DOCTOR OF PHILOSOPHY

The atypical bilingual courtroom

an exploratory study of the interactional dynamics in interpreter-mediated trials in Hong Kong

Eva Ng

2013

Aston University

THE ATYPICAL BILINGUAL COURTROOM:
AN EXPLORATORY STUDY OF THE INTERACTIONAL DYNAMICS
IN INTERPRETER-MEDIATED TRIALS IN HONG KONG

EVA NGA SHAN NG

A thesis submitted for the degree of Doctor of Philosophy

ASTON UNIVERSITY

January 2013

ASTON UNIVERSITY

THE ATYPICAL BILINGUAL COURTROOM:

AN EXPLORATORY STUDY OF THE INTERACTIONAL DYNAMICS

IN INTERPRETER-MEDIATED TRIALS IN HONG KONG

Eva Nga Shan Ng

Doctor of Philosophy

2013

Thesis Summary:

This study investigates the communication process in the atypical bilingual Hong Kong courtroom, where, unlike in most other jurisdictions, interpreting services are routinely provided for the linguistic majority instead of the linguistic minority and the interpreter usually has to work with court actors who share his/her bilingual knowledge. It sets out to explore how the unique nature of the bilingual Hong Kong courtroom impacts on the interactional dynamics in the communicative process in the courtroom and potentially on the administration of justice, using authentic recordings of nine criminal trials from three court levels, supplemented by a survey administered to court interpreters. It compares the participant roles of different court actors in different court settings, monolingual and bilingual, using Goffman's (1981) participation framework and Bell's (1984) audience design as the conceptual framework. It is found that the notion of recipientship in the atypical bilingual Hong Kong courtroom is complicated by the presence of other bilinguals, which inevitably changes the interactional dynamics and impacts on the power of court interpreter as these bilinguals take on more participant roles in the process. The findings of this study show that the power of the court actors is realised in the participant role(s) they and the other co-present court actors take on or are capable of playing. The findings also indicate that a change in the participant role of a court actor has an impact on the participation status of other court actors, which may in turn hamper the administration of justice. It is also found that the notion of power asymmetry in the courtroom has an effect on the footings adopted by the interpreter and thus on his/her neutrality. This thesis identifies training needs and makes recommendations for best practice in the courtroom and for institutional and administrative practice.

Keywords: participant role, participation status, bilinguals, power asymmetry, interpreting style

DEDICATION

To my mother for all her sacrifices, and to my father, who lost his mobility and speech to a severe stroke soon after I started this research project, for his *unspoken* support throughout the past four years.

ACKNOWLEDGEMENTS

I am grateful to Professor Malcolm Coulthard for giving me a head start and for his prompt feedback to my work and responses to my queries during the first two years of my study. I am especially thankful to him also for his continued advice and support even after he had officially ceased to be my supervisor. To me, he is both a mentor and a good friend whom I cherish dearly.

This thesis would not have come into being without the efforts of Dr Krzysztof Kredens, who took over the supervision of my thesis on Professor Malcolm Coulthard's retirement. I am indebted to him for keeping me on the right track and for his insightful advice and enlightenment. I really appreciate the meticulous efforts he has taken in correcting and commenting on my drafts.

I would also like to extend my gratitude to the High Court Registrar of the Judiciary of Hong Kong for granting me access to the recordings of the court proceedings and to the Court Assistant for preparing the DVDs. My special thanks also go to the Judiciary Administrator for referring my initial request to the High Court Registrar.

Thanks are also due from me to my ex-colleagues of the Court Language Section of the Judiciary Hong Kong for completing the online survey. I would like to thank, in particular, Mr. Joe Lai for forwarding the survey link to the serving court interpreters, and the late Mr. Renner Yu for his effort to solicit help from his fellow retired court interpreters. It is regrettable that Mr. Yu will never be able to read this thesis, but he will always be remembered dearly by me.

My thanks also go to the Leung Kau Kui Research and Teaching Endowment Fund of The University of Hong Kong for funding the data transcription of this project, and to the three student Research Assistants, Sheryl Ng, Po Po Tsang and Rachel Yang, for their help with the data transcription.

I would also like to express my heartfelt thanks my friend and colleague, Dr. Yvonne Fowler, for proofreading this thesis. Any errors that remain are mine alone.

Finally, I would like to thank my family for their unwavering support over the years.

TABLE OF CONTENTS

TRANSCRIPTION KEYS

Symbol	**Meaning**	**Example**
= latch	latched utterances, with no pause between the end of one utterance and the start of the next (i.e. no pause between turns)	I: I'm aware of= P: =Yes. Would you confirm that?
—em-dash	an em-dash marks a sudden cut-off of the current sound	*I said to him. I said—*
CAPITALS	words in CAPITALS indicate a louder voice relative to the adjacent talk. In Chinese, emphasis is represented by a change in the typeface of the characters.	Your…CAN YOU PLEASE LISTEN TO ME? 你的…你聽我說好不好？
boldface	words in boldface represent elements under discussion, which in Chinese, are represented by BOTH boldface and a change in the typeface of the characters.	And then, she used her left hand to pull the um (.) **garment** at my eh waist area. Er 佢用佢嘅左手拉我 er 腰度，啲係腰部份**嘅件衫**。
: colons	a colon indicates prolongation of the immediately prior sound. The length of the row of colons indicates the length of the prolongation	O::kay.
a number in parentheses, e.g. (3)	a number in parentheses indicates the length of a pause in seconds	Can you (3) can you tell the court what happened next?
a dot in parentheses, e.g. (.)	a dot in parentheses indicates a brief pause of less than a second	I (.) walked over to the suspect.
(word)	parenthesised words are indistinct possible hearings	Did you see (there) anything positive?
(xxx)	Three crosses in parentheses indicate the transcriber's inability to hear what was said	Do you mind being (xxx)?
< > angle brackets	angle brackets contain transcriber's descriptions rather than transcriptions	<whispering> I think so. <normal> Yeah, I believe so.
[	left square brackets indicate the start of an interruption and the utterance which is interrupted	I: I have already told [you DC: [Yes, you…

ABBREVIATIONS

Abbreviations used in transcripts

Abbreviations	Descriptions
C	**Counsel**
CC	Court Clerk
D	Defendant
DC	Defence Counsel
I	Interpreter
IA	Interpreter A
IB	Interpreter B
J	Judge/Magistrate
JR	Jury/Juror
PC	Prosecution Counsel/Prosecutor
PG	Public Gallery
VRI	Video Recorded Interview
W	Witness

Abbreviations used in the thesis

Abbreviations	Descriptions
AR	Audience Role
BI	Bilingual
CI	Consecutive Interpretation/Interpreting
CFI	Court of First Instance (of the High Court)
CLO	Chinese Language Officer
CSQ	Confirmation-Seeking Question
DC	District Court
DARTS	Digital Audio Recording and Transcription System
DW	Defence Witness
EC	Examining Counsel
Ex	Examination
HC	High Court
HKSAR	Hong Kong Special Administrative Region
IIT	Interpreter-initiated turns
IR	Institutional Role
ISQ	Information-Seeking Question
I/T	Interpreter/Translator
LOTE	Language Other Than English
MC	Magistrates' Court
MONO	Monolingual
NEC	Non-examining Counsel
OLO	Official Languages Officer
PR	Participant Role
PW	Prosecution Witness
SI	Simultaneous Interpretation/Interpreting
SL	Source Language
SR	Speaker Role
TL	Target Language
WI	Whispered Interpretation/Interpreting

LIST OF TABLES

LIST OF FIGURES

CHAPTER 1
INTRODUCTION

1.1 Background and motivation of the study

In many jurisdictions, interpretation (or alternatively interpreting)[1] is by and large provided for the linguistic minority, often a single individual involved in a trial as a defendant or a witness but not speaking the language of the court. This thesis sets out to examine a bilingual courtroom which is essentially different from this typical bilingual legal setting – the Hong Kong bilingual courtroom, where interpreting is provided for the Cantonese-speaking majority in a trial conducted in English, which is spoken by only 3.5% of the local population as a usual language (Appendix 1). There is an interesting linguistic dichotomy in an English-medium trial in Hong Kong courts: Cantonese, a local dialect spoken by around 90% of the inhabitants (see Appendix 1), is spoken by lay-participants and English by legal professionals, which makes the presence of a court interpreter a sine qua non. Besides, in a typical bilingual setting, the interpreter is usually the only bilingual on whom interlocutors not speaking each other's language rely for communication. In the Hong Kong courtroom, however, the interpreter often has to work with court actors who speak both the language of the court (i.e. English) and Cantonese, usually spoken by the defendant and witnesses. The presence of other bilingual court actors in the present-day Hong Kong courtroom in which interpreters work inevitably impacts on the interactional dynamics and participant roles of court actors in the court proceedings. This study represents a long overdue endeavour to investigate this atypical bilingual setting, motivated first by my background as a former full-time interpreter in the Hong Kong courtroom and now a researcher and interpreter trainer, and my conviction that this hitherto unexplored courtroom setting merits a full-scale investigation. This study is therefore to fill the gap in the literature of court interpreting and by extension in interpreting and translation studies, as well as the studies of sociolinguistics and forensic linguistics. It seeks to demonstrate that court interpreting is both a linguistic and social phenomenon and it is my hope that the findings will lead to better practices and more effective communication in interpreter-mediated court proceedings and ultimately to better administration of justice.

1.2 Scope and aims of the study

This study focuses on the bilingual Hong Kong courtroom – what I have termed an "atypical bilingual courtroom", where interpreters, known as "the mouth and ears of the court" (Sin 1994, p. 138), have long played an indispensable role in bridging the communication gap between English-speaking legal professionals and Cantonese-speaking lay participants in court proceedings,

[1] In this study, interpretation and interpreting are interchangeably used to refer to the oral transmission of a spoken message from one language to another.

and nowadays often have to work with bilingual court actors who share their bilingual knowledge, as noted above. The central aim of this study is to carry out a detailed investigation into the communication process in this atypical bilingual setting and see in what way the interactional dynamics differ from those in a monolingual and in a typical bilingual setting. It examines such issues as the participant roles of individual court actors with reference to their linguistic capability and thus their power and control over the communication process. It explores the participation status of individual court actors at different stages of a trial and in different interactional scenarios and thus the implications for the administration of justice. It is hoped that the findings of this study will shed light on the requirements and training needs for court interpreters as well as the best way to work with them, and that the recommendations made will apply not only to the Hong Kong courtroom, but also to other courtroom settings. This study sets out to examine the following research question:

> *How does the unique nature of the bilingual Hong Kong courtroom impact on the communication process and potentially on the administration of justice?*

To this end, answers to the following four questions will be sought:

1) How are the participant roles, reception roles in particular, made more complex in the bilingual Hong Kong courtroom, and what are the implications for a court actor's power and control over the communicative act?
2) What impact does the presence of other bilinguals in the courtroom have on the interactional dynamics of the courtroom and on the power of the interpreter? What are the implications for the participant roles of these other bilinguals?
3) What impact does a change in the participant role of a court actor have on the communicative act and on the participation status of other court actors?
4) How does the interpreter represent the voice of the speaker and what does it have to do with the notion of power asymmetry in the courtroom and that of audience design?

1.3 Summary of chapter contents

Chapter 1 gives the background and motivation for undertaking this study, delineates the scope of the study and states its aims and research questions. It provides an overview of the structure of this thesis and summarises the content of each chapter.

Chapter 2 reviews the existing literature on courtroom interpreting – which centres on the role(s) of court interpreters and their impact on the court proceedings, and underlines the discrepancy between the codified role of the court interpreter and the active role played by the interpreter in the courtroom as demonstrated in empirical studies conducted over the years. It highlights the fact that research has so far been conducted mainly in the typical bilingual setting where interpretation is in the main provided for the benefit of the linguistic minority and has yet to examine the role of the interpreter and of other court actors in an atypical bilingual courtroom like the Hong Kong courtroom.

Chapter 3 provides an overview of court interpreting in Hong Kong from its early colonial days to the post-1997 years, setting the scene for the current study. It adopts a diachronic

perspective and illustrates how interpreters, usually the only bilinguals in the courts of the earlier colonial days, differ from their counterparts in the present-day Hong Kong courtroom in terms of their role and power. It also reviews such aspects as the change of language policy in court, the establishment, entry requirements, training, deployment, remuneration and career prospects of the Court Interpreter grade. This enables and facilitates institutional and administrative recommendations to be made in the concluding chapter.

Chapter 4 explains the research methodology and presents Goffman's (1981) participation framework and Bell's (1984) audience design as the theoretical framework this study adopts. It also explains how data were collected and transcribed and addresses ethical issues relating to the use of the data.

Based on the theoretical framework presented in Chapter 4, **Chapter 5** examines the institutional roles and participant roles of individual court actors at various stages of a criminal trial in a monolingual courtroom, which serves as a foundation and point of departure for the analyses of the participant roles of court actors in bilingual settings in the chapter that follows.

Chapter 6 explores how the inclusion of an interpreter in the courtroom changes the participant roles of other court actors and the dynamics of the communication process. It examines both the typical bilingual setting and the atypical bilingual Hong Kong courtroom, with focus on the latter. It demonstrates how the presence of other bilinguals in the Hong Kong courtroom further complicates the notion of recipientship and identifies potential problems inherent in interpreting in a bilingual setting as such. The chapter also compares the usual modes of interpreting and the majority and minority languages spoken by court actors in the two bilingual settings, and their implications for the participation status of court actors in the proceedings. It illustrates how the interpreter's or other co-present court actors' change of "footing" (Goffman, 1981) or participant role may alter or otherwise disadvantage the participation status of the other court actors in the two settings.

Based on the role analyses and potential problems identified in Chapter 6, **Chapter 7** moves one level up to examine how the participant roles of the court actors as construed in the previous chapters affect their power and thus control over the interpreter-mediated interaction. The chapter compares the power of the interpreters and of other court actors in two courtroom scenarios: one resembles a typical bilingual courtroom setting, where the interpreter works with monolingual English-speaking legal personnel and a witness speaking a language unfamiliar to most in court; the other is the atypical bilingual Hong Kong courtroom, where the interpreter works with bilingual counsel and most of the other court actors speak the language of the witness. It also explores the impact of the interpreter's change of "footing" on the participation status of other court actors and potentially on the administration of justice.

Building on the correlation between a court actor's participation role(s) and his/her power and control over the court proceedings I have demonstrated in Chapter 7, **Chapter 8** explores how

judges change their participant roles and hence their power and control over the conduct of a trial by intervening in the examination of a witness. While judicial intervention per se is not endemic to the Hong Kong legal system but has to do with judges' individual styles of conducting trials, it proves to be more problematic in the bilingual Hong Kong courtroom than in the other settings, monolingual or bilingual.

Building on Goffman's (1981) notion of *speaker* and Bell's (1984) model of audience design, as well as the premise of power asymmetry between legal professionals and lay participants in the hierarchical common law courtroom, **Chapter 9** explores how interpreters represent the voice of judges and counsel and that of lay participants in the interpreted talk. Drawing on findings based on recordings of nine trials and results of a survey conducted with court interpreters, the chapter looks into the interpreters' consistent use of reported speech in representing the first-person reference (I/me/my) uttered by legal professionals or omission of it in the Chinese interpretation. It reviews relevant literature on the use of reported speech in interpreting and finds existing theories in the literature inadequate to explain this interpreting phenomenon in the bilingual Hong Kong courtroom. In this study I offer a new perspective on this interpreting phenomenon.

Chapter 10 revisits the research questions and presents a summary of the findings of this study. It also comments on its strengths and limitations and discusses its contributions to existing literature on courtroom interpreting and hence to the wider field of translation and interpreting studies, as well as to the research in sociolinguistics and forensic linguistics. In the light of the findings, recommendations for best practice are made, including pedagogical implications for interpreter training, recommendations for the best way to work with court interpreters as well as institutional and administrative recommendations to improve the quality of court interpreting. Drawing on the work of the current study, recommendations for further research in court interpreting are also made in that chapter.

CHAPTER 2
LITERATURE REVIEW

2.1 Introduction: Research on court interpreting

The past two decades saw an increasing scholarly interest in court interpreting. Of the reasonably large body of literature on court interpreting conducted over the past two decades, the majority has focused on the role of the interpreter in legal proceedings, the ethical dilemmas faced by court interpreters and how court interpreters impact on the legal proceedings (Angelelli, 2004; Angermeyer, 2005, 2009; Barsky, 1994, 1996, 2000; Berk-Seligson, 1990, 1999, 2002, 2006; De Jongh, 2008; Fenton, 1997, 2004; González, 1991; Hale, 1999, 2001, 2002, 2004, 2010; Hale & Gibbons, 1999; Ibrahim, 2007; Jacobsen, 2002, 2008a, 2008b; Kolb & Pöchhacker, 2008; Koo, 2009; Laster & Taylor, 1994; Lee, 2009a, 2009b; Leung, 2003, 2008; Leung & Gibbons, 2008, 2009; Mikkelson, 1998, 2000, 2008; Morris, 1995, 1999; Pöllabauer, 2004; Rigney, 1999). Most of these studies, empirical or anecdotal, have pointed to a conflict between what has been considered the normative practices of the court interpreter and what is actually happening in the courtroom.

2.2 The conduit model of the role of the court interpreter

Literature on the role of the court interpreter has largely been anecdotal and centred on the debate over the interpreter's role as a *conduit* of words as perceived by law practitioners or as a linguistic and cultural mediator. In the pure *conduit* role, as Morris (1999) puts it, "the interpreter is viewed as a neutral machine through which a message passes untouched apart from the change in language". The notion of the court interpreter as a *conduit* in Australian law was first articulated in *Gaio v R* (1960) CLR 419, where the interpreter was likened to a mere *conduit pipe* and a *bilingual transmitter* (Laster & Taylor, 1994, p. 112). The Australian case had followed an English precedent (*R v Attard* [1958]) 43 Cr App Rep 90), where interpreters were categorised as a *mere cipher*. In an American case (*People v Guzman* 478 NYS 2d 455, 457-8 [1984]), the interpreter was compared to a *modem* (ibid.)

It was believed that the concept of the court interpreter as a *conduit*, a mechanical or electrical device, arose from the need to overcome the evidentiary problem of excluding hearsay evidence (Fenton, 1997; Laster & Taylor, 1994), because in the common law tradition, evidence overheard or acquired second-hand is not admissible as its truth cannot be established. That means when a case involves an interpreter, what the parties hear is second-hand information, that is, hearsay evidence. However, with the interpreter perceived as a non-human, but a machine or a mouthpiece of the speaker, the problem of hearsay evidence is solved, because the interpreter, excluded as a person, was not supposed to "take an intelligent, thinking interest in the proceedings" (Fenton, 1997, p. 30). The concept of the court interpreter as a *conduit pipe* is followed by the requirement

for the interpreter to adhere to *verbatim* or word-for-word literal interpreting the legal rationale of which is based on the oral tradition of early law (Morris, 1995) or the common law's reliance on oral evidence (Laster & Taylor, 1994).

2.3 The debate on the validity of the conduit metaphor

The notion of the court interpreter as a *conduit pipe* has however been challenged by scholars like Morris (1995, 1999), Laster & Taylor (1994), Eades (1995, 2000) and Fenton (1997). Morris (1995) points out that interlingual interpretation is a process of communication, and that in order to attain the goal of true communication, interpreters must be allowed the latitude to go beyond the referential use of language rather than to restrict themselves to verbatim interpreting. She thus argues that interpreters should be allowed to ask for and make clarifications and identify misunderstanding (1995, p. 32; 1999, p. 18) in an attempt to achieve enhanced accuracy in their performance. Laster & Taylor (1994) too argue for the reconceptualisation of the interpreter's role as a communication facilitator, pointing out that given cultural and linguistic differences, literalism does not equate to accuracy in interpreting and that "the quest for literalism…is a fiction" (1994, p. 118).

In a similar fashion, Fenton advocates the role of the court interpreter as an expert witness, because interpreting requires special skills and the application of these skills requires good judgment and integrity on the part of the interpreter, who has to be held accountable for his/her performance (1997, p. 33). She also points out that the recognition of the court interpreter as an expert witness helps, among other things, to reflect the true nature of court interpreting, to resolve the problem arising from the rule of hearsay evidence, and to accord to court interpreters the dignity and the status of recognised professionals (Fenton, 1997, pp. 33-34).

Cultural difference, and thus the possibility of misunderstanding in cross-cultural communication, is another concern arising from the *conduit* model of the court interpreter. In her ethnographic study of the committal hearing of six police officers charged with deprivation of the liberty of three Aboriginal boys, Eades (1995) finds that the significant differences between Aboriginal and non-Aboriginal ways of speaking English often lead to communication difficulties, aggravated in the first place by the defence counsel's cross-examination style. She observes that the cross-examining style led the witnesses to produce answers of *gratuitous concurrence* – "the tendency to say 'yes' to any question (or 'no' to a negative question) regardless of whether or not the person agrees with the question, or even understands it" – a characteristic Aboriginal way of dealing with interviews, especially where there is serious power imbalance (Eades, 1995, p. 10, see also 1994 and 2000). Eades suggests that a literal interpretation of the boys' answers would lead to the conclusions that they were not reliable witnesses. The other two problems in this case as observed by Eades are the misinterpretation of the use of silence by the Aborigines and their lack of eye-contact with the questioners. It is acceptable in Aboriginal English to preface an

answer to a question with silence, and in Aboriginal societies for children to avoid direct eye-contact with older people with whom they are speaking. These culturally different ways of interacting, unnoticed or even ignored by the court, disadvantage English-speaking Aboriginal witnesses and often result in their being negatively evaluated in court, which obviously was what had happened in this case (Eades, 1995). The prescriptive role of the court interpreter as a *conduit* means that it is "not normally acceptable for an interpreter to point out to an examining lawyer that, for cultural reasons, a particular form of questioning is either impossible to render in the target language or would be understood erroneously by the non-English speaker; or to explain the cultural implications of the witness's reply" (Morris, 1995, p. 28).

2.4 The codified role of the court interpreter

Today the codes of ethics for court interpreters around the globe all emphasise the need to remain unobtrusive, neutral and impartial and to restrict their function strictly to the practice of interpreting. The requirement for the interpreter to be unobtrusive in the courtroom, presumably developed from the *conduit* model, suggests that the interpreter should avoid drawing attention to him/herself and should thus assume the voice of the speaker, using direct speech. The notion of impartiality requires the interpreter to avoid unnecessary contact with the parties, to inform the court of any conflict of interest, real or perceived, and that interpreters should not side with either party in the court proceedings. In addition, the codes usually prescribe that interpreters should limit their activities strictly to interpreting and refrain from giving advice to the parties, or in other words, engaging in advocacy. The Irish Translators' and Interpreters' Association's code of ethics for community interpreters, which presumably applies also to court interpreters, even warns interpreters to be wary when offering cultural advice, contending that while community interpreters are expected to have a general understanding of the cultural background, they are not cultural experts (ITIA, 2009). In other words, the interpreter under these codes of ethics is not supposed to see him/herself as a cultural broker.

2.5 The conflicting expectations or perceptions of the court interpreter's role

A review of the literature illustrates that expectations of the role of the court interpreter have been divergent, and as Berk-Seligson aptly notes, "one striking finding that emerges from a survey of the research on court interpreting is that there is little consensus on what the role of the court interpreter should entail" (Berk-Seligson, 2006, p. 262). On the one hand, there are legal practitioners who insist that interpreters should *translate*, not *interpret* (Morris, 1995); on the other hand, there are court personnel who expect the court interpreter to perform the duties of a court clerk or a bailiff or to explain the defendant's rights (Mikkelson, 1998), duties which are generally prohibited by the court interpreter's code of ethics. There are also unrepresented defendants or litigants, who see interpreters as their compatriots or even their saviours and expect them to act as

their legal advisor (see also Morris 1999).

Fowler's study (1997) explored how court personnel conceptualise the role of the court interpreter, by way of ethnographic observations in magistrates' courts and interviews with court personnel. She finds that court personnel were not consistent in their practice in court and their expectations of the role of the interpreter: on the one hand, all the magistrates expected the court interpreter to "behave as quietly and unobtrusively as possible", and that if the interpreter "could melt into the background, then all concerned would be happier" (1997, p. 195); on the other hand, they highlighted the presence of the interpreter by addressing the interpreter directly instead of the witnesses/defendants and referring to them in the third person. Moreover, many of the magistrates expected the interpreter to display impartiality while at the same time maintaining a "warm" and "helping" relationship with the defendant (ibid.).

