody the voice of another language is a better solution than to promote English as predominant language. A monolingual courtroom may risk creating inequality of rights and power. Future court interpreting training programs should instruct students about the complexities of their role and challenges they are going to face. Berk-Seligson (2002) points out that interpreters must have education in “self-awareness and adequate bilingual – bicultural competence” in addition to mere language proficiency (Berk-Seligson, 2002, pp. 116). One of the best

ways to encourage professional judgment and decision-making is by applying cultural knowledge into “realistic scenarios in which they must act out the roles of the different parties involved and then discuss the issues raised” (Mikkelsen, 2008, pp. 92). This rehearsal provides beginners with real life experience without pressure in the real judicial process, enabling them to jump out of routine learning of ethics and culture and learn how to control their interpretation by combining the ethical principles with their personal moral code. In brief, student interpreters need contextual study and personal experience to make selections and eventually design a set of principles according to different judicial situations for themselves.

Conclusion

Because of cultural, social and socio-economic factors, non-English speakers cannot make their voice to be heard completely and effectively in the bilingual courtroom without an accurate and balanced interpretation. Therefore, interpreters play a critical role to ensure the legal equivalence and power balance in the courtroom. Their linguistic choices significantly influence the final outcome of each case. Ultimately, we must redefine and improve the standardized education for future interpreters by including not only cultural and ethical education but also realistic courtroom exercises. This would address the challenges of interpretation and secure the equal rights and power for non-English speakers inside and outside the bilingual courtroom.

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