Kelly's study (2000) which surveys the views of legal professionals, interpreters, interpreter trainers and administrators from Massachusetts on the court interpreter's "ability to serve as a cultural bridge while acting as language facilitator" (2000, p. 132) demonstrates that about half of the court personnel, including judges, defence counsels, prosecutors and legislators, who had returned the surveys said "no" while the rest said "yes" or "perhaps" to the question "should interpreters interpret (convey) cultural differences in the courtroom", which manifests in itself a divided opinion in court personnel themselves, with more judges and prosecutors believing that court interpreters should not enter the realm of expert witnesses by acting as a cultural broker. Opinion among interpreter trainers and administrators was evenly divided with those opting for "yes", "no" and "perhaps" accounting for one third each.

The findings of Kelly's study show that half of the interpreters were not sure whether they should convey cultural differences by choosing "perhaps", with the remaining indicating a "yes" (21%) and a "no" (29%) to the question.

Kelly's study underscores the fact that the role of the interpreter in court has been ill-defined, and as Hale aptly points out, all the courtroom participants have had their roles clearly defined, the interpreter being the exception (2004, p. 236).

In the same vein, Lee (2009a) conducted a survey to elicit the views of 226 legal professionals and 36 interpreters in Australia on the role of the court interpreter and quality of court interpreting, where participants were asked to choose one or more of the roles that they believed to best portray the function of the interpreter in court from the five role descriptors used in the questionnaire, namely, "translation machine", "facilitator of communication", "language expert", "cultural expert" and "advocate". The results reveal a significant gap between the perceptions of the two professional groups. Most interpreters perceived their role as "facilitator of communication" (89% as opposed to 54% by the legal professionals), whereas a significantly higher percentage of the legal professionals chose "translation machine" (67% vs. 28%) as one of the roles of the court interpreter. "Language expert" and "cultural expert" were respectively

chosen by 31% and 17% of the court interpreters, while the corresponding figures for the legal professionals were 20% and 6%, indicating the legal professionals' reluctance to view court interpreters as experts. The fact that over half (54%) of the legal professionals perceived the court interpreter's role as a "facilitator of communication", as noted by Lee (2009a) may reflect a change in attitude of the legal professionals towards court interpreters, but it may also be a result of the legal professionals' uncertainty about the exact meaning of the descriptor, as one of the judges later stressed that word-for-word translation facilitated communication in court. This probably explains why 23% of the legal professionals and 17% of the court interpreters chose *both* "translation machine" and "facilitator of communication", generally regarded as two opposing models respecting the interpreter's role. Lee suggests that the results reflect a pressing need to research into the concepts behind commonly used role descriptors and into the legal professionals' perception of communication in the courtroom, including cross-cultural and cross-linguistic communication (Lee, 2009a, p. 44).

Researchers themselves are divided as to whether interpreters should be allowed or expected to play a role more than that of an interpreter. González *et al* (1991) suggest that the court interpreter's role "is to place the non-English speaker, as closely as is linguistically possible, in the same situation as an English speaker in a legal setting" without giving "advantage or disadvantage to the non-English-speaking witness or defendant" (1991, pp. 155-156) and that interpreters should not be expected to explain, for example, legal procedures and terminology, or else they would be rendering legal services for which they are not legally qualified and would thus be placed in a "legal mine field". Barsky (2000, pp. 58-59) on the other hand, believes that interpreters working at convention refugee hearings should be allowed the latitude to ask questions and make clarifications to assist claimants, many of whom are refused refugee status because of unclear and contradictory testimony. He suggests that interpreters could easily clarify apparent contradictions with "well-placed questions or statements" so that claimants less familiar with the Western adjudicating system "would have a better chance of properly expressing their predicament to the adjudicating party directly", arguing that it is particularly important for interpreters to be permitted this latitude, especially when the lawyer for the claimant is "insufficiently interested" or "inadequately prepared for the challenges of the case to fulfil his or her responsibilities". Barsky also argues that interpreters working in convention refugee hearings "should be legally recognized as active intermediaries between the claimant and the adjudicating body" (1996, p. 46). In other words, Barsky (1996, 2000) believes that interpreters should, as the need arises, assume the role of a lawyer, which is however forbidden by their code of ethics. Fenton (2004) warns that Barsky's view would "open the door to dangerous and unsafe practices for the interpreter, instil an exaggerated faith by the claimant in the powers of the interpreter, and if accepted by the interpreting community, would set the profession back by years" (p. 265). Indeed, with so many interpreters lacking training, it might be a little risky to campaign for this

view of the interpreter's role.

2.5.1 The interpreter's role in the courtroom

Despite the "legal fiction" (Morris, 1995, p. 30) concerning the role of court interpreters, and the prescription in interpreters' codes of ethics requiring them to remain unobtrusive and preferably invisible and impartial and to limit their function strictly to interpreting, empirical studies have proved this codified role of the court interpreter to be more of a myth than a reality, as court interpreters depart from this prescription in various ways in the course of interpreting.

2.5.1.1 Court interpreters as an active participant in court

In an ethnographic and data-based study of the American courts at various levels, Berk-Seligson (1990, 2002) finds that while judges and attorneys expect the interpreter to be a mere *conduit* or a *mechanical device* capable of turning one language into another, interpreters are observed to play a much more active role. Activities include interrupting and clarifying with attorneys and witnesses the meaning of their utterances, accounting for the side comments of witnesses and defendants, as well as prompting the witness or defendant to speak or otherwise silencing them; thus they draw attention to themselves and make themselves highly visible.

Hale (2001) too points out, in her study of interpreter interruptions in the Local Court Hearings in New South Wales, Australia, that such interruptions bring in the interpreter's own voice, rendering him/her more of an active participant than the prescribed role as a mouth-piece of the interlocutors. She also suggests that interpreter interruptions may manifest a lack of impartiality on the part of the interpreter, noting that they may also have an impact on the proceedings in one way or another. For example, because interruptions are unexpected by counsel, they may interfere with their questioning strategies or line of questioning, taking away some of their power and control over the witness. Hale concludes that interruptions should be kept to a minimum and that interpreters should be guided by the need for accuracy and impartiality when deciding whether or not to interrupt.

In a study of asylum hearings in the Federal Asylum Office in Graz, Austria, Pöllabauer (2004) finds that interpreters assume an active role in the hearings rather than that of an invisible translator. First, as in Wadensjö's study (1998), which suggests that interpreters not only translate, but also coordinate talk in interpreted interviews, the interpreters in Pöllabauer's study are found to act as coordinators in some of the interviews by taking the initiative to elicit information they deem necessary for the outcome of the hearings, omitting or condensing information they consider irrelevant, seeking clarifications from the asylum seekers without asking for the investigating officers' approval, and thus taking over the functions of the officers. The same study also demonstrates that interpreters do not always adhere to their normative neutral role, but tend to ally themselves with the speaker with the use of an inclusive plural first-person pronoun "we" or "us".

For example, by rendering the officer's question in German "Wie is des passiert?" (meaning "what happened") to "Tell **us** in detail", the interpreter is seen to be part of the investigating team or to pose herself as the officer's assistant (Pöllabauer, 2004, p. 169).

Pöllabauer's study corroborates Kolb and Pöchhacker's later study (2008) of interpreting asylum appeal hearings at the Independent Federal Asylum Review Board (IFARB) in Austria, in which the interpreters are found to not only verbally ally themselves with the adjudicator by changing the first-person singular pronoun "I" to the inclusive first-person plural pronoun "we", but also to initiate clarifications from the applicants, to respond to their questions without interpreting and referring them to the adjudicator and to prompt for the applicants to continue.

2.5.1.2 Interpreters as advocates

As noted above, there are views that court interpreters should be allowed the latitude for example to identify misunderstanding (e.g. Morris 1995, 1999), to intervene and if needed to assume the role of a lawyer (e.g. Barsky 1996; 2000). There are, however, others (e.g. Fenton 2004; González, 1991) who warn against the risk associated with such advocacy. Fenton (2004) concludes from the findings of her questionnaires administered to interpreters working for the New Zealand Refugee Status Appeals Authority that extending the role of the legal interpreter to include the advocacy functions is rejected by the interpreters themselves. She suggests that involving interpreters "in anything other than interpreting would be as detrimental to the individual interpreter as to the profession as a whole" (Fenton 2004, pp. 268-269).

It must be noted that there are, as Mikkelson (2008, p. 87) puts it, a range of options for interpreter intervention "in the middle of the spectrum between what is deemed by most as unacceptable advocacy for individual clients and what most consider acceptable advocacy for the interpreting process", which has yet to be fully defined.

In some jurisdictions, however, court interpreters are *officially* entrusted with the duties of an advocate or a court officer in additions to interpreting. For example, in Malaysia, resident interpreters do not work as individuals and on a part-time basis as in many other parts of the world, but as part of the civil service. Only when languages other than English and the Malaysian languages (of the Malay, Chinese and Indian speech communities) are involved, will freelance interpreters be called upon to provide interpreting services (Ibrahim, 2007). The situation in Hong Kong is very similar to that of Malaysia. Interpreting services between English and Cantonese (sometimes Mandarin as well) are provided by full-time interpreters (called resident interpreters in Malaysia), supplemented by a pool of freelance interpreters who work between Cantonese and other Chinese dialects or between English and other foreign languages. In the same study, Ibrahim also presents findings that interpreters sometimes take on the role of a court clerk or advocate in a trial by giving procedural advice, coaching and directing unrepresented defendants. Ibrahim even suggests that the term "court interpreter" in Malaysia is a misnomer because their presence in

court is obligatory and that they are "not necessarily there to interpret, but to assist in a trial" (2007, p. 21). Her findings again have some similarities with the courtroom in Hong Kong. First of all, the interpreter, working in the High Court or lower courts alike, is entrusted with the duty of swearing-in the witness. To do this, the interpreter has to ascertain if the witness has any religious beliefs, so as to decide whether an oath or affirmation should be administered (a duty which is more appropriate for a court clerk). There are also cases where interpreters are asked by magistrates to explain for example bail conditions to the defendant as will be demonstrated by my data. The question then arises is: whose responsibility would it be if the interpreter failed to explain the conditions or the defendant's rights in full?

2.6 Different role perceptions and expectations of the interpreter in different settings

It can be argued that the role perceptions and expectations of the interpreter in different settings are not necessarily the same. Mikkelson (2008) argues that, given the collaborative nature of most healthcare interactions, interpreters working in healthcare settings for example should be held to a different standard from their counterparts in legal settings, and that an attorney-client interaction can be viewed as a more collaborative situation than an adversarial court proceeding. However, she warns that "interpreters should not fall into the trap of playing what is known as the Benevolent Caretaker role, which deprives clients of their autonomy" (p. 89). She also considers the purpose of the communicative event being interpreted an extremely important factor in analysing the role of the interpreter. Mikkelson (2008, pp. 93-94) acknowledges that interpreters do depart from the conduit role in performing their day-to-day function and suggests that for such departure to be justified, the following questions be considered beforehand:

1) What is the nature of the interpreted event?
2) Do the interlocutors have a collaborative or an adversarial relationship?
3) What is the goal of the communication (determining the truth, solving a problem, sowing confusion, winning a case)?
4) What if the interlocutors shared the same language and there were no interpreter present – would there still be misunderstanding?
5) Is the misunderstanding related to language or culture?
6) What would happen if the interpreter did not intervene?
7) Is the interpreter the only one who is aware of the problem?
8) Who else is in a position to solve the problem?

It could be argued that the process of interpreting is dynamic, so are the roles of the interpreter which can vary from one extreme as a conduit to the other as an advocate. As Mikkelson puts it, interpreters are "constantly making decisions and solving problems, navigating between the Scylla

of slavish, literal interpretation and the Charybdis of free translation that distorts meaning and thereby perverts justice" (2008, p. 83).

2.7 The use of third-person interpreting and the visibility of the interpreter

To render the interpreter's presence in the court proceedings as unobtrusive as possible – in line with the *conduit* model – interpreters are required to assume the voice of the speaker, using first-person interpreting, which helps obscure the interpreter's presence in court and create the illusion of direct and dyadic communication between the interlocutors. Codes of ethics governing interpreting practice in general thus advocate that interpreters should always adopt first-person interpreting. For example, the Code of Ethics and Responsibilities of the National Association of Judiciary Interpreters and Translators (NAJIT) in the United States prescribes that "court interpreters are to use the same grammatical person as the speaker"[2], and that the use of indirect speech (or third-person interpreting) should be excluded in legal settings as the inclusion of the interpreter's voice in the transcript as a result of the use of third-person interpreting can be problematic. For example, when the interpreter renders a defendant's guilty plea in indirect speech (i.e. "He says he's guilty"), the record reflects the voice of the interpreter, not of the defendant, and the plea may thus be considered void (NAJIT, 2004)[3].

The use of first-person interpreting is thus a generally held principle among professional interpreters and scholars and is often used as a yardstick to differentiate professional interpreters from *ad hoc* interpreters (see Colin & Morris, 1996; Gentile, Ozolins, & Vasilakakos, 1996; González, 1991; Wadensjö, 1998).

Some of the studies conducted over the past two decades examine interpreters' departure from this first-person interpreting principle (e.g. Angermeyer, 2009; Berk-Seligson, 1990, 2002; Bot, 2005; Dubslaff & Martinsen, 2005; Kolb & Pöchhacker, 2008; Leung & Gibbons, 2008; Pöllabauer, 2004; Wadensjö, 1998). Many of these studies conclude that interpreters depart from the normative practice of first-person interpreting in order to disclaim responsibility for the utterances made by the speaker while others suggest that the deviation is out of pragmatic considerations (Angermeyer, 2009) or as a face-saving strategy by the interpreter (Pöllabauer, 2004, p. 163). None of them, however, seems to be able to explain the interpreting phenomenon in the Hong Kong courtroom in this regard as will be demonstrated by my data, which manifest an overt attempt on the part of the interpreter to shun assuming the voice of legal professionals, but not that of lay participants in court proceedings. Further research into the rationale for interpreter choice between first- and third-person interpreting is indicated.

---

[2] Canon 5: Protocol and Demeanor. http://www.najit.org/membership/NAJITCodeofEthicsFINAL.pdf Accessed 30 September 2010.

[3] The Racial Fairness Project, Cleveland, OH (www.racialfairness.org/interpreters.htm) lists several cases under the heading Speaking in the Third Person, cited in NAJIT (2004), though no case references have been provided.

2.8 Accuracy in court interpreting – the norm

Accuracy is accorded the highest importance in court interpreting as it matters considerably to the administration of justice. Misinterpretation of the witness's testimony may lead to miscarriages of justice (see Koo, 2009; Morris, 2010). The interpreter, as González *et al* point out, being the voice of the non-English speaker and very often the only bilingual person in court, has "an overriding obligation to ensure that the TL (target language) rendition meets the highest standards of accuracy" so that the witness's testimony can be conveyed precisely and completely (1991, pp. 475-476). González *et al* (1991) contend that, to attain this highest level of accuracy, interpreters must opt for verbatim interpretation and "conserve every single element of information" in the source language (SL) message, including both linguistic and paralinguistic elements such as the SL register, word choice, obscenities, repetitions, self-corrections, slips of the tongue, pauses, false starts and tone of voice. On the other hand, interpreters must not try to enhance the clarity of the SL message through addition and elaboration, and that they must not lengthen testimony or improve on any nonsensical or non-responsive testimony. What González *et al* are proposing in essence is that accuracy in interpreting necessitates a close adherence to both the propositional content and style of the SL message.

As a matter of fact, this is a generally established definition for *accuracy* in various codes of ethics governing the practice of court interpreting, which emphasises the importance of a faithful rendition of the SL speaker's message without addition, omission or distortion, and the requirement for the interpreter to conserve not only linguistic, but also paralinguistic elements. For example, NAJIT defines *accuracy* in the following way:

> Source-language speech should be faithfully rendered into the target language by conserving all the elements of the original message... and there should be no distortion of the original message through addition or omission, explanation or paraphrasing. All hedges, false starts and repetitions should be conveyed; [...] The register, style and tone of the source language should be conserved[4]

In Hong Kong, the Judiciary's Basic Guidelines for Part-time Interpreters[5] (Judiciary, 2003) states that "[a] part-time interpreter must interpret faithfully – without addition or omission – everything said in court", and that if a witness is speaking incoherently and unintelligibly, interpreters should refrain from clarifying with the witness and are "expected to try his/her utmost to interpret accurately and faithfully what was said in full, *regardless of how little sense it may make* (emphasis added)…".

Obviously in these codes/guidelines, an emphasis is placed on literalism/verbatim interpreting

[4] Canon 1: Accuracy. Code of Ethics and Professional Responsibilities http://www.najit.org/membership/NAJITCodeofEthicsFINAL.pdf Accessed 30 September 2010.

[5] Strangely enough, these guidelines are intended for part-time interpreters and there are no written guidelines for full-time court interpreters. However, presumably some of the general principles stated therein apply also to full-time interpreters.

and the conservation of both the propositional content and the style of the SL message in the TL version. While verbatim interpreting is a highly controversial issue and has been challenged in anecdotal evidence as has been noted above, it is generally agreed among researchers (Benmaman, 1992; Berk-Seligson, 1990, 2002; De Jongh, 1992; González, 1991; Hale, 2002; Laster & Taylor, 1994) that interpreters should convey not only the content of the utterance, but also the style in which the utterance is made if participants in the court proceedings who do not speak the language of the court are to be placed on an equal footing with those who do. Thus it is believed that the style in which a message is delivered impacts on how it is received by the listeners.

2.9 Accuracy in court interpreting – the reality

In an interpreter-assisted trial in a common law jurisdiction, it is always the English interpretation of a non-English speaking witness's testimony that is entered into the court record, not the witness's testimony in the foreign language, as in the case of the USA (Berk-Seligson, 1999) and many other common law jurisdictions including Hong Kong (before the introduction of the digital recording system). Berk-Seligson (1999) also points out that those who understand the language of the witness testifying through an interpreter "are routinely instructed by judges to ignore the foreign-language testimony and to pay attention exclusively to the English-language rendition of the court interpreter" (1999, p. 31). This judicial position has been formalised by the US Supreme Court, which allows attorneys to "disqualify potential jurors from serving on the jury" in the *voir dire* proceedings, for fear that bilingual jurors might not listen to the English interpretation of the testimony, but pay attention to the witness's testimony in the foreign language. Interestingly, Berk-Seligson (1999, p. 31) suggests that the Supreme Court's decision reflects the assumption that "the English interpretation of the court interpreter is a faithful rendition of what has been said in the source language" (ibid.), and that she finds this assumption unwarranted. It could be argued, quite to the contrary, that the Supreme Court's decision manifests in itself an assumption that there may well exist a discrepancy between the interpreter's rendition and the source language (SL) version, and that different jurors paying attention to different versions of the same testimony will necessarily come to different conclusions of the trial. If the interpreted version were a faithful rendition of the SL version, it would make no difference whether jurors are listening to the interpretation or the SL version. In other words, the decision of the Supreme Court reflects the judicial view that the two versions are not necessarily "identical", and this view has been proved true as is evidenced in the studies conducted over the past two decades, which have been devoted to the investigation of how court interpreters deal with the style of speakers in the courtroom (Berk-Seligson, 1990, 1999, 2002; Hale, 1999, 2002, 2004; Hale & Gibbons, 1999; Pöllabauer, 2004; Rigney, 1999). The findings of these studies demonstrate that interpreters tend to focus only on the propositional content of a speaker's utterance, but often fail to preserve the style in which the utterance is made. Some of these studies examine how interpreters alter the styles of witnesses'

testimony and potentially their credibility, and may subsequently impact on the outcome of the trials (Berk-Seligson, 1990, 2002; Hale, 2002, 2004), while others investigate how the pragmatics of questions as counsel's tool of manipulation are altered by interpreters (Berk-Seligson, 1999; Hale, 1999, 2004; Hale & Gibbons, 1999; Rigney, 1999).

2.9.1 Change in testimony styles

Berk-Seligson's ethnographic study (1990, 2002) of the English interpretation of Spanish testimonies in the US courts shows that, contrary to the general perception that Spanish is longer than English in translation, and consequently in interpretation as well[6], due to the syntactic differences between the two languages, the English interpretation is significantly longer than the witnesses' Spanish testimony. An analysis of the data shows that the lengthening of the testimony is due to a number of reasons, including the insertion of hedges, linguistic material which the interpreter perceived to be underlying in the original utterances, the use of uncontracted forms, rephrasing of the interpretation, additions of polite forms of address, and particles and hesitation forms. Most of these speech features are what O'Barr (1982) has identified as features of powerless speech style, which might be expected to produce a negative impression of the testifying witnesses by mock jurors.

On the other hand, in the few instances where English renditions are found to be shorter than the original Spanish testimony, it is found that interpreters have omitted precisely those elements they added in the lengthened English renditions, such as hedges, hesitations and polite forms. Berk-Seligson suggests the finding "leads one to the conclusion that these linguistic categories are not salient enough for court interpreters to include them in their interpretations when they ought to be included, and to exclude them when they should be omitted" (Berk-Seligson, 1990; 2002, p. 142). This however appears to be an over-simplistic conclusion. As evidenced by Lee's study (2009a), most of the interpreters surveyed indicated that they sought to reproduce speaker styles, which suggests that they *are* aware of the need to preserve speaker style, but their efforts to do so are hindered for one reason or another. As Lee (2011) rightly notes, court interpreters' deviations from the speech styles of the original utterances may be related to their lack of competence or training, but it may also be a result of their "conscious or unconscious efforts to effectively meet the communication needs in the courtroom proceedings" (2011, p. 5). Interpreters may not want to preserve hesitations and hedges of the SL speaker for fear that these powerless speech features may be attributed to the interpreters themselves. On the other hand, the fact that these speech features are added to the English rendition may reflect the "demanding cognitive process required

[6] The same logic does not apply to the case of English and Chinese. Chinese is generally longer than English in translation (in terms of the number of words), but in interpretation, the opposite is true. The reason is that modern Chinese terms usually come in two. For example, the word "university" becomes a two-character term 大學 *da xue*. On the other hand, Chinese characters are essentially monosyllabic (which means one character produces only one phoneme) and so the presence of polysyllabic words in English but not in Chinese necessarily renders Chinese shorter than English in interpretation.

of the interpreter" (see Hale, 2002 below).

Berk-Seligson also points out that the use of uncontracted forms, the addition of linguistic elements deleted syntactically by the witness would make the English testimony sound "excessively formal in register", a speech style which even highly educated native speakers of English would not normally use, but which is used by some interpreters in the rendition of the testimony of Hispanic working-class persons and peasants, resulting in a mismatch of speech style (Berk-Seligson, 1990; 2002, p. 143).

To test the impact of politeness markers, hyperformality and hedging in the English interpreted testimony on jurors, Berk-Seligson conducted a verbal-guise experiment on mock jurors, some of whom were Hispanics speaking both Spanish and English, and presented them with witnesses' Spanish testimonies through two English interpretations, one with the original politeness marker conserved and the other omitted. In the light of the findings of O'Barr (1982), it was expected that the presence of these features of powerless speech, as has been established by O'Barr, would produce negative evaluations of the witnesses. However, contrary to what has been found by O'Barr, the results show that in interpreted testimony both politeness markers and hyperformality give a witness an enhanced image in terms of convincingness, competence, intelligence and trustworthiness (Berk-Seligson, 1990; 2002, pp. 162-175). The same experiment was repeated to evaluate the impact of hedging on the mock jurors, who were presented with two English interpretations of Spanish testimonies, one maintaining the hedges present in the original and the other with the hedges omitted. The findings are interesting: while hedged interpretations were found to result in negative evaluations of a witness by non-Hispanic (or English-speaking) mock jurors, which is consistent with O'Barr's (1982) findings, they were found to produce no negative impact on the Hispanic (or Spanish-speaking) subjects. Berk-Seligson (1990; 2002, p. 183) suggests cultural differences between Latin Americans and North American Anglos as the main reason, noting that "hedging does not have a pejorative cultural connotation in Hispanic culture that it has in Anglo-American culture".

In a study of Spanish-English bilingual proceedings in the local courts of Sydney, Hale (2002, 2004) too examines speakers' use of hesitations, hedges, fillers, discourse markers, pauses, repetitions and backtracking, and ungrammaticalities and unidiomaticality, and how these features of powerless speech style as identified by O'Barr (1982) are rendered in the interpreted testimony. Her study shows that the witnesses' speech styles "are constantly being altered by interpreters" (Hale, 2002, p. 43; 2004, p. 156). For example, the interpreted testimony is found to contain far fewer hedges and fillers than the witnesses' original answers, thus changing the degree of certainty of the answers. In respect of the use of discourse markers, the results also show that discourse markers used by the Spanish-speaking witnesses are often omitted in the interpretations. Hale suggests that the omission of the Spanish discourse marker *bueno* (equivalent to "well") for example, potentially changes a powerless speech style to a powerful one, renders an answer less

relevant and less coherent, and that the omission may also alter the tone of the answer.

On the other hand, a far higher frequency of hesitations occurs in the interpreted versions of witnesses' testimonies than in witnesses' original testimonies. This, as Hale (2002, p. 40) rightly points out, reflects the more "demanding cognitive processes required of the interpreter than of the original speaker" arising from the interpreter's need to "decode the original message and to recode it in a different language". Moreover, the results show that although hesitations appear in both the original answers and the interpreters' renditions, they do not always match. As a matter of fact, the findings demonstrate a tendency for the interpreter to omit the hesitations of the witnesses. In other words, most of the hesitations in the interpreters' renditions are attributed to the interpreters themselves, not to the witnesses. Hale (2002, p. 42; 2004, p. 101) finds the hesitations in interpreters' renditions in most cases indicate "a translation difficulty, a thought process or a doubt, a preface to a pause, a backtracking or a grammatical or pronunciation error". Hale suggests that the omission or addition of hesitations in the interpreted testimony may have an impact on the evaluation of the witness's credibility by jurors or the bench and can potentially change the outcome of the case, because a witness's credibility is judged not only according to what s/he says, but also how s/he says it, which has been proved by the matched-guise experiments she subsequently conducted. The results of Hale's experiment show that the hedged interpretation which mimicked the original style of the Spanish testimony was evaluated more negatively in the same way as the hedged Spanish original. In essence, the findings of her study corroborate those of O'Barr's study (1982), but are different from Berk-Seligson's findings. Hale (2006) suggests that the divergence with regard to the mock jurors' perception of hedged interpretation can be explained first of all by the different methodologies adopted: while the mock jurors in Berk-Seligson's experiments were presented with the interpretations together with the original testimonies in Spanish, in Hale's study, the Spanish-speaking mock jurors were given only the original Spanish testimony, and the English-speaking mock jurors the different versions of English interpretations.

Hale (2006) suggests that in Berk-Seligson's experiments, the Spanish-speaking mock jurors might have ignored the English interpretation and simply listened to the Spanish version. However, since hedges were present in the original Spanish testimony, one would expect a similar rating even if the mock jurors had simply relied on the Spanish testimony for their evaluation. Thus this cannot be a plausible explanation for the divergence; nor can the divergence be explained by Berk-Seligson's suggestion that "hedging does not have a pejorative cultural connotation in Hispanic culture that it has in Anglo-American culture" because the results of Hale's study show that it does.

The results of these experimental studies underscore the fact that interpreter-mediated communication is essentially different from monolingual communication. O'Barr's experiments were done in a monolingual context, as were Hale's, in which the mock jurors were presented with

either the English version or the Spanish version of the testimony for evaluation, making the analysis simpler and easier. Berk-Seligson's experiments were however conducted in a bilingual context with the participation of bilingual mock jurors presented with bilingual versions of the witness's testimony, which makes the analysis more complicated as bilingual mock jurors could then listen to both versions as bilingual jurors do in court in reality. This may explain why the results of O'Barr's study corroborate Hale's, but not Berk-Seligson's. In an interpreter-mediated communicative act, the analysis is more complicated as it is not easy to ascertain to what extent listeners are able to tell who is responsible for these paralinguistic elements. It is possible that, in Berk-Seligson's study, the Spanish-speaking mock jurors attributed the hedges to the interpreter, not to the witness, who was thus not negatively rated. Further research is required before any generalisation can be made about the impact of these paralinguistic features on listeners in an interpreter-mediated trial.

Pöllabauer's study (2004) of interpreting in asylum hearings in Austria shows that there is a tendency for the interpreters to shift into a higher register when interpreting the asylum-seekers' utterances. Again, the impact of this register shift on listeners in these triadic exchanges can only be speculated upon and cannot be easily proved even with experimental studies as has been demonstrated above.

2.9.2 Change in question styles

Other studies focus on how court interpreters change the pragmatics of courtroom questions, which counsel use as tools of manipulation to control witnesses.

Using the same data from the local courts in Sydney, Hale (1999, 2004) presents her findings on how interpreters treat the use of discourse markers by counsel during examination-in-chief and cross-examination to preface their questions, focusing on three discourse markers, "well", "see" and "now". Her data show that "well" and "see" are mostly used in cross-examination as devices by counsel to initiate disagreements or challenges, whereas "now" is used mainly in examination-in-chief to maintain the flow of information and to mark progression in the story-line. The study shows that interpreters tend to omit these discursive devices systematically with very few exceptions. Hale suggests that the omission may be due to the interpreter's judging these markers to be superfluous or a result of a lack of direct semantic equivalents. Hale suggests that the omission of the discourse markers counsel use to preface their questions will inevitably change "the illocutionary force or strength with which the question is asked" and that "a change of force can have a possible change of reaction" (1999, p. 72; 2004, p. 86).

Rigney (1999) too examines how courtroom questioning is done through an interpreter, using data from the Rosa López testimony during the O.J. Simpson murder trial in Los Angeles in 1995. Her study shows that attorneys' power as stipulated by the law to ask questions and to manipulate the questions in order to exercise control over witnesses' answers is very much

reduced or lost when the questioning is performed through an interpreter, not only because the presence of a third person in the process inevitably changes the flow of communication, but also because the interpreter is found to alter the pragmatics of questions as attorneys' tools of manipulation. She has categorised courtroom questions into 13 types according to their degree of control over the witness's testimony, with open wh-questions at one end assigned the lowest degree of control and factual declarative questions with the highest degree of control at the other end. The results show that the interpreter has a tendency to alter the pragmatics of certain types of English questions in the Spanish rendition, for example, by removing the modal question in a request (such as "can you", "would you"), thus turning a polite request into an "unmitigated command" (1999, p. 96), or by changing a tag question, which is coercive in nature and allows the questioner to exercise more control over the testimony, into a Yes/No question, with a relatively lower degree of control, thus reducing the coerciveness of the original question. Rigney observes that some of the alterations are attributed to linguistic differences between English and Spanish. For example, it would be difficult to translate an English reverse polarity tag question with a positive tag into Spanish because of the lack of equivalents. Other alterations are however made despite the linguistic similarities between the two languages.

The results of Rigney's (1999) study corroborate the findings of Hale's (2004) study which examines how counsel use questions strategically in the courtroom to elicit free narratives from witnesses in examination-in-chief with the use of open-ended questions and in cross-examination, to coerce witnesses, to control and constrain their answers to a limited choice with the use of leading questions, and how the intended effect of the questioner is altered in interpreters' renditions. Both Rigney's (1999) and Hale's (2004) study produce very similar findings in that there is a tendency on the part of the interpreter to omit modal interrogatives and tag questions. Hale suggests that the modal question (such as the one in her examples – "can you tell the court what happened") functions as an indirect request or command, and that the lawyer "establishes his control and authority over the witness" while at the same time "maintaining politeness in the use of indirectness". She also suggests that with an indirect request being turned into a direct question ("then what happened"), "the level of authority disappears" (2004, p. 56). On the other hand, the omission of the tag question, which Hale finds "expresses maximum conduciveness" (2004, p. 45), inevitably mitigates the control the questioner wishes to exert over the witness's testimony. Like Rigney (1999), Hale also points out the lack of lexical and syntactic equivalence in Spanish as the main reason for the omission. However, the interpreter's omission of modal questions may actually be a pragmatic consideration, as it is not uncommon, at least in the Hong Kong courtroom, for a lay witness, who takes the modal question as a real question, to respond to it with an utterance like "yes, I can", if the modal question is kept intact in the interpretation. That is probably why interpreters in the Hong Kong courtroom are sometimes found to render a modal question like this into "please tell the court what happened", thus turning an indirect request into a

direct one.

Like Hale (2004) and Rigney (1999), Berk-Seligson's study (1999) also examines the accuracy of the rendition of courtroom questions in terms of their pragmatic force. In particular, she examines how interpreters render counsel's leading questions into Spanish. Leading questions are considered to be highly controlling as they allow the questioner to suggest the desired answers from the witness. The findings show that almost half of the questions were rendered inaccurately in terms of pragmatic force in that the interpreter omitted either the tag or the leading portion of a question, thus turning a coercive question into a less coercive one. This means that the cross-examining attorneys' power to control witnesses' answers is weakened through the mediation of the interpreter. Berk-Seligson suggests that interpreters may not be sensitive to the importance of rendering the pragmatic force of attorneys' questions accurately and that they should be made aware of the dangers of altering this pragmatic force (Berk-Seligson, 1999, p. 50).

Hale and Gibbons (1999), in their study of courtroom questions, divided the courtroom into two layers of reality, namely, the primary and the secondary realities, following Bennett and Feldman's (1981) concept of storytelling in American criminal trials and Clark's "layers of action" in conversation (1996, p. 16). The primary reality is the courtroom itself, while the secondary reality relates to the events under examination in the case. The secondary reality is not physically present in the courtroom, but represented through various ways and media, and the most common way of representing this secondary reality is through the testimonial evidence of witnesses. In the adversarial common law system, each party will try to "construct different representations of the same secondary reality" and certainly different representations will result in different outcomes of the case (Hale & Gibbons, 1999, p. 204). In an attempt to persuade the court to believe their representation of the secondary reality and at the same time to discredit the version of the other party, a strategic use of language will be employed to influence the jury or the bench. As Hale and Gibbons point out, a common tactic used by counsel when examining a friendly witness is to ask "What happened", which is intended to obscure the fact that what will be told by the witness is just a version of the events rather than the events themselves; whereas in cross-examination, the question will be framed as "What do you *say* happened", which is done to weaken the credibility of the hostile witness's evidence (1999, p. 205). The findings manifest significant changes in the interpreted version and that most of the changes occur in the representation of the primary courtroom reality, rather than in that of the secondary external reality (1999, p. 209).

2.9.3 Further research required with regard to style changes

Hale and Gibbons (1999) suggest that the changes are probably due to the constraints and pressures interpreters working in real time are subjected to, as well as the interpreter's own ignorance of the linguistics of the courtroom, and thus in order to save time, interpreters will filter out what they consider to be redundant and preserve only the propositional content of the

utterance (1999, p. 207). The pressure of working in real time and the interpreter's ignorance of the pragmatics of speaker styles as suggested by Hale and Gibbons are possible reasons that may help explain interpreter's focus on propositional meaning rather than the style of the speaker as illustrated by the above studies. Morris' study of the Demjanjuk trial in Israel (1989, cited in Morris, 1995) however demonstrates that there is a tendency for the court interpreter to edit lawyers' questions, but not the witnesses' testimony, to improve intelligibility and effectiveness of communication. Speakers' hesitations, unfinished sentences, grammatical mistakes, slips of the tongue and other speech defects, which according to the prescriptive rules of court interpreting, must be reproduced by the court interpreter "even at the risk of the interpreters themselves sounding incompetent", were treated by the court interpreters "both on a personal basis and *according to the status of the speaker*" (emphasis added) (Morris, 1995, p. 39). In Lee's study (2009a), two thirds of the interpreters surveyed responded that they sought to reproduce counsel's speech style and 78% reported that they strove to preserve witnesses' speech style, and that in general, they reproduced the style of witnesses' speech rather than that of counsel. The results of Lee's study corroborate Morris's in that it is possible that the interpreters' decision to preserve or edit the speech style depend on who the speaker is. Empirical studies to compare how interpreters render counsel's speech style and that of witnesses into the target language (TL) may provide new insight into this issue before any generalisation can be made.

2.9.4 Additions in court interpreting

While the aforementioned studies of accuracy in court interpreting focus on speaker styles, Jacobsen's study (2002) is devoted to the examination of additions in court interpreting, drawing on data from a mock trial and an authentic trial in Danish courtrooms. Jacobsen's study is based on two hypotheses – firstly, that court interpreters are preoccupied with building and conveying a mental model of speaker meaning, and secondly, because of this preoccupation, the interpreters' renditions in the TL will contain a variety of additions. The findings of her study demonstrate that interpreters in Danish courts regularly depart from one of the rules in the guidelines for court interpreters, who are required to render the SL message in its entirety *without additions* (emphasis added) or deletions in that they add information which did not exist in the original message in the course of interpreting. Jacobsen has identified three categories of additions in the interpreters' renditions:

1) Additions with no impact on the semantic and/or pragmatic content of the SL message, which include repetitions, silent pauses, voice filled pauses and false starts.
2) Additions with minimal impact on the semantic and/or pragmatic content of the SL message, which include repetitions, fillers (such as "you know", "I mean"), paralinguistics (such as laughter), explicating additions and elaborating additions (of contextually/situationally evoked or inferable information).
3) Additions with significant impact on the semantic and/or pragmatic content of the SL message, which include emphasising additions (by adding emphatic adverbs like

"actually", and "genuinely"), down-toning additions (by inserting "maybe" for example, which expresses uncertainty) and new-information additions.

Jacobsen's categorisation of the impact these additions may have on the semantic and/or pragmatic content of the SL message may appear controversial, as studies on the pragmatics of court interpreting have sought to demonstrate that alterations of the paralinguistic features like repetitions, fillers, pauses and false starts will have an impact on the pragmatics of speaker meaning and thus on the perception of the message by the end-receivers. Nonetheless, the conclusion Jacobsen seeks to draw through the analysis and findings of the data is that the presence of additions in the interpreted version is a direct result of interpreters' preoccupation with pragmatics, and that in order to achieve the primary aim of successful interaction, the interpreters are prepared to violate the ethical code, which she believes, is also evidenced by the fact that the interpreters in her study are also found to correct the defendant's grammatical errors, to complete fragmented utterances, and to engage in dialogue with the non-Danish-speaking participants who requested repetitions or clarifications.

2.10 Interpreting between culturally and linguistically different languages

While the majority of the empirical studies have centred on court interpreting between European languages, Spanish and English in particular, which share linguistic features to a greater or lesser extent, Lee's study (2009b) is one of the few which examine language combinations with disparate linguistic features. Lee (ibid.) researches into the discourse of Korean–English interpreting in Australian courtrooms and investigates how the use of inexplicit language by Korean-speaking witnesses presents challenges to the court interpreter and how the different strategies adopted by the interpreters affect the accuracy of court interpreting.

Lee's (ibid.) study focuses on witnesses' inexplicit language through the use of ellipsis, a common linguistic feature in Korean, where contextually understood elements including subjects, objects and other major sentential elements can be ellipted. Therefore an utterance like "If Ø have to go, I'll tell Ø", which can mean "If (she/he/you/they) have to go, I'll tell (her/him/you/them)", is grammatically allowed in Korean. The use of ellipsis by the speaker necessarily forces the interpreter to draw heavily on the context for the understanding and thus the rendition of the original message into English. However, contextual clues available to the interpreter are limited as interpreters are usually not allowed access to information related to the case beforehand, and thus their contextual knowledge is "limited to the local context unfolding at each turn in court examination" (Lee, 2009b, p. 94). Lee also aptly points out that the commonly adopted mode of interpreting in court, i.e. short consecutive interpreting, where short chunks of (and thus partial) information are given at every turn, adds to the challenges faced by the court interpreter. The results of Lee's study indicate that ellipted grammatical subjects pose a particular challenge to interpreters when they cannot be inferred from the context. On the other hand, the ethical

requirement for interpreters to remain unobtrusive during the course of interpreting necessarily restricts their freedom to clarify with the testifying witness. Interpreters' desire to maintain their professional dignity may also prevent them from asking for clarification as interpreters making frequent requests for clarifications may be perceived as incompetent, aside from interrupting the smooth flow of the proceedings.

The findings of Lee's study show that interpreters in general do not attempt to reproduce the ambiguity arising from the ellipsis, but instead omit or modify the witnesses' utterances, for example, by using the passive voice thus dispensing with the need to specify the ellipted subject, or by adding a subject based on their judgment of the speaker's intended meaning, in order to make them comprehensible and grammatically adequate in the English interpretation. This modification often leads to a misinterpretation or distortion of the semantic meaning of the utterances. Lee also argues that the use of the passive voice may "give an impression that the witness seeks to obscure the agent or diminish their responsibility" (2009b, p. 103).

Lee suggests that inexplicit witness utterances may inevitably require clarification for accuracy to be attained and that interpreters should inform the court of any interpreting difficulty arising from the use of inexplicit language by the witness, or alternatively "reproduce the inexplicitness in interpreted renditions so that the court may direct the witness to be more explicit" (2009b, p. 111). Reproducing the inexplicitness in the target language however may not be done easily without the interpreter appearing incompetent, because of the fundamental linguistic differences between Korean and English.

Lee's (2009b) study underscores the challenges and thus the dilemmas faced by court interpreters working between two languages which operate in entirely different lexico-grammatical systems. As Lee (ibid.) rightly notes, Chinese also displays similar subject ellipsis to Korean. It is expected that because ellipsis is a common linguistic feature in Chinese, it will pose similar challenges to Chinese-English interpreters in the courtroom. For example, Leung (2008) illustrates the problem arising from the use of ellipsis in Chinese with an example taken from a case of estate inheritance in Hong Kong[7]. In this case the plaintiff, daughter of the defendant, challenged the English translation (by the defendant's solicitors) of her two letters to her father requesting money from him while she was studying law in England and promising to repay the debt when she finished her studies (日後學成，定當歸還。 懇請幫忙！日後定當歸還[8]。). However, as all the subjects in those Chinese sentences had been ellipted (which is acceptable given the context from which the ellipted sentential elements can be easily recovered), the

[7] HCMP001927A/1995. Mui Po Chu v. Moi Oak Wah http://legalref.judiciary.gov.hk/lrs/common/search/search_result_detail_frame.jsp?DIS=37998&QS=%24%28Mui|Po|Chu%29&TP=JU. Accessed 13 October 2010.

[8] Literally, someday when Ø finish studies, Ø will definitely repay; Ø earnestly ask for help; someday Ø will definitely repay.

complainant disputed the translation which suggested that *she* (emphasis added) would certainly repay the debt. In court, the interpreter, obviously well-informed of the issue in this case, chose to play safe by rendering the sentence in the passive voice, turning the Chinese original 定當歸還 (Ø will definitely repay) to "will definitely be repaid:", thus dispensing with the need to mention the subject, which however, as Leung observes, renders the interpretation "unnecessarily ambiguous" (Leung, 2008, p. 204). This example highlights the dilemma faced by the court interpreter when rendering ellipsis from Chinese into English: produce an ambiguous, incoherent or even ungrammatical interpretation OR risk being accused of "putting words into the mouth of the witness".

Other lexico-grammatical differences between English and Chinese may be equally problematic for interpreters. Leung (2003), drawing on the findings of her doctoral thesis, which examines the problems associated with the interpreting between Cantonese and English in legal settings in Britain, including a police interview and a hearing in an immigration appeal tribunal, points out that one of the problems facing Chinese–English interpreters is the differences between the grammatical structures of Chinese and English, taking tenses of verbs as an example. In Chinese, the verb itself does not indicate the tense or aspect, which is either inferred from the context or marked by lexical means. This poses more of a problem when rendering a message from Chinese into English than the other way round because it is always easier to render something explicit than implicit. Here is an example cited by Leung (P=policeman; S=suspect; I=interpreter):

P: but you knew you shouldn't have done that 'cause that's illegal, yes or no?
S: 咩嘢?
(what)
I: 你知道咁樣做係唔合法㗎係咪? 你咁樣買一張 mot 証明返黎係犯法㗎
(you know it is illegal by doing this, you bought the MOT certificate this way?)
S: mm ...我唔知道
(mm I don't know)
I: 你嗰時買嗰時唔知道呀你意思?
(at the time you bought it you did not know, do you mean)?
S: .. 哦! 買嗰時 (exclaimed) .. 唔知道
(so ... oh at the time I bought it didn't know)
I: he said he didn't know that when he bought it from that man at that time.

The example cited above however manifests in itself a degree of incompetence on the part of the interpreter, rather than a lack of grammatical equivalence between Chinese and English. First of all, the verb "knew" in the past tense is used by the interrogator to express his emphasis on the fact that the suspect had committed the offence *knowingly*, and this explicit information could have been conveyed in the Chinese interpretation, not by a change in the form of the verb (as verbs in Chinese do not conjugate), but by means of what Jacobsen (2002) terms as an "explicating addition". Had this question been interpreted more accurately, the suspect's answer in line 4 "I

don't know" (which actually can also mean "I didn't know") would have been unambiguous. Note that the interpreter also initiates a clarification with the suspect (in line 1) without asking for permission to do so and renders the suspect's utterance in the third person (line 7), a practice which is considered by many as unethical and unprofessional.

Leung's study nonetheless underlines the importance of differentiating inherent cross-linguistic communication problems from those stemming from interpreters' own linguistic deficiency. Other fundamental grammatical differences between Chinese and English such as the absence of plurality and gender marking in Chinese are expected to present court interpreters with similar challenges and research into these areas has yet to be conducted.

Leung and Gibbons (2009), drawing on data from five rape trials heard in Hong Kong courts examine an under-researched linguistic phenomenon in Cantonese – utterance-final particles – a linguistic device usually used by speakers to convey their attitudes and emotions along with the semantic content of their utterances, or to establish cohesion within courtroom discourse, with a similar function to that of prosodic features in English. Their findings show that the interpreters in general fail to capture the pragmatics of the Cantonese utterance-final particles and "interpret in a rather monotonous tone and use statement-like intonation, rather than the contour that the situation would appear to demand" (Leung & Gibbons, 2009, p. 212). Leung and Gibbons conclude (rightly) that most of the factual and emotive information conveyed by these particles can be captured by means of alternative linguistic devices such as intonation in English, though "less proficient interpreters" may not be able to do that (ibid.). In other words, the issue addressed here is strictly speaking interpreter incompetence, rather than a linguistic equivalence problem in cross-linguistic communication.

2.11 Conclusion

Obviously, empirical studies all point to the fact that despite the variety of ethical codes of conduct for legal interpreters around the globe, what happens in reality "comes nowhere near to the norms laid out in the canons of these codes" (Berk-Seligson, 2006, p. 265). The findings of these studies may lead one to the conclusion that, as Pöllabauer puts it, "traditional codes of ethics may only be valid on paper" (2004, p. 175). The requirement that court interpreters reproduce everything in the SL speech without addition, omission or distortion, like the conduit role of the interpreter, has been proved equally unattainable. Some of the deviations in terms of both the role of the court interpreter and the standard of accuracy have been attributed to the ill-defined role of the court interpreter and others are deemed to have originated from problems inherent in interlingual and intercultural communication and from the demanding cognitive nature of real-time interpreting. Some of the problems have been identified as evidence of incompetence or a lack of training on the part of the interpreter, or the interpreter's conscious or unconscious efforts to meet the communication needs in the courtroom or otherwise to save face. While interpreter

competence and training is a universal issue, linguistic and cultural issues are largely language-specific and the problems identified in interpreting between some languages may not be present in other languages. In other words, theories generated from studies conducted in one jurisdiction may not account for the interpreting phenomena in another. More research into court interpreting involving varied language combinations is needed for more holistic theories about court interpreting to be advanced.

Fundamentally, the majority of court interpreting studies mentioned above have focused on a typical bilingual setting, where interpretation is provided for the linguistic minority and that the interpreter is usually the only bilingual, with the exception of studies by Berk-Seligson (1990, 2002), Ibrahim (2007), Leung (2008) and Leung and Gibbons (2009), none of which, however, examine how the presence of bilinguals in the courtroom other than the interpreter might impact on the interactional dynamics of the communication process. Berk-Seligson's (ibid.) study raises the possibility of bilingual jurors listening to the SL testimony instead of the English interpretation. However, jurors, being silent followers of the trial talk throughout much of the court proceedings, presumably have little impact on the interactional dynamics per se in the courtroom, though as the fact-finders of a trial, jurors' bilingual knowledge certainly has an impact on the administration of justice. Despite the similarities Malaysian courts bear to the Hong Kong courtroom, due to the British colonial background in both places, Ibrahim's (2007) study focuses on the issue of impartiality of court interpreters as they are allowed to act as advocates, especially for unrepresented defendants. With the Hong Kong courtroom as the context of their studies, Leung's (2008) and Leung and Gibbons' (2009) studies, however, examine the general cross-linguistic and cross-cultural communication and the problems of interpreting thus arising. Neither of the studies addresses problems specific to the unique nature of the bilingual Hong Kong courtroom – an atypical bilingual setting, where interpreting services are routinely provided for the linguistic majority and where the interpreter usually has to work with court actors who share their bilingual knowledge. The impact on the interactional dynamics and potentially on the administration of justice of the other bilinguals in an interpreter-mediated trial therefore remains unexplored. No doubt the analysis of interpreters' performance has to be situated in the context in which the interpreting event takes place and in relation to the behaviour of the co-present participants in the interpreted talk.

Triadic communication is a highly complex process, especially in the adversarial hierarchical courtroom setting, where power asymmetry between those who testify as witnesses and those who have the right to question the witnesses is palpable (Atkinson & Drew, 1979; Cotterill, 2003; Drew, 1992; Fairclough, 1989; Gibbons, 2008; Harris, 1984; Walker, 1987). This power asymmetry may have a bearing on interpreters' performance. In the light of Morris' (1989) findings, studies which compare interpreting strategies for powerful participants and for powerless participants may shed light on certain interpreting phenomena, not just in the Hong Kong courtroom, but in other

jurisdictions.

The next chapter will review the development of interpreting in the Hong Kong courtroom from its early colonial days to the status quo in the recent post-1997 years. It will demonstrate what makes the Hong Kong courtroom a special legal setting in which this study is situated and what implications this special setting has for the role and power of the court interpreter and of the other court actors therein.

CHAPTER 3

A HISTORICAL REVIEW OF COURT INTERPRETING IN HONG KONG

Court interpreters have long been a fixture of the Hong Kong courtroom. Unlike in many jurisdictions where court interpreters are hired on demand for the benefit of linguistic minorities who do not speak the language of the court, non-English-speaking litigants, defendants and witnesses in the Hong Kong trial courtroom, are the Cantonese-speaking linguistic majority. Statistics from the Census and Statistics Department of Hong Kong show that in 2011 close to 90% of the local population spoke Cantonese, the local dialect, as their usual language whereas those who spoke English as their usual language accounted for only 3.5% of the total population (see Appendix 1). In other words, in a trial conducted in English, court interpreting is a *sine qua non*. Article 11 of the Hong Kong Bill of Rights[9] states that the rights of persons charged with or convicted of criminal offence include inter alia the right to "free assistance of an interpreter if he cannot understand or speak the language used in court". The right for a witness to testify in a language other than the court language is also guaranteed by law.

In order to understand or make sense of the current practice regarding the provision of interpreting in the Hong Kong courts, it is important to review the history of court interpreting in Hong Kong. This chapter serves to set the scene for the study of interpreting in the Hong Kong courtroom by providing an overview of the provision and development of court interpreting in Hong Kong from its early colonial days to the recent post-1997 years. It will demonstrate what makes the Hong Kong courtroom a special bilingual setting in which this study is situated and how the bilingual legal setting changes over time, and it will explore the implications of these changes for the role and powers of the interpreter and of the other court actors. This chapter also reviews the Court Interpreter grade, the change in the court language policy and the entry requirements and training for court interpreters; this has pedagogical implications and I will recommend best practice in the concluding chapter.

3.1 Court interpretation in the early British colonial years

Court interpreting was necessitated soon after Hong Kong was ceded to Britain in 1842, by virtue of the Nanking Treaty. In *The History of the Laws and Courts of Hong Kong from the Earliest Period to 1898*, Norton-Kyshe, Registrar of the Supreme Court of Hong Kong from 1895 to 1904[10], notes that during the first twenty years of the British administration, the question of interpretation had been a matter that "caused the greatest embarrassment" to the colonial government as very often courts either could not sit because no interpreters were available or had to adjourn because of incorrect interpretation (Norton-Kyshe, 1971b, p. 8). The lack of interpreters

[9] Section 8, Hong Kong Bill of Right Ordinance, Cap 383, Laws of Hong Kong.
[10] See (Wesley-Smith, 1972)

was one of the most difficult problems facing the government in its administration and maintenance of law and order, and the lack of competent court interpreters and the poor quality of interpretation hindered the administration of justice (Smith, 1975). This paints a general picture of the state of court interpretation in those days.

3.1.1 The birth of court interpreting and the first court interpreter in Hong Kong

When the British began their colonial rule over Hong Kong in 1843, there was no one in the Government who had any knowledge of the Chinese language and could act as interpreter, except Daniel Richard Caldwell (1816–1875) (Eitel, 1877; Endacott, 1962). Caldwell was born in St. Helena (Norton-Kyshe, 1971a, p. 82), had lived in Singapore and worked in Canton. He spoke Cantonese, Malay, Hindustani and Portuguese, which made him indispensable to the colonial Government in Hong Kong, though he had no knowledge of written Chinese (Eitel, 1877; Endacott, 1962; Kwan, 2011). He first became an interpreter of the Magistrates' Court in January 1843 and a year later when the Supreme Court was established, he was also made Interpreter of that court (Endacott, 1962). There are thus reasons to believe that Caldwell was the first court interpreter in Hong Kong, and for a while the only interpreter working in both the Magistrates' Court and the Supreme Court. The fact that Caldwell was occupying and receiving a salary for two posts caught the attention of the Audit Department in Britain in due course and an explanation was demanded. However, due to the lack of competent interpreters to replace him, the then Governor of Hong Kong, Sir John Davis, "urged that irregularity be overlooked" as the Chief Justice had made it clear that the court would not be able to function without Mr. Caldwell's services (Endacott, 1962, p. 96). Being the only person who was able to bridge the communication gap between the British administrators and the local people, Caldwell became very influential in the colony. He was made Assistant and later Acting Superintendent of Police. However, in addition to his police duties, his services as interpreter were also required in courts. He had twice resigned from the appointments but was reappointed shortly afterwards as it was quite impossible for the Government to function without him. In 1856, Caldwell was appointed Registrar-General, Protector of Chinese because of his ability to communicate with the local population and as General Interpreter to the Government. He was made an official Justice of Peace by virtue of the office he held and was given wide powers in dealing with the Chinese (see Endacott, 1962; Kwan, 2011). Because of his knowledge of Chinese, Caldwell was popular with the Chinese community (Kwan, 2011).

Caldwell was however, later suspected of being associated with the pirate Ma Chow Wong and involved in many questionable transactions (Endacott, 1962; Kwan, 2011). He was eventually dismissed from office in 1861. Whether Caldwell was guilty remains a mystery. Endacott (1962) suggested that Caldwell was never quite trusted by the Government and that "as a man of mixed blood and married to a Chinese, he possibly was not completely accepted socially" (p. 95), while

Kwan (2011, p. 194) notes that the dismissal of Caldwell might have stemmed from the concerns that Caldwell on whom the Government relied so heavily in their administration of the colony would become all too powerful and that as suggested by Norton-Kyshe (1971b, p. 410) the large powers he was given would be turned to his advantage. As a matter of fact, even after Caldwell's departure from the Government, he continued to make himself indispensable up to his death in 1875, as his services were often requested if he happened to be in court as a spectator because of the incompetence of the interpreter in court (Endacott, 1962). Eitel[11] was even quoted as saying that Caldwell was "the best colloquial linguist Hong Kong ever possessed" (Endacott, 1962, p. 99).

3.1.2 The lack of competent interpreters and the quality of interpretation

What rendered Caldwell indispensable to the authorities during the early history of Hong Kong was the shortage of competent interpreters during this period. In a review of oral interpretation in the courts, Eitel observed that there were no competent interpreters attached to the Police Magistracy (i.e. Magistrates' Court) or Supreme Court with the exception of Caldwell, who "was the only Government officer who could interpret from Cantonese into English and *vice versa* with correctness and fluency" (1877, p. 5). As noted above, during the early colonial years, very few people in the service of the Hong Kong Government could act as interpreters and translators between the British administrators and the local Chinese population. Those who could were missionaries who had learned Chinese to spread the gospel, such as Charles Gutzlaff and John Robert Robinson (Bickley, 2001, p. 10). Missionaries however devoted much of their effort to "evangelisation, conversion and education of the Chinese"; most of them were not British and were antipathetic to the colonial government (Lethbridge, 1970, p. 38). Moreover, the Chinese dialects spoken by these missionaries were mostly Cantonese or Mandarin, whereas there were other Chinese dialects such as Chiuchow, Hakka, Amoy and Foochow (also spelt "Fuchow"), spoken by at least one fourth of the local population at that time, for which there were no competent interpreters (Eitel, 1877, p. 5).

In the first few years of colonial rule, the British administration had relied on non-Chinese, mostly on the service of Caldwell and some missionaries as noted above, to interpret in the courts and in other government departments as they did not quite trust Chinese interpreters (Kwan, 2011), and there were few educated Chinese and even fewer who had an understanding of English (Lethbridge, 1970). In 1847, following Caldwell's first resignation from his appointments, however, they had to seek other alternatives by using Chinese interpreters. However, only a handful of Chinese really competent in English were produced by the English-language schools

[11] Ernest John Eitel (1838-1908), a German Protestant missionary to China. He moved to Hong Kong in 1870 and became Director of Chinese Studies in 1875. He was later appointed Inspector of Schools in Hong Kong and the Chinese Secretary to the Governor Sir John Pope Hennessy.

and those employed in the Government did not usually stay long as they were paid less than the non-Chinese interpreters. Chinese clerks who worked for the Government were also asked to act as interpreters in court because of their knowledge of the English language which they must have possessed to be able to communicate with their English-speaking superiors (Kwan, 2011).

With regard to the quality of interpreting during this period, Eitel (1877) noted that both the interpreter (a Chinese) working in the Police Court and the other interpreter (a Macaëse[12]) working in the Supreme Court of Hong Kong were not sufficiently acquainted with English, whilst the interpreter in the Supreme Court was insufficiently acquainted with both English and Chinese. This highlights the shortage of competent interpreters in the early colonial years. Eitel (1877, p. 10) pointed out at the same time that to make the matter worse, the interpreters in both Courts had little understanding of their role and would often engage in lengthy private conversations with witnesses, and "put at their own instigation leading questions to witnesses whilst of the replies thus elicited only so much as appears relevant or judicious to the uncultured minds of the interpreters reaches the ears of Counsel, Jury or Judge". He also finds that the interpreters in both Courts suggested to witnesses what to say, while the Supreme Court interpreter was found to be in the habit of bullying, lecturing and scolding witnesses for giving absurd replies either arising from their "incomprehensibility of the interpreter's unidiomatic speech or peculiarity of pronunciation" or their "mental incapacity or intentional evasion" (1877, p. 10). Eitel suggested that "the evasions, equivocations and other subterfuges which witnesses so often indulge in, and which in the case of English witnesses are at once noted by Counsel, Jury and Judge as a significant part of the evidence, are thus entirely lost sight of in the case of Chinese witnesses" (ibid.). Meanwhile, as the Chinese witnesses were not able to testify in the language of the court, their evidence was subject to the interpreter's "knowledge, judgment and discretion" and depended on "how much he may retranslate or entirely omit their evidence" (ibid). On the other hand, as observed by Eitel, the interpreters' unwillingness, among other things, to admit their "inability to understand the peculiar local patois of a witness" and thus having to resort to guesswork would also have an effect on the accuracy of interpretation. As a natural consequence, the Chinese population then supposed that justice in the Hong Kong court depended "as much upon the good-will or knowledge of the interpreter as upon the legal acumen of the Counsel or the impartiality of the Judge" (Eitel, 1877, p. 10).

From time to time there were native Chinese interpreters caught indulging in corrupt practices and subsequently dismissed, but as noted by Eitel, "the cases of detection were probably few as compared with the amount of rascality carried on undetected" (1877, p. 3). The few Chinese interpreters who were able to bridge the communication gap between court personnel and lay participants were "frequently exposed to the temptation of bribes for giving false interpretation"

[12] Now usually spelt "Macanese" – Portuguese born in Macau.

as Smith observes (1975, p. 71).

3.1.3 The Student Interpreter Scheme

To improve the supply of bilinguals and hence the supply of interpreters and translators and the quality of interpretation, various measures to encourage Government officers to study Chinese or schoolboys to prepare themselves for interpreterships in the Government service were introduced but all ended in failure (Norton-Kyshe, 1971b). In 1861, Sir Hercules Robinson, who took office as Governor of Hong Kong in 1859, proposed a new scheme – The Student Interpreter Scheme (also known as the Cadet Scheme) – to the Legislative Council, arguing that "there was no fit interpreter available, and no existing means were likely to furnish such men" (Norton-Kyshe, 1971b, p. 8). The Governor pointed out at the same time that "it was quite impossible to conduct the government of 120,000 people without proper interpreters who knew their language. The existing interpreters were a failure, not so much from their ignorance of Chinese, as from their ignorance of English" (Norton-Kyshe, 1971b, p. 9). To illustrate the state of affairs, the Governor cited an anecdote he was told by Dr. James Legge[13]: Legge's daughter had her watch stolen, and the thief was caught and brought to court. The only witness to the theft told the court through the interpreter that he was *asleep* on the wall when the crime was committed. The witness's answer was manifestly absurd but would nonetheless have been accepted if Dr. Legge had not been present in court to point out the mistake. It was later made known to the magistrate that what the witness had said was that he was *white-washing* the wall when he spotted the theft[14]. The Governor's proposal was subsequently approved by the Legislative Council.

The scheme was apparently instituted out of a pressing need for better interpretation and translation in the government especially in the courts (Lethbridge, 1970). The Governor's plan was to choose young men under 20 years of age from England to study Chinese in Hong Kong. It was hoped that upon successfully completing the two-year Chinese learning course and passing the examinations, the cadets would act as interpreters and translators between the British administrators and the local Chinese people, and in particular as interpreters in the courts, where the need was pressing (Bickley, 2001; Eitel, 1877; Lethbridge, 1970; Norton-Kyshe, 1971b). The Regulations governing the cadetships published in the Government Gazette on 12 October 1861 stipulated that "[a]t the end of two years' study or as soon afterwards as they shall be declared qualified by a Board of competent Examiners, the three first Cadets shall be appointed

[13] James Legge (1815–1897), A noted Scottish sinologist and the first professor of Chinese at Oxford University (1876–1897)

[14] Chinese is a tonal language, which means that different tones distinguish words that are otherwise pronounced identically, and Cantonese has 6 basic tone markers. In this case, the Cantonese words 粉 (white-wash) and 瞓 (sleep), albeit orthographically different, are distinguished phonetically only by their tones. The problem was obviously caused by the interpreter's failure to distinguish the tone of *fan2* (white-wash 粉) from that of *fan3* (sleep 瞓).

Government Interpreters, and be employed in such of the departments as may require their services…" (Norton-Kyshe, 1971b, p. 10). However as it turned out, none of the cadets recruited under the scheme and subsequently declared qualified by the Board of Examiners ever held the position of interpreter, but instead assumed senior positions in the government in various capacities such as Chief Justice, Postmaster General, Colonial Treasurer, Captain Superintendent of the Hong Kong Police, Registrar General, Administrator of the Colony, Superintendent of Victorian Gaol and Police Magistrate (Bickley, 2001, p. 16; Lethbridge, 1970, p. 39). Lethbridge suggests that the cadets' swift promotion to substantive posts was "a *de facto* violation of the published regulations" (1970, p. 39). Even James Legge, who supported the scheme, was of the view that the scheme would have been more fruitful if it had been better carried out and noted that "there should have been no directing them away from their proper business of study until they had given proof of their actual interpretation in the Supreme Court" (1872, p. 189).

Eitel considered the scheme a "move in the right direction" and noted that it "has done much good" despite all its drawbacks, as the addition of the cadets to the various government departments enabled "a sufficient check" on the interpretation of the native Chinese clerks acting as interpreters and documentary translation (Eitel, 1877, p. 8). Eitel also opined that the scheme did not help with the interpretation in the Supreme Court, where "it is still possible to listen to a game of cross questions and crooked answers which would be amusing if it were not so painful" (ibid.). Like Legge, he considered it regrettable that the practical value of the scheme "was never put on its trial at the Supreme Court" (ibid.).

As a matter of fact, the reason why these cadets never attempted interpreting in the courts is not too difficult to fathom. As the scheme did not require them to have any prior knowledge of Chinese, they all started to learn from scratch an entirely new language which was in no way similar to their native tongue. Two years would never have sufficed to master a new language, let alone the skills of court interpreting, which – as we now know – itself requires rigorous and specialised training. The fact that these cadets never attempted interpreting in court suggests that they were never quite qualified as court interpreters.

As such, the problem of interpretation in the Supreme Court continued to pose a challenge to the colonial government. In the Governor's Report on the Blue Book dated 29 April 1881 (Jarman, 1996), Sir J. Pope Hennessy, the then governor of Hong Kong, addressed the problem of defective interpretation, which had led to a number of miscarriages of justice. The judges and the bar from whom he subsequently solicited views regarding this issue, described the interpretation in the Supreme Court as "deplorably bad", noting that even the Chief Court Interpreter was a Portuguese gentleman, who in their words "cannot interpret the written language of China" and "is unable to express himself in correct English", while the other interpreters were Chinese who received low salaries and did not speak English very well. Governor Hennessy was

told that none of the legal and court personnel (except Mr. Ng Choy[15], the first Chinese called to the bar), including the judges, the Attorney General, Crown Solicitors and the jury, understood a word of Chinese, although it was the language spoken by most of the "prisoners and witnesses" in the majority of the criminal cases and litigants in most of the civil cases (Jarman, 1996, p. 629). In other words, nobody in court, except the interpreter him/herself, would be able to tell if the interpretation was accurate, a situation which is in stark contrast with the present-day Hong Kong courtroom, where most of the court personnel are bilingual.

3.2 Court interpretation from the 1970's to 1997

3.2.1 The enactment of the Official Languages Ordinance in 1974

Nineteen seventy-four marks a major watershed in the official language policy of Hong Kong. It was then that Chinese was given official status along with English, which had been the only official language in Hong Kong for over a century since its colonisation by the British. In 1974, the Official Languages Ordinance (Cap 5) was passed, establishing both English and Chinese as the official languages for the purposes of communication between the Government and the general public, as well as for court proceedings[16]. Subsequent to the enactment of the Official Languages Ordinance, the requirement to use only English in courts was lifted at the Magistrates' Courts and various tribunals. This language restriction was later removed at the other levels of courts in stages from 1996 to 1997 (see Appendix 2).

3.2.2 The creation of the Court Interpreter grade

In the early colonial days, all government interpreters and translators (commonly known as I/T) were a general grade under the then Colonial Secretary's Office (Eitel, 1877; see also Lee, 1994), and later under the Secretariat for Chinese Affairs (Sin & Djung, 1994). Both Lee (1994) and Sin & Djung (1994) suggest that the Court Interpreter grade was established in the year when the Official Languages Ordinance was passed, i.e. 1974. However, Schedule 1 of the Pension Benefits Ordinance (Established Offices) Order[17], listing government grades and the dates from which the offices were to be deemed to be established, shows that the Court Interpreters' Office was established on the 26th of May 1971, three years before the Official Languages Ordinance was enacted. On the date of its establishment, there were only two ranks, Court Interpreter II (the lower rank) and Court Interpreter I. The rank of Senior Court Interpreter and Chief Court Interpreter were created on the 1st of April 1973 and the 14th of October 1981 respectively.

The enactment of the Official Languages Ordinance in 1974 resulted in the creation of the Chinese Language Officer (CLO) grade (now the Official Languages Officer – OLO grade) in the

[15] Ng, also known as Wu Tingfang, served as an interpreter in the Magistrate's Court from 1861 to 1874 before he studied law in England at University College London and became the first ethnically Chinese barrister in history (Pomerantz-Zhang, 1992).

[16] Official Languages Ordinance, Section 3, Cap 5, Laws of Hong Kong

[17] Schedule 1, Pension Benefits Ordinance (Established Offices) Order, Chapter 99J, Laws of Hong Kong

same year[18]. The duties of CLOs were to provide written Chinese translation of official government documents, which were originally drafted in English, for communication with the general public. The creation of the CLO grade subsequently led to the division of the I/T grade into the translation stream and the interpretation stream. Those who opted for the translation stream became CLOs while others chose to join the Court Interpreter grade.

3.2.3 The resistance to the use of Chinese in court by the legal arena

The freedom to use Chinese as the trial language in the Magistrates' Courts from 1974 did not however result in an immediate switch of the court language from English to Chinese for trials heard in the Magistrates' Courts, except for trials heard by special magistrates[19]. One of the reasons was that English remained the language of the law until 1987 when the Official Languages Ordinance was amended to require new laws to be enacted and published in both English and Chinese (Sin & Djung, 1994). April 1989 saw the enactment of the first bilingual ordinance – Securities and Futures Commission Ordinance (Cap 24) (E. Ng, 2009), which also marks the commencement of the bilingual legislation program in preparation for the changeover of Hong Kong's sovereignty in 1997. The other reason was that back in the 1970's and the 80's, courts (the Magistrates' Courts included) were still predominantly presided over by monolingual English-speaking expatriates. It was not until the early 1990s that Chinese began to make its way into Magistrates' Courts, which saw an increase in bilingual court personnel. A newspaper report dated 1 April 1990 in the *South China Morning Post*, a leading English-language newspaper in Hong Kong, reveals that the plan to use Cantonese as the trial language in the Magistrates' Courts met with resistance from the Hong Kong Bar Association and had thus to be postponed (Wong, 1990). Since the scheme allowed the magistrate hearing a trial in Cantonese to record the proceedings in a different language (presumably English), the Bar Association expressed concerns that the magistrate, being not a qualified interpreter/translator, would have to translate Cantonese testimony into English alone and that since the magistrate's notes were not open to scrutiny by other parties during the trial, translation errors made by the magistrate would escape notice. In a trial conducted in English however, the Bar Association argued, any mistakes made by the court interpreter would be noticed and rectified by other Chinese speakers in court (ibid.).

The argument put forward by the Bar Association is indicative of the interpreting reality in the Hong Kong courtroom in the early 1990's, which remains by and large true of the state of affairs in the present-day bilingual Hong Kong courtroom: in a trial conducted in English, the

[18] Ibid.

[19] Following the passing of the Official Languages' Ordinance, special (lay) magistrates were hired in the Magistrates' Court from late 1970's to deal with such cases as hawking and minor traffic offences and trials of such cases are heard in Cantonese and thus no court interpreters are assigned to these courts. Lay magistrates are Cantonese-speaking locals without any legal training.

court interpreter is, unlike his/her counterparts in the early colonial days, not the only bilingual in court and his/her interpretation is open to scrutiny and correction where necessary by the other bilinguals in court. The other reality which was true only of the early 1990's Hong Kong courtroom is that English was often chosen as the trial language with interpretation provided, not because there was a communication barrier between the lay participants and the legal professionals, but because the magistrate either did not wish to translate or considered him/herself incapable of translating counsel's questions and witnesses' testimony into English without the help of the interpreter. Although the law does not require magistrates to keep their notes in English in a Cantonese trial, the Chinese magistrates I worked with and knew of when I served in the courts from 1994 to 1995 all kept their notes in English. The reason for this practice was twofold: first, the writing system of Chinese is far more complicated than its English counterpart and it is thus understandably more efficient to note in English than in Chinese; second, even if the record of the proceedings was kept in Chinese in a Cantonese trial, the Chinese record would have to be translated into English in case of an appeal as Chinese was not allowed in the Court of Appeal until 1996 (see Appendix 2 for the use of Chinese in various courts). This accounts for the resistance of the use of Chinese in the courts from the legal arena and thus the continued use of court interpreters so that a *scrutinised* official record of the proceedings could be kept.

3.2.4 The use of Chinese in the Magistrates' Courts and the role of the interpreter

When it later became obvious that the use of Chinese in the courts was an inevitable trend with the imminent handover of Hong Kong's sovereignty in 1997, bilingual magistrates and counsel made no more attempt to resist the trend but chose to go with it. However, instead of releasing the court interpreter, many magistrates kept the interpreters as language consultants in court and would seek help from them in a whisper when they encountered a problem in the process of translating the proceedings into English (Ng, 1997). In my days as a court interpreter, half of the time when I worked with a Chinese bilingual magistrate, I would be sitting in the court during a Cantonese trial, but could not allow my mind to wander away from the court drama as my services could be required at anytime during the trial.

3.3 The post-colonial court interpretation in Hong Kong

3.3.1 Increasing use of Chinese in the courts

The changeover of Hong Kong's sovereignty in 1997 has resulted in an increasing use of Chinese (Cantonese) as the trial language in the Magistrates' Courts in recent years. In the District Court and the Court of First Instance (CFI) of the High Court, however, a large percentage of the criminal cases are still heard in English on a daily basis due to the presence of expatriate court personnel, judges and counsel included. Statistics from the Department of Justice of Hong Kong reveal that only 32.9% and 26.8% of the criminal cases were heard in Cantonese in 2011 in the

District Court and the CFI of the High Court respectively, and it was not until 2009 that the Court of Final Appeal (CFA) started to deal with some of the appeal cases in Chinese (see Appendix 3). It is expected that Chinese will be put to a wider use at various court levels in the years to come as monolingual English-speaking expatriate judges retire and are replaced by bilingual locals.

3.3.2 The need to work with bilingual court personnel

In the early colonial days, the court interpreter was usually the only person speaking both the language of the lay participants and that of the court as has been illustrated above. Any interpreting mistakes, which might have subsequently led to a miscarriage of justice would simply go unnoticed as discussed above, because few would be able to challenge the accuracy of the interpretation. Today, while interpreters continue to play their part in trials conducted in English, they are no longer the only bilinguals in the courts, which are dominated by legal professionals who speak both the language of the court and that of the witnesses and defendants. The presence of these other bilinguals inevitably subjects court interpreters to immense external pressure and can be presumed to have an impact on the dynamics of interactions in court. It is not uncommon for bilingual counsel or judges to criticise an interpreter's interpretation. For example, on 30 May 1997, the South China Morning Post quoted Barnabas Fung, a magistrate in Western Court fluent in both Chinese and English, as saying that his court interpreter's poor interpretation "could rob the defendant of a fair trial" and that these remarks had left the court interpreter in tears. The magistrate ordered a five-minute break for the interpreter to "collect herself", but she was too upset to continue and had to be replaced. The same article also reports the magistrate's intervention in an earlier trial with the same interpreter when he felt he had to translate a verdict himself (Chow & Chin, 1997).

In the same news article, a judge was quoted as saying that "[t]he quality of court interpreters varies from the very good to the very bad and the situation has become worse in recent years". The judge is probably right about the variation in quality, but could be mistaken in saying that the situation has worsened in recent years. The truth is that there are now more bilingual court personnel who are able to spot interpreting mistakes. It can thus be argued that the presence of the other bilinguals in court makes the process of interpreting in the courtroom more transparent and thus the job of court interpreting more demanding.

3.3.3 The bilingual court reporting system

The installation of the Digital Audio Recording and Transcription System (DARTS) in the courts in the late 1990's is a milestone in the history of court interpreting in Hong Kong as it enables a bilingual court reporting system. Before that, only utterances made in English and the English interpretation were kept in the court record. What was said by the witnesses/defendants in Chinese and the Chinese interpretation of English utterances vanished into thin air once spoken. Even if an

appeal should ensue at a later stage on the grounds of an alleged interpreting error, verification was impossible in the absence of any record of the original testimony in Cantonese. What the court relied on for its verdict was the English version of the trial talk. With the introduction of DARTS, any mistake allegedly made by the interpreter can be checked against the record. Interested parties can apply for access to the bilingual record in case of an appeal. While this inevitably further intensifies the pressure on the court interpreter, it at the same time "holds out the promise that justice will be better safeguarded" (Sin & Djung, 1994, p. 144).

The appeal case (CACC153/2010) between the Hong Kong Special Administration Region (HKSAR) and Ng Pak Lun is an example of DARTS serving as evidence of misinterpretation by the interpreter, which led to the conviction being set aside by the Court of Appeal and a retrial of the case. Interestingly, misinterpretation or inaccurate interpretation did not constitute grounds for the appeal application in this case as counsel for both parties and the trial judge were all non-Cantonese speaking expatriates and were unaware of the inaccuracy in interpretation. It was during the examination of the DARTS transcript necessitated by the appeal that this interpretation problem was uncovered.

In this case, Ng was convicted of murder by a majority verdict of a jury in the CFI of the High Court of Hong Kong, for jointly assaulting the victim to death. It was the prosecution case that Ng, who was shown on the CCTV tape to have participated in the attack with other attackers, must have realised that there was a real risk that one of his fellow attackers with the heavy object he swung at the deceased intended to cause really serious bodily harm to the deceased, and the realisation was sufficient to render him guilty of murder. The following is a suggestion by the trial judge, followed by the interpreter's rendition in Cantonese (back-translation):

Judge: You must have realised that there was a risk that Siu Fung[20], in doing what he did, intended the victim **some really serious bodily harm.**

Interpreter: And actually you, at that time, that is, at the time of the incident, you must have known of the risk in this regard, which is that at the time of Siu Fung so doing, in this respect, [he] would have had the intention of being able to cause the victim, even if not that amounting to grievous bodily harm, that would still possibly cause **some degree of harm**, is that so?

Defendant: Yes <through the interpreter>

The judge of the Court of Appeal described the interpreter's Cantonese rendition as "an unfortunate mistranslation or loose translation". A similar suggestion made by the judge a short while later was interpreted in more or less the same way with "really serious" becoming "some degree of":

Judge: You must have realised at the time that there was a real risk that Siu Fung was attacking the deceased with the intent to cause grievous bodily harm or **some really serious** bodily harm.

Interpreter: You, at that time, must have known that there was some risk in this regard, that

[20] The prime assailant on the defendant's case

at the time Siu Fung attacked that victim, (he) had the intention to cause some grievous bodily harm or to **some degree of** bodily harm, is that so?

Defendant: Yes, I knew it. <through the interpreter>

The judge of the Court of Appeal opined that what the defendant was agreeing to was that he knew Siu Fung had intended at least *some degree of* (emphasis added) bodily harm on the deceased, which was not sufficient to render him guilty of murder. The leave to appeal against the conviction was accordingly granted and a fresh trial upon the same indictment was ordered by the judge of the Court of Appeal. It was estimated that the retrial would cost the government about half a million Hong Kong dollars (roughly £40,000) (Ming Pao, 2011).

This case was widely reported in the news and aroused concerns from the Legislative Council about the quality of interpreting (Hong Kong, 2012). It could be argued that the installation of DARTS provides a final line of defence for the justice system. There is no knowing how many miscarriages of justice had resulted from defective interpretation before the implementation of DARTS, especially in the old days when the interpreter was the only bilingual in court.

3.4 The Court Interpreter grade

3.4.1 The strength of the Court Interpreter grade

Since its establishment in 1971, the Court Interpreter grade has experienced both expansion and contraction. The grade experienced its first expansion during the period from 1980 to 1982 from an establishment of 96 to 142 (Hong Kong, 1982) and a second enlargement in the late 1990s. The establishment reached its peak of 200 in 2001 (Hong Kong, 2001). Thereafter, the grade shrank subsequent to the introduction of an early retirement scheme and a recruitment freeze on government posts and diminished to 136 in 2006 (Hong Kong, 2006). As of 1 August 2012, the total number of full-time court interpreters stood at 167 (M. Tse, 28 August 2012)[21].

In Hong Kong, all new recruits of the Court Interpreter grade (full-time) start from Court Interpreter II before they are promoted to higher ranks (i.e. Court Interpreter I, Senior Court Interpreter and Chief Court Interpreter). Promotions are both performance- and seniority-based and may also depend on the vacancies of the senior grades. Court Interpreters II usually work in the lower courts (magistrates' courts and various tribunals), while Court Interpreters I are attached to the District Court with some to the lower courts as Centre Heads. Senior (or Acting Senior) Court Interpreters usually work in the High Court and the two Chief Court Interpreters of the grade are entrusted with administrative duties of the grade.

Full-time court interpreters differ from their part-time counterparts not only in employment status, but in their language combinations. Full-time court interpreters are required to work from English into Cantonese and vice versa (though many of them nowadays also speak Mandarin and

[21] Email reply from Judiciary Administration dated 28 August 2012.

some also speak other Chinese dialects such as Shanghainese, Hakka, Amoy, Hoklo, Chiuchow, and Toishan)[22]. Apart from the primary duty of providing oral interpretation in court, full-time court interpreters are also entrusted with the duties of translating court documents and the certification of translated documents for use in court.

The service of a part-time interpreter is required when a trial involves a participant speaking a language other than Cantonese or English and the full-time interpreter working on the trial does not speak that language. Part-time court interpreters usually work either between Cantonese and other Chinese dialects or between English and other foreign languages.[23] Where the part-time interpreter's other working language is not a language of the court, typically in the case of a Chinese dialect interpreter working in a trial conducted in English, a relay interpreter is required. In Hong Kong, part-time interpreters provide interpretation and translation in 36 languages and 17 Chinese dialects.[24]

3.4.2 Entry requirements for court interpreters

As has been illustrated above, court interpreting was necessitated at a time when bilinguals competent in both Cantonese and English were a rare species, let alone professionally trained interpreters or translators. Lee (1994, pp. 1-2) notes that in the old colonial days when the Colonial Secretariat appointed I/Ts, the recruitment examination for potential candidates was no more than a test of their linguistic knowledge and writing skills on the level of Classical Chinese and was in no way related to court interpretation. Due to this historical background, a qualification or prior training or experience in translation or interpreting has never been a requirement for the Court Interpreter grade even to this date, though candidates must pass a written translation and an interpretation test before they are invited to attend a selection interview. Presumably in the old days there were no requirements as to the candidates' educational level. The basic requirements for the job would be no more than a high level of proficiency in both Cantonese and English. Many of those who joined the Court Interpreter grade in the 1970's only had secondary education level. As a result, entry requirements for court interpreters have been relatively low despite the demanding and challenging nature of the job. Even as of 2004, the minimum requirements for Court Interpreter II were a pass in two subjects in the Hong Kong Advanced Level Examination[25]. It was not until 2010 that the requirement in a recruitment notice for Court Interpreter II was

[22] Panel on Administration of Justice and Legal Services – Performance of Court Interpreters – LC Paper No. CB(2)1592/03-04(01)

[23] From my experience in court, foreign language interpreters usually have English as their other working language, except Thai, Indonesian and Vietnamese interpreters, who usually have Cantonese rather than English as their other working language. Chinese dialect interpreters mostly have Cantonese as their other working language.

[24] Panel on Administration of Justice and Legal Services – Performance of Court Interpreters – LC Paper No. CB(2)1592/03-04(01)

[25] Panel on Administration of Justice and Legal Services – Performance of Court Interpreters – LC Paper No. CB(2)1592/03-04(01)

raised to a recognised university degree (Judiciary, 2010) (Appendix 4). Another government grade, Simultaneous Interpreter, established on the 4th of September 1973[26] with the duties to provide simultaneous interpretation for meetings of the Legislative Council, District Councils, and press conferences of various governmental departments, however require applicants to inter alia possess seven years' post-qualification experience and to be able to interpret simultaneously with precision and at a great speed from English into Cantonese and vice versa (Civil Service Bureau, 2012) (Appendix 5).

A part-time interpreter must be proficient in the foreign language concerned and in either English or Chinese, and is required to possess a recognised university degree or an equivalent academic qualification. Part-time interpreters for Chinese dialects are required to have attained secondary level education and be proficient in Cantonese and the dialect concerned[27].

3.4.3 Training for court interpreters

Lee (1994), who became a court interpreter in the 1970's, having previously worked as a court clerk, recalls that training for full-time court interpreters did not start to develop until 1974, and that the form of training was "somewhat like an apprenticeship scheme" (p. 2). Subsequent to the establishment of the CLO grade (see Section 3.2.2 above), many government I/Ts opted for the translation stream and became CLOs, presumably because the work of a translator is less stressful compared with that of a court interpreter, resulting in a serious shortage of court interpreters. Consequently many government clerks, especially court clerks, having worked in the court for quite a while and seen many court interpreters at work, considered themselves competent for the job and applied to become court interpreters. The candidates selected were deployed to provide *chuchotage*, i.e. whispered interpreting (WI), to defendants (also known as dockside interpreting in the trade) in magistrates' courts under the supervision of regular court interpreters. This on-the-job training for the student court interpreters went on for about a year before they sat the above-mentioned recruitment examination, and if they passed the examination, they would be appointed court interpreters (presumably at the rank of Court Interpreter II). The training provided for the novice interpreters in those days was no more than to familiarise them with the trial procedural and terminological knowledge. In the early 1980's, a permanent training officer was appointed to provide training for both new recruits and in-service court interpreters (Lee, 1994), and Lee was himself in charge of the Training Unit in the 1990's.

The legacy of on-the-job training for new recruits has been carried on to this day. Training for new recruits in recent years (and in 1994 when I first joined the Grade as a new recruit) is more or less what it was for new recruits in the 70's and 80's as described by Lee (1994) except

[26] Schedule 1, Pension Benefits Ordinance (Established Offices) Order, Chapter 99J, Laws of Hong Kong
[27] Panel on Administration of Justice and Legal Services – Performance of Court Interpreters – LC Paper No. CB(2)1592/03-04(01)

that it lasts for only 4 weeks instead of one year as for the student court interpreters in the old days. During the 4-week training period, new recruits are taken through the trial procedures and are provided with glossaries of common terms pertaining to court proceedings. Arrangements are also made for the new recruits to observe in-service court interpreters at work. At a later stage of the training period, a new recruit is assigned to understudy an experienced interpreter in a magistracy until s/he is confident enough to make his/her debut, usually under the supervision of the same interpreter s/he has understudied. In the new recruits' first year of service, they are required to attend week-end mock trials and visits organised by the Training Unit to various related government departments such as the Customs and Excise Department and various departments of the Police Force.

Newly recruited part-time interpreters are required to attend an induction class on court structure, court procedures and code of practice. During the induction briefing class, the new recruits are given handouts on the court system in Hong Kong, interpreter and witness oath/affirmation specimen charges, brief facts and verdicts, as well as glossaries of legal terms commonly used in court proceedings. Among the various handouts is a copy of the Basic Guidelines for Part-time Interpreters[28](Appendix 6), which, strangely enough, is not given to full-time court interpreters. Although some of the guidelines (Introduction, Status and Remuneration, for example) are specifically intended for part-time interpreters, those under Etiquette largely concern court interpreters' code of ethics about accuracy in interpretation and impartiality of the court interpreter, are equally applicable to full-time interpreters[29]. Experience-sharing workshops are organised by the Part-time Interpreters' Unit from time to time for part-time interpreters to discuss problems encountered, to seek advice from the Unit and to exchange views with their colleagues. However, far from being conducted regularly as the Judicial Administration has claimed[30], these workshops are run only once every two or three years, too infrequently to be of any real help to the interpreters[31].

Training for full-time serving court interpreters organised by the Training Unit during the years 2003 to 2004 consisted mostly of a number of Mandarin (Putonghua) courses and seminars, understandably because of the increasing demand for Mandarin interpretation in court, and visits to the Weapons Training Division and the Police and Detective Training Schools of the Hong Kong Police Force[32].

---

[28] Panel on Administration of Justice and Legal Services – Performance of Court Interpreters – LC Paper No. CB(2)1592/03-04(01)

[29] I was not given a copy of the Guidelines until after I had resigned from the post of Court Interpreter II and changed my status to a part-time dialect interpreter.

[30] Panel on Administration of Justice and Legal Services – Performance of Court Interpreters – LC Paper No. CB(2)1592/03-04(01)

[31] The most recent one I attended was held on 19 November 2011, and the one before that was in August 2008.

[32] Panel on Administration of Justice and Legal Services – Performance of Court Interpreters – LC Paper

3.4.4 The deployment of full-time court interpreters

In Hong Kong, a full-time court interpreter used to be assigned to a court to work with a particular judge for a certain period of time. In the early days, it was not uncommon for a court interpreter to work with the same judge for over 10 years until s/he was promoted to a higher rank and was deployed to another court, or, as suggested by Li (2008), even until the judge retired from office. Sin & Djung (1994) suggest that the arrangement simplifies staff deployment, facilitates communication and helps foster a better working relationship between the judge and the interpreter, as the judge builds up trust and confidence in the interpreter. Li (2008) describes this as a patronage relationship. He agrees with Sin & Djung (1994) that this practice enhances communication and fosters a harmonious working relationship of mutual trust, which has a positive effect on the morale and confidence of the interpreter.

This patronage relationship however may not be in the best interests of justice, as Li (2008) rightly notes that the judge might not be too critical due to the need to maintain a harmonious relationship with the interpreter and might side with the interpreter when his/her interpretation was challenged by counsel. The other disadvantage of this practice as Li (ibid) points out is a lack of motivation on the part of the interpreter to better him/herself to meet future changes and challenges. In the mid-1990's when I was serving in the courts, it was decided that it would be in the best interests of the interpreter for him/her to work with different judges to gain wider experience. As a result, court interpreters were rotated every few months or half a year. Nowadays a monolingual English-speaking judge will have a different interpreter assigned to him/her at an interval of about three months, whereas bilingual judges will not have interpreters assigned to them unless a trial has to be conducted in English due to the presence of monolingual English-speaking counsel for the prosecution and/or the defence. Interpreters who are not assigned to a particular judge work according to the daily roster. When an interpreter is assigned to work on a trial, efforts will be made for the same interpreter to serve in the trial until it is completed. When their service is not called for, court interpreters will work in the office on document translation and certification (J. Lai, August 1, 2012)[33].

3.5 Remuneration and career prospects of court interpreters

The low entry requirements have resulted in a relatively low starting pay and poor career prospects, compared with the Simultaneous Interpreter grade. The Master Pay Scale at Appendix 7 shows that the starting salary of a simultaneous interpreter is only two points lower than that of a Senior Court Interpreter. A retired Chief Court Interpreter recalled at his farewell party years ago that it took him 16 years to be promoted from Court Interpreter II to I and another 16 years to the rank of Senior Court Interpreter. Even today when the career prospects of the grade seem to have

---

No. CB(2)1592/03-04(01)

[33] Telephone conversation on 1 August 2012.

improved a little, it may still take the best interpreters well over 10 years from the rank of Court Interpreter II to reach the rank of Senior Court Interpreter, which is in most cases the highest rank an interpreter can reach, given the fact that within an establishment of 167 court interpreters, there are only two at the rank of Chief Court Interpreter. A review of the Simultaneous Interpreter grade, however, shows that of the 14 interpreters, two are at the rank of Chief Simultaneous Interpreter (Appendix 8), which was created on the 1st of April 1974, less than seven months after the Simultaneous Interpreter grade was established. Even the Official Languages Officer grade (formerly Chinese Language Officer as described earlier in this chapter; see entry requirements at Appendix 9) has better career prospects as it has four promotion ranks, namely, Official Languages Officer I, Senior Official Languages Officer, Chief Official Languages Officer and Principal Official Languages Officer, and there are obviously more posts at the ranks above Official Languages Officer II than the Court Interpreter grade. Li (2008) describes the Court Interpreter grade as one of the few government grades with no career prospects, and this has had an adverse impact on the morale of well qualified and highly experienced court interpreters in particular. As a way to express their discontent and grievances, some interpreters would choose to adopt a negative attitude to work by feigning sickness. They would repeatedly seek help from psychiatrists complaining about the work pressure until they are diagnosed with mental disorder or mild depression due to work pressure. As a result of the diagnosis, they would be able to take sick leave for a prolonged period and on a regular basis until they are dismissed (Li 2008). The reason why they do not initiate a resignation instead, as suggested by Li, is that they would lose all the fringe benefits of a civil servant if they choose to leave on their own initiative. There are other interpreters who used the job as a stepping stone to gain access to the legal arena and have become barristers of law (Li 2008). As a matter of fact, one of them is now a High Court judge. Li (2008) describes court interpreting in Hong Kong as a declining yet not dying industry, one of the reasons being the continued use of English in court, especially in the High Court as noted above.

3.6 Conclusion

The chapter has provided an overview of court interpreting in Hong Kong from its early colonial days to the post-1997 years. It has illustrated that although court interpreters have long been an integral part of the court proceedings in the Hong Kong courtroom, the role of and the power assumed by court interpreters in the early colonial days and their present counterparts differ markedly. In the early colonial days, when bilingualism was, as aptly noted by Anderson (2002, p. 212), "a rare skill which the other parties to the interaction are unable or unwilling to acquire" and when qualified interpreters were "hard to find, and replace", the interpreter was "cast in a highly important role vis-à-vis his clients", and the interpreter's position in the middle "has the advantage of power inherent in all positions which control scarce resources" (ibid). Anderson's argument aptly applies to the state of affairs in the Hong Kong courtroom in the early colonial days and the

power and thus behaviour of the court interpreters. In the present-day Hong Kong courtroom where bilingualism is no longer a rare skill, but is possessed by the majority of the court personnel and even the lay participants in the court proceedings, the power of the interpreter is diminished or as suggested by Anderson “disappears” (2002, p. 214). This chapter has also reviewed the Court Interpreter grade of the Hong Kong Judiciary in various aspects such as its establishment, entry requirements, training, deployment, remuneration and career prospects.

By adopting a diachronic perspective, this chapter has demonstrated the Hong Kong courtroom as a special bilingual legal setting not comparable with many other jurisdictions and has identified the processes responsible for its unique nature. It has also highlighted the potential problems associated with the practice of interpreting inherent to this special setting. The next chapter will explain the methodology and theoretical framework adopted for this study.

CHAPTER 4
DATA, METHODOLOGY AND CONCEPTUAL FRAMEWORK

As has been pointed out in Chapter 1, it is the aim of this study to investigate the bilingual Hong Kong courtroom and to explore in what way the communication dynamics are different from those in many other bilingual courtroom settings. This chapter provides an overview of the research methodology used to address the research questions raised in Chapter 1 and, in particular, presents the theoretical framework this study takes as a point of reference. This chapter also presents the data collection and transcription process and addresses ethical issues relating to the use of the data.

4.1 Access to data

As noted in the previous chapter, the introduction of DARTS into the courtroom in the mid-1990's marks a milestone in the history of court reporting, giving birth to a bilingual reporting system. Before that, only utterances made in English and the interpreted English version of witnesses' testimony constituted the official court record, making it impossible for the court to verify any mistakes allegedly made by the interpreter. With the installation of DARTS, both the speaker's SL utterances and the interpreter's rendition in the TL are digitally audio-recorded. The bilingual recordings of court proceedings provide not only a verification system to ensure better administration of justice, but also a valuable source of data for the teaching and study of interpreting.

In July 2008, I applied to the Judiciary Administrator for leave to access the recorded court proceedings for teaching and research purposes, after my proposal to teach a new course in legal interpreting had been approved by my university – The University of Hong Kong. The Judiciary Administrator, however, referred my application to the High Court Registrar as the release of recorded court proceedings was, according to her, beyond the Judiciary Administrator's terms of reference with regard to the public's access to information, but was rather at the discretion of the High Court Registrar. On receipt of my letter, the High Court Registrar wrote to me to clarify how the data would be used and sought my undertaking that the data would not be freely circulated among students or the web. An undertaking to the effect was made accordingly, in which I reassured the High Court Registrar that all the personal information in the data would be concealed or changed to ensure anonymity. Eventually, the Registrar granted me permission to use the recordings of nine out of the ten trials I had requested[34]. She also waived the reproduction cost of the nine DVDs of the recordings and arranged for me to pick them up one month later. Thus my data comprise nine trials from the three levels of criminal courts, i.e. Magistracies, District Court and High Court, totalling 111 hours and 11 minutes of recording time (see table 4.1 in this chapter).

[34] Access to the recordings of one case, which had been rescheduled for a re-trial, was denied.

With the exception of Case 9, a rape trial, for which a half-day ethnographic observation was undertaken before an application for access to the recordings was lodged, no onsite observation has been done for the other trials. Information regarding the names of the presiding judge, counsel for the prosecution and for the defence, and the defendant in each of the other eight trials are however readily available online as the defendants in all these eight trials lodged an appeal either against conviction or sentence; the judgments of the appeal have all been uploaded online for public access. It was after I had read the judgments of the Court of Appeal that I applied for access to the recordings of the court proceedings in the trial court.

4.2 Funding and data transcription

To help with the transcription of the bulk of the data, I applied to the University of Hong Kong for a research fund and was subsequently awarded in early 2009 an endowment fund "Leung Kau Kui Research and Teaching Endowment Fund – Teaching Grants" in the sum of HKD40,000 (roughly £3,200). The Fund enabled me to hire three student research assistants (RAs). The first RA was a final-year Translation major with a legal background[35] who took up the job during the summer break and worked almost full-time for three months before she found a full-time teaching job and quit. Another RA took over the job; she was a 2nd year Translation major who worked part-time from August 2009 to March 2010. During this period a third RA, a BA first-year student from Shanghai, was hired to transcribe the testimony of a Shanghainese witness in the trial of a blackmail case (Case 4), in which a Shanghainese/Cantonese interpreter and a Cantonese/English interpreter work in relay.

By the time the research fund was used up in March 2010, 49 hours and 12 minutes of the audio recordings had been transcribed, yielding 1,255 pages of transcripts, or 658,166 words in total (see table 4.1 overleaf). Given the bulk of the data, the relatively small amount of fund awarded and the limited time for the whole research project, it was apparent from the outset that it would not be possible to transcribe the data in full. To save time and cost, I listened to the recordings of all the nine trials more than once before deciding which part of a trial was to be transcribed, with no assumptions made about the data beforehand. However, as I was listening to the recordings, I did pay special attention to the interactional dynamics in the communication process and made notes of things that struck me as specific to the context of the Hong Kong courtroom. Two relatively short trials (Cases 1 and 2) have been transcribed in full from plea-taking to the delivery of a sentence. This was to produce a full picture of a trial as different stage of a trial involves different institutional roles and participant roles of the court actors as will be demonstrated in the chapter that follows. I made sure that the data transcribed from each of the other seven trials were representative of the trial as a whole and include the examination-in-chief

[35] This student was admitted to HKU as a law student, but changed her Major to Translation after her first year of study in law.

and cross-examination of witnesses and of defendants (where defendants elect to give evidence). Monologues such as counsel's opening/closing speeches and mitigation, and judges' delivery of verdicts and sentences and case summings-up are included as appropriate to ensure the diversity of the data for analysis.

A small portion of the recordings was transcribed by me before the RAs were hired and after the Fund was used up. Transcription done by the RAs was all checked and corrected by myself against the recordings. Not including my verifying and correction time, the transcription process took my three RAs a total of 777 hours. The time I spent on the correction and revision of the transcripts produced is by no means less than the total transcription time. Table 4.1 below and overleaf shows a list of the cases, the duration of each trial, the part of each trial transcribed and the number of words generated from the transcription.

Table 4.1 List of cases, duration of recordings and no. of words transcribed

Case	**Court**	**Charge**	**Duration**	**No. of words transcribed**	**Part of trial transcribed**
1	MC	Theft	3h 36m	68,127	in full (from plea-taking to sentence)
2	MC	1. Making a false declaration to an immigration officer 2. Conspiracy to defraud the government of the People's Republic of China	4h 4m	58,764	in full (from plea-taking to sentence)
3	MC	Attempting to distribute an infringing copy of a copyright Work	11h 23m	28,683	1) Ex (in chief and cross) of PW1 2) Verdict by J 3) Application of bail pending appeal against conviction
4	DC	Blackmail	16h 34m	29,382	1) Ex (in chief and cross) of PW1 (Shanghainese-speaking) and PW2 2) Verdict and sentence by J
5	DC	Trafficking in dangerous drugs	7h 9m	74,705	Ex (in chief and cross) of PWs 1, 2, 3, 4 and D
6	DC	Arson with intent	14h 7m	48,583	1) Ex (cross) of PW1 2) Ex (in chief and cross) of PW2 and D 3) Verdict by J

7	DC	Wounding	8h 18m	93,378	1) Ex (in chief and cross) of PWs 1, 2, and 3 2) Ex (in chief and cross) of D and DW1 3) Closing speech by PC 4) Closing speech by DC 5) Verdict by J 6) Mitigation by DC 7) Sentence by J
8	HC	Murder	29h 43m	141,077	1) Ex (in chief and cross) of PW1 (Mandarin-speaking), PW2 and PW5 (doctor testifying in English) 2) Ex (in chief and cross) of D and DW1 3) Closing speeches by PC and DC (in part) 4) Sentence by J
9	HC	Rape	16h 17m	115,467	1) Arraignment 2) Jury empanelling 3) Legal argument between DC and PC and J's address to D 4) Ex (in chief and cross) of PW1 and D 5) Summing-up by J
Total length of audio recordings/no. of words transcribed			111h 11m	658,166	

The recordings have been transcribed verbatim, using transcription symbols and conventions for conversation analysis (ref. Silverman, 2006). The transcription is intended to represent the speech in as detailed and multifaceted a manner as possible so as to provide readers with an accurate representation of the interaction and thus includes such non-verbal elements as pauses, emphases and overlapping speech. Concern was however given to the readability of the transcripts as too many details and information could have made them difficult to read. Efforts have thus been made to strike a balance between an accurate representation of the speech and readability of the transcripts (See the lists of transcription keys and abbreviations used in the transcription on pages 10 and 11).

4.3 Ethical issues

As the recordings of court proceedings contain personal information of court participants like names of defendants, witnesses, interpreters and counsel, as well as all other personal details like home addresses and even identity numbers of witnesses, all personal information has been changed or concealed in the transcripts to ensure anonymity, as stated in my undertaking to the High Court Registrar. In my undertaking to her, I made it clear that the data would be used solely for teaching and research purposes, and that where transcripts of the audio record were required

for analyses and illustrational purposes, information containing personal data would be changed to ensure anonymity and confidentiality. All the three RAs were briefed on the need to abide by research ethics. Relevant evidence including the correspondence with the High Court Registrar was submitted to and accepted by the Ethics Committee of Aston University.

4.4 Conceptual framework and analytical tools

To explore the communicative dynamics in an institutional setting like the courtroom, an examination of the institutional and participant roles taken up by court actors is essential, which helps demonstrate not only the participation status of individual court actors but also the power relations between court actors and how power is maintained and realised in the roles ascribed or taken on by them. In this regard, Goffman's participation framework (1981) and Bell's (1984) model of audience design provide useful analytical tools. Goffman (1981) proposes the concept of footing, which he defines as the "participant's alignment, or set, or stance, or posture, or projected self in the production or reception of an utterance" (p. 128), while Bell's (1984) model of audience design suggests that speakers adjust their language style to accommodate their audience. Both Goffman's concept of footing and Bell's audience design have been applied, albeit separately, to the study of interactions in police interviews, both monolingual (Haworth, 2013; MacLeod, 2010) and bilingual (Wadensjö, 1998), and in interpreter-mediated court proceedings (Angermeyer, 2009; Leung & Gibbons, 2008). Haworth's (2013) study, based on Bell's (1984) audience design model, examines how the interviewers and interviewees during police-suspect interviews orient their talk to their future audiences in the courtroom despite the fact that they are addressing each other. Applying Goffman's (1981) concept of footing as one of her analytical tools, MacLeod (2010) examines the discursive patterns of interactions between police officers and female rape victims during police-witness interviews. She demonstrates how police interviewers indicate their relationship with a message uttered (or in other words, shift their footings) by reporting and formulating interviewees' answers, thus representing themselves as neutral and mere animators of the words uttered while ensuring that the interviewees retain principalship of the utterance. While both Haworth's (2013) and MacLeod's (2010) studies examine interactions in a monolingual legal setting, the others explore interpreter-mediated interactions in court proceedings (Angermeyer, 2009; Leung & Gibbons 2008) and police interviews (Wadensjö, 1998). Both Leung & Gibbons's and Wadensjö's studies, built on Goffman's (1981) participation framework, suggest that interpreters' change of footing by using reported speech to represent the voice of the SL speaker is closely bound up with the distribution of responsibility for the interpreted talk. The use of reported speech in interpreting is seen in both studies as a shift in the interpreter's footing to declaim responsibility for the propositional meaning of the interpreted talk. On the other hand, Angermeyer (2009) argues that interpreters' use of reported speech can be regarded as their accommodation to the audience in court, following Bell's (1984) model of audience design.

While both Goffman's participation framework and Bell's model of audience design are found to be useful analytical tools in the study of interactions in legal settings as illustrated above, they are usually used alone and none of the above-mentioned studies for example adopts both of them in their analysis. The current study will however combine both conceptual frameworks in its investigation of the interactional dynamics in the bilingual Hong Kong courtroom and explore inter alia how interpreters' shifts of footings (Goffman, 1981), can be explained by Bell's (1984) notion of audience design. In other words, the two frameworks are intended to complement each other for the analysis of my data. The section that follows will thus examine these two models in some detail.

4.4.1 Goffman's participation framework

Goffman introduces his participation framework with the notion of "footing" and points out that "participants over the course of their speaking constantly change their footing" (1981, p. 128). In Goffman's categories, the notion of "speaker" comprises the following three production roles:

> **animator** – "the sounding box", "the talking machine", "a body engaged in acoustic activity", "an individual active in the role of utterance production" (pp. 144, 226);
> **author** – someone who has selected the sentiments that are being expressed and the words in which they are encoded (1981, p. 144), the agent who puts together, composes, or scripts the lines that are uttered (p. 226);
> **principal** – someone whose position, stand or belief is established by the words that are spoken (pp. 144, 226).

According to Goffman (1981), when an individual speaks lines which have been composed by him and which attest to his own position, he combines the three functions of animator, author and principal. He however points out that such congruence may not always be found in reality. For example, in radio talk, the announcer is usually only the animator of his lines, while the author and the principal are usually the station, the sponsor or even "right-thinking people" (p. 226). Other examples of individuals merely animating other peoples' words and beliefs (in other words, without being the author or principal of the words uttered) include the reciting of a text we have fully memorised but had no hand in formulating and reading a deposition or providing a simultaneous translation of a speech (see Section 4.6.1 for a discussion on the suitability of this example). He concludes that "it is not true to say that we always speak our own words and ourself [sic.] take the position to which these words attest" (p. 146). He suggests that different production formats provide speakers with different relationships to the words they utter and thus the interpretative frameworks in terms of which their words can be understood (p. 230).

As regards reception roles, Goffman (1981, pp. 131-132) identifies two basic categories of hearers – the ratified and the unratified. According to Goffman, ratified hearers are official listeners comprising both the addressed recipients, who are being directly addressed, and the unaddressed recipients, who may or may not be listening; whereas the unratified are non-official

listeners who can be overhearers or eavesdroppers depending on whether they are unintentional bystanders or purposely engineered followers of the talk.

Goffman regards the unratified participants as "bystanders", whose presence is however considered the rule, not the exception. Those who follow the talk and "catch bits and pieces of it, all without much effort or intent" are categorised as "overhearers", whereas those who "surreptitiously exploit the accessibility they find they have" will qualify as "eavesdroppers" (p. 132).

Goffman's notion of footing with regard to speaker roles has received considerable attention and application (see Leung & Gibbons, 2008; MacLeod, 2010; Wadensjö, 1998 above). His hearer roles have however received little application, which, as noted by Haworth (2013), is because Goffman's participation framework, "focuses on the individual's involvement in the interaction taking place, rather than their effect on the discourse they witness" (p, 6). Goffman's framework does not for example elaborate on the influence the hearer roles might have on the footings adopted by the speaker. The reason why I have adopted Bell's model of audience design (introduced in Section 4.4.2 below) is to complement the conceptual framework for this study.

4.4.2 Bell's model of audience design

While Goffman's participation framework deals with both speaker roles and hearer roles, Bell's (1984, 1990, 1997) model of audience design concerns only the latter and addresses the impact the hearers have on speakers' speech styles. Following Goffman's participation framework in respect of reception roles, Bell's model of audience design has a taxonomy of four audience members as follows:

Addressee – listeners who are known, ratified and directly addressed (addressed recipient in Goffman's framework of reception roles)
Auditor – listeners who are known, ratified but not directly addressed (unaddressed recipient in Goffman's framework of reception roles)
Overhearer – non-ratified listeners whose presence the speaker is aware of
Eavesdropper – non-ratified listeners whose presence the speaker is unaware of

Bell's notion of audience design is modelled on the accommodation theory proposed by Giles and Powesland (1975) and Giles and Smith (1979), which suggests that speakers vary and adjust their speech style to their addressees to reduce social differences, or otherwise to accentuate the linguistic differences between them and their addressees to indicate power or status differences. While Bell's model chiefly builds on a similar premise (that speech style is in essence the speaker's response to the audience), he suggests that not all audience members are equally important and that speakers accommodate primarily to their addressees, the second person, while other participants, third persons, such as auditors and overhearers affect speaker style to a lesser degree. Bell discriminates between acquainted overhearers, whom the speaker knows personally and "for whom the speaker may specifically design an utterance" (Bell, 1984, p. 177), and

unacquainted overhearers such as co-travellers on a bus, who understandably have less influence on the speaker's utterances. In Bell's model, eavesdroppers, whose presence is not known to the speaker, are presumed to have no influence on speaker style. Bell represents the hierarchy of attributes and the audience roles in the following table:

Table 4.2 Hierarchy of attributes and audience roles (Bell, 1984)

Bell's categorisation of the audience members is similar to Goffman's classification of reception roles, which is depicted in a similar table below for comparative purposes.

Table 4.3 Hierarchy of attributes and reception roles (Goffman, 1981)

A comparison of the two tables shows that a major difference between the two is that in Goffman's framework, access of the non-ratified participants (whether as overhearers or as eavesdroppers) to the encounter, "however minimal, is itself perceivable by the official participants" (Goffman, 1981, p. 132) as their presence is the rule, not the exception, whereas in Bell's model, the eavesdropper's presence, "intentionally or by chance" (1984, p. 159), is not known to the speaker. Obviously, Bell differentiates overhearers from eavesdroppers depending on whether their presence is known to the speaker or not, whereas Goffman's differentiation of overhearers from eavesdroppers is based on the listeners' intentionality, with the former being inadvertent listeners and the latter purposely engineered followers of the talk. As it would not be possible for the speaker to know the intentionality of the listeners, it can be argued that Goffman's categories of listener roles are conceptualised from the listeners' point of view, not from the speakers' perspective. By contrast, Bell's audience roles are categorised from the speaker's perspective, that is, the speaker's assumption about the roles of the listeners and thus the influence they have on the speaker's design of his/her talk. For this reason and for the purpose of this study, I will use Goffman's production framework only for the speaker roles and Bell's categories of listener roles for my analysis of how speakers change their footings or participant roles based on their perceived audience in the courtroom.

4.5 Application of the frameworks to the analysis of monolingual trial talk

Before I can embark on the analysis of participant roles in a bilingual courtroom – a marked legal setting (a less common or unusual legal setting) – it is important to see how the conceptual framework can be applied to the unmarked (dominant or usual) monolingual courtroom. The application of the conceptual framework to a monolingual courtroom will serve as a point of reference for my analysis of participant roles and interactional dynamics in bilingual legal settings.

Based on the production roles delineated in Goffman's participation framework, the institutional roles (IR) and speaker roles (SR) in witness examination in a monolingual trial for example can be construed as follows (Table 4.4).

Table 4.4 Institutional roles and speaker roles in witness examination of a monolingual trial

IR	SR
Examining counsel (EC)	Animator/author/(principal)
Witness (W)	Animator/author/principal
Non-examining counsel (NEC) who interrupts or raises objections	Animator/author/(principal)
Judge (J) who interrupts to clarify an ambiguous point or passes rulings on objections	Animator/author/principal

In the examination of a witness in a monolingual courtroom, the speakers are usually the examining counsel (EC) who acts as the questioner and the witness as the answerer, though the non-examining counsel (NEC) may object to the questions put to the witness, and the judge (J) may pass his/her rulings on the objections raised, or interrupt to clarify an ambiguous point, and in so doing, cast themselves in the speaker role. Since counsel represents either the prosecution or the defence, his/her words may not attest to his/her own belief or stance though s/he may have composed the lines s/he utters based on the instructions s/he has been given. Counsel's speaker role therefore combines the roles of animator and author (but may not always be principal of every utterance s/he makes). Levinson describes counsel's speaker role in the examination of a witness as *spokesman* – "speaker (of questions) but not fully source" (1988, p. 197). It is true, however, that during the examination of a witness, there may be stages when counsel (EC or NEC) speaks also as principal of his/her talk, for example, when NEC raises objections to what s/he believes to be a speculative or leading question asked of a witness, and when EC responds to the objections, the arguments presented can be taken to represent counsel's own belief, knowledge and judgment, and therefore attest to their own stand.

On the other hand, when witnesses (W) answer counsel's questions, or when the judge seeks clarification from counsel or witnesses or passes rulings on objections, they are speakers, who combine the roles of animator, author and principal as the words they utter represent their sentiments and position.

Adopting the audience roles as elaborated by Bell (1984), the institutional roles and audience roles (AR) in witness examination of a monolingual trial are represented in Table 4.5 below.

Table 4.5 Institutional roles and audience roles in witness examination of a monolingual trial

IR	AR
W	Addressee (of counsel's question)
EC	Addressee (of witness's answer)
Defendant (D), not testifying/Jury (JR)	Auditor
J	Addressee (of objections) Auditor (of verbal exchanges between counsel and the witness)
NEC	Auditor (of verbal exchanges between examining counsel and witness) Addressee (of judge's rulings on objections)
Public gallery (PG)	Overhearers

When the examining counsel and the witness address each other, they are by default each other's addressee. The defendant (D), the non-examining counsel, the judge and the jury (JR) (where the case is tried by jury) most of the time take on the role of auditor as close followers of the talk. Bell explains that the term "auditor" is drawn on the normal associations of the word which means one who audits as in a class without being an "addressed" student or "one who audits utterances as in a sense similar to the accounting practice" (1984, p. 173), that is, a ratified third person who is paying close attention to what is being said.

Those in the public gallery (PG) can be categorised as overhearers as their presence is noticeable to the speaker given that the trial talk takes place in an enclosed courtroom, though they may or may not be following the talk closely. These non-official participants as overhearers in the trial talk are not supposed to assume a speaker role in the proceedings. Note that under the common law adversarial system, jurors, despite their roles as addressees (as in the case of jury instructions or counsel's submission) or auditors (as in witness examination), are most of the time silent followers of the trial talk like the overhearers in the public gallery and do not usually have a speaker turn. They take on a speaker role only when they have to take the oath and pass the verdict, the latter being the duty of the jury foreman.

Where no recording of the court proceedings is allowed and thus the interaction is available only to those physically present in the courtroom where the trial takes place, there, as noted by Jacobsen (2002, p. 233) can be no category of eavesdroppers under Bell's categorisation of audience roles. However, where court proceedings are routinely recorded as in the case of the Hong Kong courtroom, researchers, media representatives or appeal court judges who later gain access to and review the recordings or the verbatim transcripts produced thereof for various purposes may be termed eavesdroppers, though they presumably have no impact on the speaker style if their "presence" is unknown to the speaker, and are therefore excluded from the analysis of the participant roles in court. In the case where speakers do have these potential recipients in mind and adjust their speech styles accordingly, they however become Bell's category of "referees", which he defines under his referee design as "third persons not physically present at an interaction, but possessing such salience for a speaker that they influence speech even in their absence" (1984,

p. 186). Referee design is intended by Bell to complement his "audience design" for examining style shifts in mass communication. Bell contends that "all third persons, whether absent referees, present auditors or overhearers, influence a speaker's style in a way which echoes the effect they would have as second person addressees." (1984, p. 186). In the courtroom, there can be instances when speakers speak for the record instead of for those present in the courtroom. As referees are absent from a face-to-face interaction, referee design is beyond the scope of this study, which focuses on the interactional dynamics of court actors physically present in the courtroom.

4.6 Application of the frameworks to the analysis of bilingual trial talk

So far the conceptual framework seems to work well for the role analysis of court actors in a monolingual trial. Let us see how it can be applied to a bilingual courtroom.

4.6.1 The speaker role of the interpreter

What renders a bilingual courtroom different from a monolingual one is the inclusion of an interpreter in the trial talk. It is therefore important to examine the participant role(s) of the interpreter in the triadic encounter.

It could be argued that, in the *conduit* model (see Chapter 2), the interpreter is not considered a participant proper in an interpreted interaction but a transparent presence, which however has been proved in empirical studies more of a myth than a reality (see Section 2.5.1). Goffman's citation of the provision of "simultaneous translation of a speech" as an example of the speaker animating someone else's speech (1981, p. 146) is contentious as it is tantamount to confirming the mythical conduit model for the interpreter and the suggestion that interpreting is a mechanical process in which a message can be transferred from one language to another intact without the interpreter having to input his/her knowledge, effort and judgment in creating a new version of the talk. In producing the TL version of the message, the interpreter, as suggested by Wadensjö (1998), necessarily becomes the author, though not the principal. There are, however, times when the interpreter goes beyond the strictest sense of relaying or translating, but assumes the role of a coordinator and creates his/her own talk in the course of coordinating the talk between the interlocutors not speaking each other's language, thus qualifying also as principal (Wadensjö, 1998).

4.6.2 The listener role of the interpreter

On the other hand, the interpreter as a listener does not easily fit into Bell's categories of audience roles. The normative practice requires the monolingual interlocutors to address each other as if the interpreter was invisible and if all the interlocutors abide by the rule of addressing each other directly, the interpreter is not an addressee as s/he is one the monolingual interlocutors address each other *through*, not *to*, i.e. not an end receiver of the message. Nor can s/he be regarded an auditor or overhearer, who only has a passive listener role. In other words, the interpreter has a

listener role that lies somewhere between an addressee and an auditor. I have therefore decided to look into Wadensjö's (1998) reception format for my analysis of the interpreter's listener role in the course of interpreting.

Wadensjö (1998) suggests that Goffman's analytical distinction of recipientship fails to take into account the different listener roles a participant in an interaction takes or is ascribed. To complement Goffman's participation framework, Wadensjö (1998, p. 92) proposes a reception format, in which she suggests that one may listen as r*eporter* and memorise for repetition words just uttered by another speaker as in a say-after-me language lesson, or as *recapitulator* who recapitulates what was said by the preceding speaker when s/he takes over the floor; or as *responder* by introducing content of his/her own or by back-channelling and gazing like a direct addressee.

Applying Goffman's production format and her own reception format to interpreter-mediated encounters, Wadensjö (ibid.) suggests that an interpreter taking or being given a *reporter*'s role in the reception format would be expected to speak only in the restricted sense of 'animator' of someone else's speech; by taking or being given a *recapitulator*'s role, an interpreter would be expected to speak as both animator and author of the production format, whereas interpreters taking the role of *responder* would relate to their talk as animator, author and principal and as the ultimate addressee as in the case of clarifications with the preceding speaker. Wadensjö suggests that in the course of interpreting, interpreters, with the "mandate and responsibility to compose new versions of utterances", always take the reception role of *recapitulator* and thus the production role of animator and author. The reception roles and thus the production roles the interpreter takes can be represented in Figure 4.1 below.

Figure 4.1 Interpreter's Relationship between reception format and production format

Reception format		**Production format**
Reporter	➔➔	animator
Recapitulator	➔➔	animator, author
Responder	➔➔	animator, author, principal

No doubt Wadensjö's reception format complements Goffman's production format nicely, though her categories of listener roles as "reporter", "recapitulator" and "responder" seem to suggest more of speaker roles than of listener roles. Wadensjö explains that these listener roles denote "different *modes of listening* (and subsequently reacting)" (1998, p. 91) and suggests that distinguishing different modes of listening would help "more thoroughly elucidate how individuals demonstrate their own opinions and attitudes concerning rights and responsibilities in interaction" (1998, p.92). The other problem as I see is that Wadensjö's reception format deals only with active listening, but not with passive listening. That is, it does not deal with other

listener roles in the courtroom, who may not have a speaker turn such as jurors as addressees/auditors and spectators in the public gallery as overhearers. For this reason, I will use her role categories only for the interpreter's listener roles, which I will combine with Bell's audience roles and Goffman's speaker roles for my analysis of the participant roles in interpreter-mediated trial talk (see Figure 4.2 below).

Figure 4.2 Participation framework of interpreter-mediated talk in the courtroom

Speaker role			Audience role			
animator	author	principal	addressee (responder)	reporter/ recapitulator	auditor	overhearer

In dialogic communication, the addressee also has a *responder* role in that s/he has to respond to the preceding speaker when s/he takes over the speaker turn, as in witness-examination. It would thus make sense to put *responder* in the same column as addressee, though in trial monologues such as counsel's closing speeches and the judge's jury instructions, the addressee usually does not have a responder role (that's why I have placed it in brackets). The interpreter assuming a responder role would thus be cast in the same role as direct addressee in dialogic communication. The listener roles of *reporter* and *recapitulator* are put in a separate column as they have a more active listening mode than auditors and overhearers – as they have to *report* or/and *recapitulate* what they have heard when the speaker turn is handed over to them.

4.6.3 Participant roles in the typical bilingual courtroom

The speaker roles in trial talk at any stage, even with the mediation of an interpreter, seem to fit easily into the categories outlined by Goffman (1981). In an interpreter-mediated trial, the examining counsel, the interpreter (I) and the witness take turns to speak (with the interpreter actually doing most of the talking), the interpreter is therefore included as one of the speakers (see Table 4.6 below).

Table 4.6 Institutional roles and speaker roles in witness examination through an interpreter who is the only bilingual in court

IR	SR
EC	Animator/author/(principal)
Interpreter (I)	Animator/author Animator/author/principal (when s/he seeks clarifications from counsel/witness)
W	Animator/author/principal
NEC who interrupts or raises objections	Animator/author/(principal)
J who interrupts to clarify an ambiguous point or passes rulings on objections	Animator/author/principal

The audience roles during witness examination in an interpreter-mediated trial can be construed as

in Table 4.7, with the examining counsel and the testifying witness as each other's addressee and the interpreter assuming a listener role as a reporter, a recapitulator or a responder as s/he deems necessary or appropriate. In theory, like in a monolingual trial, the examining counsel and the witness are each other's addressee as if the interpreter were transparent. In reality, however, people not used to working with interpreters tend to address the interpreter rather than the official addressee. In that case, the interpreter will become an addressee of the talk. The audience roles for the defendant, the public gallery and the other legal personnel remain more or less the same as in a monolingual trial except that for the witness's testimony, they have to follow the interpreter's rendition, rather than the witness's SL version.

Table 4.7 Institutional roles and audience roles in witness examination through an interpreter who is the only bilingual in court

IR	AR
EC	**Addressee** (of interpretation of witness's answer)
W	**Addressee** (of interpretation of counsel's question)
I	**Reporter/recapitulator/responder**
D who speaks the language of the court but not that of the witness and is not testifying	**Auditor** (of counsel's question and interpretation of witness's answer and all the verbal exchange between counsel and judge)
J	**Addressee** (of objections) **Auditor** (of counsel's questions and interpretation of witness's answers)
JR	**Auditors** (of counsel's questions and interpretation of witness's answers, and all the verbal exchange between counsel and judge)
NEC	**Addressee** (of judge's rulings on objections) **Auditor** (of counsel's questions and interpretation of witness's answers)
PG who speak the language of the court	**Overhearers** (of counsel's questions and interpretation of witness's answers, and all the verbal exchange between counsel and judge)

4.6.4 Participant roles in the atypical bilingual Hong Kong courtroom

As has been demonstrated above, in a typical bilingual courtroom, where the interpreter is the only bilingual and interpretation is provided for the benefit of the linguistic minority not speaking the language of the court, both the speaker roles and listener roles of court actors are relatively simple and predictable. Let us see what will happen in the atypical Hong Kong courtroom if the same conceptual framework is to be applied.

It must be pointed out that whether the interpreter is the only bilingual in the courtroom or not does not make any difference as regards the speaker roles. Therefore the institutional roles and speaker roles in a witness examination mediated by an interpreter in the atypical Hong Kong courtroom would be the same as those construed in Table 4.6, where the interpreter is the only bilingual.

However, the notion of audience roles, with the presence of other bilinguals, is inevitably

rendered more complicated and the interaction more dynamic, as bilingual court actors take on more participant roles, often simultaneously. Table 4.8 below compares the different audience roles in witness examination in an interpreter-mediated trial with the other court actors being monolingual and bilingual respectively.

Table 4.8 Institutional roles and audience roles in witness examination through an interpreter with and without the presence of bilingual court actors

IR	AR	
	Monolingual	Bilingual
EC	**Addressee** (of English interpretation of witness's answers)	**Addressee** (of English interpretation of witness's answers) **Overhearer** (of Cantonese interpretation of his/her questions and witness's answers in Cantonese
W	**Addressee** (of Cantonese interpretation of counsel's questions)	**Addressee** (of Cantonese interpretation of counsel's questions) **Overhearer** (of counsel's questions in English and interpreter's rendition of his/her answers into English)
I		**Reporter/recapitulator/responder**
D (who speaks the language of the witness, and is not testifying)	**Auditor** (of Cantonese version of the talk)	**Auditor** (of Cantonese version of the talk) **Overhearer** (of English version of the talk)
J	**Addressee** (of objections) **Auditor** (of English version of the talk)	**Addressee** (of objections) **Auditor** (of English version of the talk) **Overhearer** (of Cantonese version of the talk)
JR	**Auditors** of English version of the talk	**Auditors** (of English version of the talk) **Overhearer** (of the Cantonese version of the talk)
NEC	**Addressee** (of judge's rulings on objections) **Auditor** (of English version of the talk)	**Addressee** (of judge's rulings on objections) **Auditor** (of English version of the talk) **Overhearer** (of Cantonese version of the talk)
PG	**Overhearer** (of Cantonese version of the talk)	**Overhearer** (of Cantonese/English version of the talk)

As illustrated in the above table, bilingual court actors are capable of assuming more audience roles than their monolingual counterparts. First of all, if the examining counsel is bilingual, in addition to his/her official role as the addressee of the interpretation of the witness's answers, s/he may also slip into a non-ratified role as an overhearer of the witness's answer in Cantonese as well as the interpreter's rendition of his/her question into Cantonese, pick up interpretation mistakes or omissions and draw the court's attention to such mistakes or omissions.

In some cases, a witness may be bilingual or part-bilingual, but elect to give evidence in Cantonese, and s/he may also act as an overhearer of the questions put to him/her in English and

the interpreter's rendition of his/her answers into English.

The judge and the silent counsel have to follow the talk closely. If it so happens that they are bilingual, like the bilingual examining counsel, they may, in addition to their official role as auditors of the talk in English – the language in which the trial is conducted – also act as overhearers of the witness's answers in Cantonese and the interpreter's rendition into Cantonese and raise the issue of misinterpretation in the course of overhearing.

Given that around 90% of the Hong Kong population is Cantonese-speaking, as noted in Chapter 3, members of the jury mostly speak Cantonese as their first language, though to qualify as a juror, one must have "a sufficient knowledge of the language in which the proceedings are to be conducted to be able to understand the proceedings"[36]. It follows that in a trial conducted in English, most, if not all, of the jurors are bilingual. These silent hearers, while in their official role as auditors of either version of the talk as they see fit (now that both English and Cantonese are official languages and that everything said in court is digitally recorded), may from time to time slip into the role of overhearers of the version of the talk other than the one they are following. As silent followers of the talk throughout much of the trial, jurors however rarely draw to the court's attention any inconsistency they may have identified between the interpreted version and the original of the talk.

In cases where the Cantonese-speaking defendant (who would most likely choose to follow the talk in Cantonese) is bilingual, or part-bilingual so to speak, s/he may be able to pick up bits and pieces of the talk in English, rendering him/her an overhearer as well, as I will demonstrate with my data.

The public gallery, and other court personnel such as the court clerk may or may not be following the talk closely, qualifying them as overhearers. When they do listen to the talk, they are more likely to follow the Cantonese version than the English one. However with a certain degree of competence in English, they may be able to catch some of the talk in English, resulting in overhearing of the English version of the talk.

I have categorised listeners following the other version of the talk not intended for them, be it English or Cantonese, as "overhearers" instead of auditors for two reasons. First, in Hong Kong for example, bilingual witnesses who have elected to testify in Cantonese are not allowed to respond to counsel's question in English without waiting for it to be interpreted into Cantonese; similarly, bilingual counsel are not supposed to respond to a witness's answer in Cantonese and must wait for it to be interpreted into English. Likewise, jurors bilingual in both English and Spanish in the US courts are constantly reminded by the judge to ignore witnesses' original testimony in Spanish and to pay attention only to the English interpreted version (Berk-Seligson, 1990). The fact that they are also following the talk in a language other than the court language (in

[36] Section 4(c), Jury Ordinance, Cap 3, Laws of Hong Kong.

the case of bilingual counsel) or the language in which they have elected to testify (in the case of bilingual witnesses) renders them non-ratified listeners and thus overhearers of the talk. Second, when designing their talk, the primary concern of the interpreter is the listeners for whom the talk is intended, whether as addressees or auditors. It is nonetheless true that, when producing their interpretation, the interpreter is understandably conscious of the bilingual skills these people possess and may accommodate to them accordingly. These non-ratified listeners can thus be regarded as acquainted overhearers in Bell's categorisation and may thus affect the interpreter's style, though to a lesser degree.

4.7 Conclusion

This chapter has explained how the data were collected and transcribed. It has provided an overview of Goffman's (1981) participation framework and Bell's (1984) model of audience design, and explained how these frameworks can be applied to the analysis of trial talk in different settings. The next chapter will illustrate the application of this conceptual framework to real-life data and to the analysis of participant roles at different phases of a trial in a monolingual courtroom – the unmarked legal setting, which is intended as a point of departure before we move on to analyse the participant roles of court actors in the marked bilingual legal settings, both typical and atypical, in the chapters that follow.

CHAPTER 5
PARTICIPANT ROLES IN MONOLINGUAL TRIAL TALK

The previous chapter presented the conceptual framework for this study. It differentiated three courtroom settings, monolingual, typical bilingual and atypical bilingual, and explored the application of the conceptual framework to the analysis of the participant roles in the three different settings. This chapter focuses on the monolingual courtroom and demonstrates the participant roles of the court actors in this setting, using the conceptual framework presented in the previous chapter and examples are drawn, where possible, from existing research in monolingual trials, or otherwise from my own research data[37]. Through an examination of the participant roles at various stages of a trial, this chapter aims to demonstrate how the roles of the participants change from one stage of the trial to another and how a change in the interactional dynamics brings about a change in the participant roles of the interlocutors in the interaction. The analyses are intended as a foundation and a point of departure for the analyses of the roles of participants in interpreted trial talk in the following chapters, including that of the interpreter.

5.1 Trial procedure in the adversarial common law courtroom

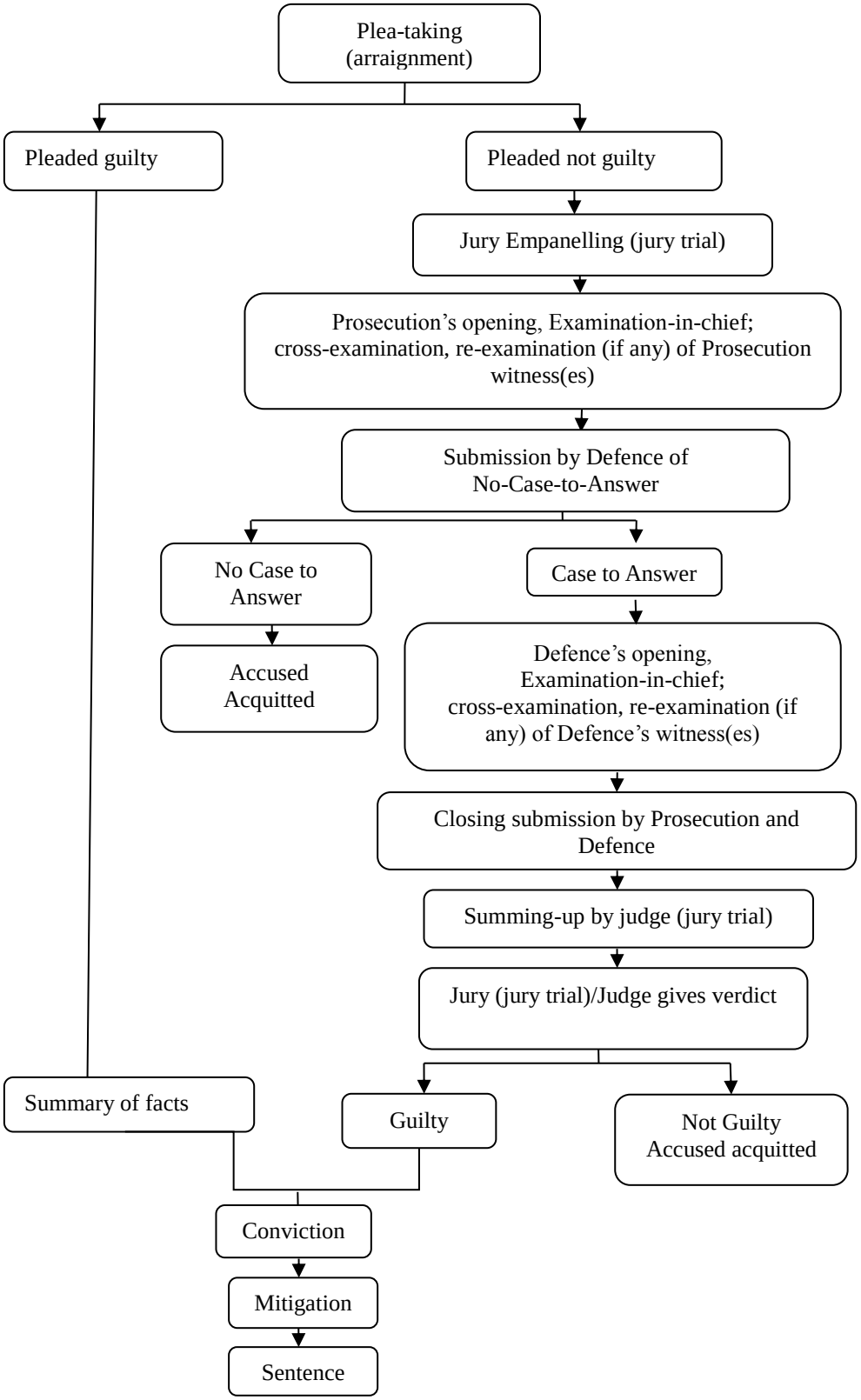
The criminal trial procedure in a common law courtroom, be it monolingual or bilingual, is more or less the same (see Figure 5.1 overleaf). Figure 5.1 is a simplified flowchart which combines the criminal procedures in the District Court and in the CFI of the High Court in Hong Kong, a common law jurisdiction, where serious indictable criminal cases and some civil cases such as defamation or malicious prosecution are tried in the CFI of the High Court by a judge sitting with a jury and trials in the lower court (District Court and Magistrates' Court) are tried summarily by a judge/magistrate alone (Heilbronn, 1998 ; Judiciary, 2008). References are also made to research from other adversarial jurisdictions such as the United States and the United Kingdom. For a description of the trial procedure in the American courtroom, see for example Cotterill's (2003) study of the O.J. Simpson's trial and De Jongh (1992), or Heffer (2005) for the trial of *R v Speak* in an English courtroom.

5.2 Participant roles in a monolingual trial

It is apparent from Figure 5.1 that different stages of the proceedings involve different institutional roles and hence different participant roles (PR). See Cotterill (2003) for participants and interactional dynamics at different trial phases and Heffer (2005) for "the trial as ritual" (2005, p. 72).

[37]The data of my study were obtained from interpreter-mediated trials. For the purpose of illustrating the participant roles in monolingual trials in this chapter, they are hypothetically treated as being taken from a monolingual trial.

Figure 5.1 **Flowchart of Criminal Trial Procedure in a Common Law Courtroom**[38]



[38] Adapted from the flowcharts of criminal procedure of CFI of the High Court and District Court of the Judiciary of Hong Kong. <http://www.judiciary.gov.hk/en/crt_services/pphlt/html/guide.htm>

5.2.1 Arraignment

A jury trial usually starts with the arraignment (Example 5.1) where the formal written indictment is read to the defendant by the court clerk (see Heffer, 2005, p. 73). The defendant, having heard the charge formally put to him, will have to tell the court whether he will plead guilty or not guilty. The institutional roles (IR) and participant roles (PR) in an arraignment can be construed as those presented in Table 5.1.

Example 5.1 Arraignment, Case 9

CC	In the High Court of the Hong Kong Special Administrative region, Court of First Instance, Criminal Case No. <omitted>, <name omitted>, accused, you are charged as follows: Statement of offence: Rape, contrary to Section 118(1) of the Crime Ordinance, Cap two (.) hundreds. Particulars of offence, <name omitted>, on the thirtieth (.) day of August, 2006, <details of address omitted>, in Hong Kong, raped <name omitted>. Accused, <name omitted>. How say you are guilty or not guilty?

Table 5.1 Participant roles in the arraignment of a monolingual trial

IR	PR					
	SR			AR		
	animator	author	principal	addressee	auditor	overhearer
CC	+	−	−	+	−	−
D	+	+	+	+	−	−
J/C	−	−	−	−	+	−
PG	−	−	−	−	−	+

The one who reads the indictment to the defendant, i.e., the court clerk (CC), is what Goffman (1981) would have termed "animator", as he is simply reading a script, which was obviously not prepared by him, but by the prosecution, and is thus not an author of the words he is uttering. Nor can he be regarded as expressing his own beliefs or stance by animating these words. The addressee is the defendant (D), who, when replying to the question, is the speaker in a full notion, combining the roles of "animator", "author" and "principal". The court clerk is the addressee of the defendant's reply, while the judge (J) and counsel (C) are cast in the role of auditors as close followers of the talk, though the ultimate destination of the defendant's reply is the judge, whom Levinson has described as "indirect target" in his derived categories of Goffman's (1981) reception roles (1988, p. 173).

Since the arraignment is administered before the jury empanelment, the jury is excluded from the audience roles. Those in the public gallery (PG) as non-official participants in the trial usually assume the role of overhearers as noted in the previous chapter.

5.2.2 Jury Empanelment

If a plea of guilty is entered, the defendant will be convicted and sentenced without the prosecution having to call its witnesses to testify in court. In the case where the defendant pleads not guilty to the charge and if it is a trial by jury, the court will proceed to the selection of jurors,

who at the end of the trial will decide whether the defendant is guilty or not guilty. The newly empanelled jury will then be briefed by the judge on, inter alia, the nature of an adversarial common law trial and the procedure of the trial. Example 5.2 is taken from the judge's instructions to the jury in the involuntary manslaughter trial of Michael Jackson's personal doctor, Conrad Robert Murray, in relation to Jackson's death (Case No. SA073164)[39].

Example 5.2 Judge addressing a newly empanelled jury in *People v Conrad Robert Murray*

Table 5.2 Participant roles in instructions to jury in a monolingual trial

IR	PR					
	SR			AR		
	animator	Author	principal	addressee	auditor	overhearer
J	+	+/−	+/−	−	−	−
JR	−	−	−	+	−	−
D/C	−	−	−	−	+	−
PG	−	−	−	−	−	+

In addressing the jury, the judge assumes the role of the speaker (animator), but he may or may not be the author or principal especially of words relating to the trial procedure, which he may simply be reciting from a fully memorised text which he "had no hand in formulating" (Goffman, 1981, p. 145). Note that the judge's instructions to the jury are monologic in nature in that the addressee, i.e. the jury, does not have a speaker turn as in an ordinary conversation.

5.2.3 Prosecution's opening and examination of prosecution witnesses

In a jury trial the prosecution case usually commences with an opening statement, in which counsel for the prosecution outlines to the jury what evidence the prosecution is going to present during the trial. What is said in the opening address is however not evidence itself. Example 5.3 is again taken from the trial of *People v Conrad Robert Murray*.

Example 5.3 David Walgren's (PC) opening statement in *People v Conrad Robert Murray*[40]

[39] Available from: http://cnninsession.files.wordpress.com/2011/11/jury-instructions.pdf
[40] Available from: http://muzikfactorytwo.blogspot.hk/2011/10/prosecutor-opening-statement-full.html

Table 5.3 Participant roles in PC's opening address in a monolingual trial

IR	PR					
	SR			AR		
	Animator	author	principal	addressee	auditor	overhearer
PC	+	+/−	+/−	−	−	−
JR	−	−	−	+	−	−
J/D/DC	−	−	−	−	+	−
PG	−	−	−	−	−	+

Like the judge's procedural instructions to the jury, the prosecution's opening address is also a monologue (see Cotterill, 2003, p. 94) with the prosecutor, or prosecution counsel (PC) as the speaker, who again may or may not be the author or principal. The audience roles are more or less the same as in the judge's instructions to the jury, with the jury as the addressee, the judge, the defendant and the defence counsel (DC) as the auditors, and the public gallery as the overhearers.

The prosecution's opening is followed by the examination of the prosecution witnesses. Example 5.4 below is taken from the examination-in-chief of a witness in *R v Speak* cited in Heffer (2005, p. 78).

Example 5.4 Examination-in-chief of Witness in *R v Speak*

Table 5.4 Participant roles in witness examination in a monolingual trial

IR	PR					
	SR			AR		
	animator	author	principal	addressee	auditor	overhearer
PC	+	+	+/−	+	−	−
W	+	+	+	+	−	−
JR/J/D/DC	−	−	−	−	+	−
PG	−	−	−	−	−	+

Table 5.4 shows the most likely participant roles in a typical witness examination with the prosecution counsel as the examiner and the witness as the answerer as in Example 5.4 above, and hence the participant roles taken on by individual court actors, based on the conceptual framework presented in Chapter 4.

Note that under the common law adversarial system, the examination of witnesses is conducted by counsel with the judge assuming a fairly passive and supervisory role (see Cotterill, 2003; Damaska, 1975; Danet & Bogoch, 1980). This means that the judge has little power or control over the flow of the evidence. A judge's power in the evidential phase of a trial however lies in "his ability to intervene as and when required" (Cotterill, 2003, p. 94). When the need for intervention does arise (see Example 5.5, taken from the drug trafficking case of my data), the judge casts himself in the role of a speaker (combining the role of animator, author and principal,

so does the examining counsel when responding to the judge's intervention), while the other reception roles would remain more or less the same (see Table 5.5). Note the change in the witness's role from a speaker/addressee to an auditor in the judge/counsel interaction.

Example 5.5 Clarification by Judge during cross-examination of a prosecution witness, Case 5

1	J	I don't understand that kind of general question
2	DC	Well…well, I…I…I fail to (.) understand Your Honour why you don't understand my question
3	J	Well, I don't. Do you?
4	DC	I am asking this as a general question: Who would require methadone (1) treatment?
5	J	Ah, you didn't mention methadone.
6	DC	I did mention methadone all along.
7	J	Well, I didn't hear you.
8	DC	I said who would require methadone treatment a..a.as a general question. I did (.) ask (.) methadone.

Table 5.5 Participant roles when Judge interrupts Counsel in a monolingual trial

IR	PR					
	SR			AR		
	animator	author	principal	Addressee	auditor	overhearer
J	+	+	+	+	−	−
DC	+	+	+	+	−	−
JR/D/PC/W	−	−	−	−	+	−
PG	−	−	−	−	−	+

Likewise, the non-examining counsel may cast him/herself in the speaker role by raising objections to a question put to a witness, and thus rendering the judge the addressee, who in return will have to take over the speaker turn to pass his/her rulings on the objections raised as demonstrated in Example 5.6 below taken from the oft-cited O. J. Simpson murder case (Cotterill, 2003, p. 142).

Example 5.6 Objection by PC during cross-examination of a prosecution witness in O. J. Simpson murder case

The defence counsel, Mr. Cochran's question (Q) in Turn 1 is addressed to the witness (addressee), who however sees his speaker turn to reply to the question taken over by Mr. Darden, the prosecution counsel, and is subsequently rendered one of the auditors like the jury and the defendant in the ensuing interaction between the judge and counsel (Table 5.6).

Table 5.6 Participant roles in objection/ruling sequences

IR	PR					
	SR			AR		
	animator	author	principal	addressee	auditor	overhearer
DC	+	+	+/−	+	+	−
W	−	−	−	+	+	−
J	+	+	+	+	−	−
PC	+	+	+	+	−	−
JR/D	−	−	−	−	+	−
PG	−	−	−	−	−	+

5.2.4 Submission of no-case-to-answer

At the close of the prosecution's evidence, the defence may submit to the court that there is no case for the defendant to answer on the grounds that the evidence presented by the prosecution is not sufficient to establish the defendant's guilt and that the charge against the defendant should be dismissed, which in the American courtroom is called "motion for a direct verdict" (Peoples, 2000, p. 148). In a jury trial, the jury has to be excused when a no-case-to-answer submission is being heard by the court so that the jurors will not be prejudiced by judge's subsequent ruling over the application. Example 5.7 is an extract of a defence submission taken from *R v Speak* (Heffer, 2005, p. 26) in which the defence counsel is persuading the judge to dismiss one of the charges against the defendant in the absence of the jury, who are therefore excluded from the reception roles and the addressee is the presiding judge (see Table 5.7). If the judge rules that there is no case for the defendant to answer, the charge will be dismissed and the defendant acquitted as shown on Figure 5.1.

Example 5.7 A submission of–no-case-to-answer in *R v Speak*

Table 5.7 Participant roles in submission of no-case-to-answer in a monolingual trial

IR	PR					
	SR			AR		
	animator	author	principal	addressee	auditor	overhearer
DC	+	+	+/−	−	−	−
J	−	−	−	+	−	−
D/PC	−	−	−	−	+	−
PG	−	−	−	−	−	+

5.2.5 Defence's opening and examination of defence witnesses

In the case where the no-case-to-answer application is rejected, the trial will continue and the defence will open its case and call the defendant and/or any other defence witnesses to rebut the

evidence presented by the prosecution. Under the common law system, it is however not obligatory for the defence to prove the defendant's innocence as the onus of proof is on the prosecution. This rebuttal process is therefore omitted in some trials. Where the defence opts for a rebuttal process, the defence case will open in much the same way as the prosecution's case (De Jongh, 1992, p. 100), except that the defence does not usually start with the defence counsel's opening speech, but with presentation of evidence by the defendant (if s/he elects to take the stand) and/or other defence witnesses, each of which is followed by cross-examination by the prosecution. Table 5.8 illustrates the most likely participant roles in the defendant's examination in-chief/cross-examination.

Table 5.8 Participant roles in defendant's examination in a monolingual trial

IR	PR					
	SR			AR		
	Animator	author	principal	addressee	auditor	overhearer
EC	+	+	+/−	+	−	−
D	+	+	+	+	−	−
J/JR/NEC	−	−	−	−	+	−
PG	−	−	−	−	−	+

Like the examination of prosecution witnesses, the examination of the defendant is dialogic in nature with the examining counsel and the defendant as both speaker and each other's addressee while the other reception roles remain more or less the same as in the examination of prosecution witnesses (see Table 5.4 above).

5.2.6 Closing submissions

At the close of both the prosecution and the defence cases, counsel for both sides usually make a closing speech in which they comment on and/or discredit the other side's evidence in an attempt to persuade the jury (jury trial) or the judge (non-jury trial) to accept their respective versions of the evidence as illustrated in Examples 5.8 and 5.9.

Example 5.8 Prosecution closing argument in O. J. Simpson murder case (Cotterill, 2003, pp. 206-207)

Example 5.9 Defence closing argument in in O. J. Simpson murder case (Cotterill, 2003, p. 217)

Examples 5.8 and 5.9 are both taken from the same case, a jury trial. Like the prosecution's

opening address, counsel's closing speeches are monologues targeted at the jury (addressee). The prosecution's closing speech would therefore produce exactly the same participant roles as its opening (see Table 5.3). For the defence counsel's closing speech, the participant roles can be construed as those presented in Table 5.9 below.

Table 5.9 Participant roles in DC's closing speech in a monolingual trial

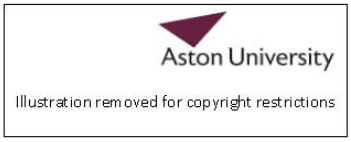
IR	PR					
	SR			AR		
	animator	author	principal	addressee	auditor	overhearer
DC	+	+/−	+/−	−	−	−
JR	−	−	−	+	−	−
J/D/PC	−	−	−	−	+	−
PG	−	−	−	−	−	+

For a non-jury trial, the addressee of counsel's closing speeches is the presiding judge in lieu of the jury, while other reception roles at this stage of the trial would remain pretty much the same as in a jury trial.

5.2.7 Summing-up by judge (jury trial)

The closing arguments are usually followed by the judge's verdict (non-jury trial) or summing-up for the jury (jury trial). In the summing-up, it is the judge's duty first of all to direct the jurors on law by explaining to them for example the functions of the judge and the jury, the burden and standard of proof, the interpretation of offences as well as other general and legal directions. This is followed by a review or summary of the evidence presented in court (see Heffer, 2005, pp. 162-163). Example 5.10 below is an extract from the summing-up of *R v Speak* cited by Heffer (2005, p. 87).

Example 5.10 Judge's summing-up in *R v Speak*



Like the judge's instructions to the jury at the start of the trial, the judge's summing-up is a monologue addressed to the jury and produces the same participant roles (see Table 5.2 above).

5.2.8 Verdict by jury

In a jury trial, the jury decides on the verdict and it is the court clerk's duty to take the verdict from the jury foreman following the judge's summing-up as illustrated by Example 5.11 extracted from Case 9 of my data.

Example 5.11 CC taking verdict from the jury foreman, Case 9

1	CC	Mr Foreman, can you please stand up? I am going to ask you to return your verdict.
2	Foreman	Yes.
3	CC	On the count of rape against of the accused, <name omitted>, have you reached a verdict?
4	Foreman	Yes.
5	CC	Is the verdict unanimous?
6	Foreman	No.
7	CC	By what majority?
8	Foreman	er…6 to 1
9	CC	What is your verdict?
10	Foreman	Not guilty.
11	CC	Thank you.

As in the arraignment, the court clerk in his speaker role, is only animator, someone who is simply performing the ritual of the trial by reciting lines of a script he obviously "had no hand of formulating" (Goffman, 1981, p. 145). In his reply to the court clerk, the foreman of the jury however combines the roles of animator and author, but may or may not be principal in this case as the verdict is not unanimous but 6 to 1. That is, he might be the odd one out who found the defendant guilty. If, however, he is one of the other 6, then he is also principal (or co-principal) of his utterance as he is at the same time speaking on behalf of the other jurors who found the defendant not guilty. (see Table 5.10 below).

Table 5.10 Participant roles in jury verdict in a monolingual trial

IR	PR					
	SR			AR		
	animator	author	principal	addressee	auditor	overhearer
CC	+	−	−	+	−	−
Foreman	+	+	+/−	+	−	−
Other JRs	−	+/−	+/−	−	+	−
J/C/D	−	−	−	−	+	−
PG	−	−	−	−	−	+

5.2.9 Verdict by judge in non-jury trials

In a non-jury trial, it is the judge who decides on and delivers the verdict. The judge/magistrate usually gives a brief summary of the evidence before passing his/her verdict. The following is an extract of a verdict from a theft case tried in a magistrates' court of my data.

Example 5.12 Verdict by judge, Case 1

J	In Mannings store in Shatin, the defendant was seen in the...in that company. She entered the shop. She took what was described as a complimentary product, …she then went over and purchased two packs of biscuits. So, she didn't leave the shop immediately because apparently the cashier is inside the shop. Having purchased the two packs of biscuits, she (.) returned back to the shop. Er she then took a BAG of er Doraemon biscuits, placed them all into the plastic bag she had been given by Mannings…. In this case, I have to satisfy that the defendant was acting dishonestly, and had the intent to permanently deprive Mannings of these items….Having (.) having reached this factual conclusion, I must (.) bring in a conviction against the defendant as charged.

It is interesting to note that although obviously the verdict is targeted at the defendant, the judge is all along referring to the defendant in the third person, not the second person, as if he was addressing all those in court, not the defendant exclusively. A review of my data shows that in all the seven non-jury trials, the judges/magistrates all address the defendants in the third person when delivering their verdicts, although in all the cases, the defendants are specifically told to stand up for the verdict, a sign which indicates the defendant as the addressee and target of the verdict. It is possible that the judges/magistrates wish to avoid being personal and to maintain a distance from the defendant. Nonetheless, the judge, in delivering the verdict, is animating his own words (animator and author) which also represent his own stance and beliefs (principal) (Table 5.11). The defendant as an addressee however is not expected to respond to the speaker and therefore does not have a speaker turn.

Table 5.11 Participant roles in verdict by judge in a monolingual trial

IR	PR					
	SR			AR		
	animator	author	principal	addressee	auditor	overhearer
J	+	+	+	−	−	−
D	−	−	−	+	−	−
C	−	−	−	−	+	−
PG	−	−	−	−	−	+

5.2.10 Mitigation

If the defendant is found not guilty, s/he will be acquitted following the verdict. A guilty verdict on the other hand is usually followed by a plea for mitigation, which is advanced by the defence counsel (if represented) on behalf of the defendant or the defendant him/herself (if unrepresented). The following is the defence counsel's mitigation for the defendant of the theft case after her conviction (Example 5.13) with the participant roles suggested in Table 5.12.

Example 5.13 Mitigation by counsel, Case 1

DC	Right. As Your Worship knows that she has a clear record, and er...and the...her background aspect is (.) already stated in the report. I don't say that em (.) BEAR IN MIND she has a clear record (.) and that I would simply ask Your Worship to impose a lenient fine. THAT's...that's all I wish to say

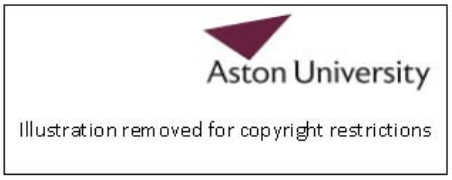
Table 5.12 Participant roles in mitigation by counsel in a monolingual trial

IR	PR					
	SR			AR		
	animator	author	principal	addressee	auditor	overhearer
DC	+	+	+/−	−	−	−
J	−	−	−	+	−	−
D/PC	−	−	−	−	+	−
PG	−	−	−	−	−	+

5.2.11 Sentencing

Sentencing is either passed on the same day as the verdict is delivered or reserved for another day. Social inquiry reports about the defendant may be ordered to assist the judge with the sentencing (Carr, 1983; Peoples, 2000). Example 5.14 is the sentence passed by the judge in *R v Speak* (Heffer, 2005, p. 90), which produces the same participant roles as in the verdict delivery (see Table 5.11 above).

Example 5.14 Sentencing in *R v Speak*



5.3 Conclusion

This chapter has examined the roles of participants at the various stages of a criminal trial (with and without a jury) in a monolingual common law courtroom. It has been illustrated that, with the exception of the non-participating audience in the public gallery whose roles as overhearers remain fairly static throughout the trial, the roles of other participants as primary interlocutors vary from one stage of the trial to another and may also depend on the interlocutors' communicative activities such as judicial interventions and objection sequences during the evidential phase. It was also found that a change in a primary participant's role necessarily resulted in a change in the roles of other participants, turning, for example, a key interlocutor into an auditor and vice versa.

It is thus concluded that the participant roles are as dynamic in the institutionalised trial talk as in ordinary conversations. What will happen in a bilingual trial? How will the introduction of an interpreter into the courtroom impact on the communication process and on the participation status of court actors? What impact may the presence of other bilinguals in court have on the behaviour of the interpreter and on the interactional dynamics in interpreter-mediated trial talk, and what are the implications for the administration of justice? These questions will be explored in the following chapter, which will examine two bilingual courtroom settings, one with the interpreter as most likely the only bilingual as is the case in most jurisdictions and the other with the presence of bilingual court actors other than the bilingual interpreter.

CHAPTER 6

PARTICIPANT ROLES IN INTERPRETER-MEDIATED TRIAL TALK

The previous chapter examined the roles of participants at the various stages of a criminal trial in a monolingual common law courtroom and exemplified how the participant roles of primary interlocutors change from one stage of the trial to another and vary with the interlocutors' communicative activities in the judicial process. This chapter focuses on *interpreted* trial talk in two bilingual legal settings as differentiated in Chapter 4. The first one is a typical bilingual setting where interpretation is provided for the linguistic minority with the interpreter as the only bilingual in the courtroom; the other is the atypical bilingual Hong Kong courtroom, where the interpreter is hired because the linguistic majority do not speak the language of the court and more often than not has to work with other bilingual court actors.

This chapter will compare first of all the majority and minority languages spoken by court actors in both settings, as whether the language in which a witness testifies is the language of the court or that of the defendant will decide on the modes of interpretation adopted at different phases of the trial and thus the participation statuses of individual court actors in the proceedings. It seeks to demonstrate that in addition to the role the interpreter takes on or is ascribed during the course of interpreting, the modes of interpretation and the court actors' linguistic proficiency have a direct bearing on their participation status in an interpreter-mediated trial, which may impact on the administration of justice. For the typical setting, examples will be cited from existing literature on court interpreting, and for the illustration of the Hong Kong bilingual courtroom, I will use my own data.

6.1 Interpreting in a typical bilingual setting

6.1.1 Language(s) of the court and court actors in a typical bilingual setting

In many jurisdictions, interpreters are hired to serve the need of the linguistic minority, either a defendant or a witness, who does not speak the language of the court, and the interpreter is usually the only person who speaks both the defendant's/witness's language and the court's language, whilst the majority of the other court actors speak the language in which the trial is conducted.

Assuming that the defendant is the only person who does not speak the language of the court – the majority language (Language A) – but speaks only Language B – the minority language – and that the interpreter is the only bilingual speaking both Language A and Language B (see Table 6.1 overleaf), everything said in Language A will be interpreted into Language B for the benefit of the defendant, whose turns in Language B will be interpreted into Language A for all the court actors in their various participant roles.

Table 6.1 Languages of court actors in a typical bilingual setting

Institutional role (IR)	Language spoken
counsel, judge, jury, witnesses, public gallery	Language A (court/majority language)
Defendant	Language B (minority language)
Interpreter	Languages A & B

6.1.2 Modes of interpreting and the interpreter's visibility

Interpretation provided for the linguistic minority, the defendant for example, is conducted for much of the trial in the simultaneous mode (i.e. WI or *chuchotage*) without the speaker having to pause at regular intervals to allow his/her utterance to be interpreted, and WI is thus "off-the-record" as noted by De Jongh (1992, p. 45) in her depiction of the US courtroom. This mode of interpreting enables the interpreter to remain less intrusive and thus more invisible throughout the trial, though it would be difficult, if not impossible, to monitor the quality of the interpretation. In other words, with WI, it would be difficult to ascertain to what extent the defendant is able to participate in the speech act in his/her role as auditor. Where interpretation is provided in the consecutive mode, usually when a defendant or witness who does not speak the language of the court takes the stand and is examined by counsel, the interpreter is brought into the foreground, and ostensibly assumes a participant role in the interaction. Going through the trial procedure, in the case where the defendant is the only one who does not speak the language of the court, CI is usually provided during the arraignment, the examination of the defendant, and the judge's verdict and sentencing, in which the defendant has a speaker role and/or a role as the direct addressee. For the rest of the trial where the defendant is but an auditor, interpretation is usually provided to him/her in *chuchotage* with the interpreter standing/sitting next to him/her. With the interpreter working in the background in a relatively non-obtrusive mode, the trial is conducted in very much the same way as one without the assistance of the interpreter and the roles of the other court actors, including those in the public gallery, remain more or less the same as in a monolingual trial as described in the previous chapter.

In cases where those who do not speak the language of the court are not the linguistic minority, but the linguistic majority, interpretation provided in a whisper however does have an impact on the participation status of the other court actors. This will be discussed later in this chapter. As for now, my analysis will focus on the stages of the trial which require the interpreter to work in the consecutive mode. As has been pointed out earlier on, consecutive interpreting inevitably highlights the presence of the interpreter, who now has a speaker turn as do the other interlocutors; the role(s) the interpreter takes on or is ascribed may have an impact on the other court actors' access to the interpreted encounter and thus their participation status in the trial.

6.1.3 The interpreter as relayer

Interpreting, as noted by Wadensjö (1995, 1998), is a process of both relaying and coordinating,

and that where the interpreter takes on the role of relayer, s/he acts only as animator (and author) of the interpreted version of the monolingual interlocutors' utterances as in Example 6.1, taken from Berk-Seligson's (1990) study of the American courtroom, in which a Spanish-speaking witness is testifying through an interpreter with interpretation provided in the consecutive mode.

Example 6.1 Interpreter-mediated witness examination, adapted from Berk-Seligson (1990, p. 239)

Turn	Speaker	SL utterances/interpretation
1	PC	Sir, would you state your name, please?
2	I	<interpretation in Spanish>
3	W	<answer in Spanish>
4	I	Roberto Quesada Murillo.
5	PC	Where were you born?
6	I	<Interpretation in Spanish>
7	W	<answer in Spanish>
8	I	In Saltillo.

Based on the assumptions in Table 6.1, and the conceptual framework presented in Chapter 4 in respect of the role categorisation in a typical bilingual courtroom (Tables 4.6 and 4.7), the participant roles can be construed as follows (Table 6.2).

Table 6.2 Participant roles in interpreter-mediated witness examination (Example 6.1)

IR	PR						
	SR			AR			
	animator	author	principal	addressee (responder)	reporter/ recapitulator	auditor	overhearer
PC	+	+	+/−	+ of English rendition of W's answers	−	−	−
I	+	+	−	−	+	−	−
W	+	+	+	+ of Spanish rendition of PC's questions	−	−	−
D DC J JR	−	−	−	−	−	+ of English version of the talk	−
PG	−	−	−	−	−	−	+ Of English version of the talk

As illustrated in Example 6.1, the defence counsel, the interpreter and the witness take turns to speak, and therefore they all have a speaker role in the interaction. The speaker roles for both the witness and the prosecution counsel remain unchanged with or without the mediation of the interpreter, in that the witness speaks in the sense of animator, author and principal, whereas the

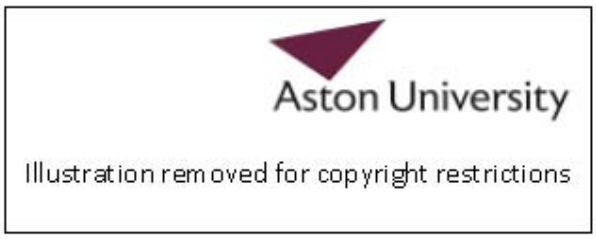
prosecution counsel has the roles of animator and author but may or may not be the principal as his words may only attest to the stance of the prosecution, not his own. By relaying only what is said by the monolingual interlocutors, the interpreter takes on the speaker roles as animator and author of the interpreted talk and the listener roles as reporter and/or recapitulator as was noted in Chapter 4. The defendant, the judge, the jury and the defence counsel are auditors and the non-participating audience members in the public gallery are overhearers of the English version (original and interpretation) of the interaction. In an idealised communication with no possibility of misunderstanding nor the need for clarification, and where the interpretation is a both propositionally and pragmatically accurate representation of the SL meaning, all the court actors should have full access to the defendant's testimony and counsel's questions as their counterparts do in a monolingual trial.

Problems of communication are however commonplace in dyadic communication, let alone triadic encounters. Where a problem arises or communication breaks down, the need for clarification and coordination becomes obvious. In a monolingual trial, a clarification procedure only results in a change in the participation status of the interlocutors, but not of the non-participating court actors. In an interpreter-mediated trial, however, the clarification procedure may change the participation status of all the court actors. The following section will exemplify how an interpreter's change of his/her role or footing may impact on the participation status of other court actors.

6.1.4 The interpreter as coordinator

As has been evidenced by empirical studies (e.g. Berk-Seligson, 1990; Hale, 2001, 2004; Jacobsen, 2008; Wadensjö, 1993, 1995, 1998), interpreters in the courtroom do from time to time interrupt court proceedings to clarify witnesses'/defendants' answers and counsel's questions, to correct an interpreting mistake, or to answer a witness's clarifying question. When the interpreter interrupts, seeks clarification from examining counsel or responds to a witness's request, s/he becomes his/her own voice and thus takes on a full participant role in the interaction. Example 6.2, taken from Jacobsen's (2008) study of a criminal trial, in which an English-speaking defendant is testifying through an interpreter in a Danish courtroom, illustrates the interpreter responding to the English-speaking defendant's (linguistic minority) request for clarification of the prosecutor's intention.

Example 6.2 Interpreter responding to defendant's request for clarification (Jacobsen, 2008, p. 57)



By taking the defendant's request for clarification upon herself and responding to it directly without rendering it into Danish and referring it back to the prosecutor, the interpreter renders herself an addressee of the defendant's question and takes on a listener role as responder, while at the same time assuming the speaker roles of animator, author and principal. However, in so doing, she has temporarily excluded the participation, in the trial, of not only the other interlocutor, i.e. the prosecutor, but also other court actors including the defence counsel, the judge, the jury as well as the public gallery, who are supposedly the linguistic majority, i.e. speakers of the court language – Danish (see Table 6.3 below).

Table 6.3 Participant roles when Interpreter responds to Defendant's request (Example 6.2)

IR	PR						
	SR				AR		
	animator	author	Principal	addressee (responder)	reporter/ recapitulator	auditor	overhearer
I	+	+	+	+	−	−	−
D	+	+	+	+	−	−	−
PC/DC/ J/JR/PG	−	−	−	−	−	−	−

Assuming that no other court actors except the interpreter speak the language of the defendant, the verbal exchange between the interpreter and the defendant from turns 2 to 4, necessarily excludes the other court actors (linguistic majority in this case) from the audience by the use of a language unintelligible to any of them. Being excluded from the communicative process, these Danish-speaking court actors are linguistically absent, albeit physically present in the encounter. Therefore, only the defendant and the interpreter have a participant role in the interaction, while the others have all been excluded.

Example 6.3, again taken from Berk-Seligson's (1990) study, illustrates an interpreter clarifying the prosecuting attorney's question to a Spanish-speaking witness. By clarifying with the prosecution counsel, the interpreter is speaking for herself as animator, author and principal, and assuming a listener role as responder and then addressee of counsel's replies to her clarifying questions. Assuming that the witness is the only non-English speaking participant in court, s/he is the only one, being the linguistic minority, excluded from the interpreter-attorney interaction. In other words, the clarification procedure has excluded the witness as a primary interlocutor from both the production roles and the reception roles, whereas the reception roles of other court actors as the linguistic majority speaking the language of the court remain unaffected, and they have full access to the encounter (Table 6.4).

Example 6.3 Interpreter clarifying with the examining counsel (Berk-Seligson, 1990, p. 74)

Table 6.4 Participant roles when Interpreter clarifies with Counsel (Example 6.3)

IR	PR						
	SR			AR			
	animator	author	Principal	addressee (responder)	reporter/ recapitulator	auditor	overhearer
PC	+	+	+	+	−	−	−
I	+	+	+	+	−	−	−
W	−	−	−	−	−	−	−
D/DC/J/JR	−	−	−	−	−	+	−
PG	−	−	−	−	−	−	+

6.1.5 The interpreter's audience in jurisdictions where the interpreter is the *only* bilingual

In an interpreter-mediated trial in jurisdictions where interpretation is provided only for the monolingual foreign language speaker (linguistic minority) who does not speak the language of the court, the foreign language speaker is usually the exclusive audience (as addressee or auditor) of the interpretation into that particular foreign language; all those who do not speak that language would be excluded, as is noted by Bell, the "[u]se of a language which is unintelligible to any interlocutor defines that person out of the audience. It is the ultimate in dissociative behaviour, designating the uncomprehending hearer an unratified eavesdropper, a nonmember, even a nonperson". (1984, p. 176).

The opposite is true for the foreign language-speaking participant when his/her words are rendered into the language of the court, to which s/he has no access. In other words, in a courtroom where the interpreter is the only bilingual, s/he has two distinct audiences, one for the interpretation *into* the court language and the other for the interpretation *out of* the language of the court. Interpreter-initiated conversations with interlocutors of one language inevitably exclude court actors speaking the other language. In a courtroom where the interpreter is but one of the bilinguals and where interpretation is provided for the linguistic majority, the conceptual framework is manifestly different as was established in Chapter 4 (Table 4.8). This atypical bilingual legal setting will now be examined in some detail in the rest of this chapter.

6.2 Interpreting in the atypical bilingual Hong Kong courtroom

As was pointed out in Chapter 3, interpreters have long been a fixture in the Hong Kong

courtroom, where interpretation between English and Cantonese is provided on a day-to-day basis, just as Ng (2009, p. 120) puts it, "the ubiquity of court interpreters is a distinctive feature in English-language trials in Hong Kong". The bilingual Hong Kong courtroom is nonetheless fundamentally different in many ways from the typical bilingual setting described above.

6.2.1 Interpreting for the linguistic majority

First of all, in many other jurisdictions, the majority of the court actors speak the language of the court and those who do not belong to the linguistic minority and are assisted by an interpreter who speaks their language. In a trial conducted in English in the Hong Kong courtroom, however, the court personnel, including the judge, counsel and the jury all speak English whereas the majority of lay participants like the defendant, witnesses and the public gallery speak only Cantonese and have to rely on the Cantonese interpretation of counsels' and judges' talk in English for participation in the trial (see Table 6.5 below). In other words, what is understood to be the minority language in other bilingual settings is spoken by the majority of the court actors in the case of the Hong Kong courtroom.

Table 6.5 Usual languages spoken by court actors in an English trial in Hong Kong

Institutional role	Language spoken in court
counsel, judge, jury	English
Defendant, witnesses, public gallery	Cantonese
Interpreter	English and Cantonese

6.2.2 Modes of interpreting and visibility of the interpreter

As has been pointed out above, in a bilingual courtroom where an interpreter is hired to serve the need of the linguistic minority, interpretation is in the main provided in *chuchotage* except when the minority language speaker takes the stand. In the Hong Kong courtroom however, since the legal professionals and lay-participants in an English trial usually speak different languages, legal-lay interactions are most of the time interpreted consecutively, which has the effect of foregrounding the interpreter, rendering him/her a highly visible participant in the communicative process. If by any chance there is an English speaking witness, then the court functions like a typical bilingual court for a while with interpretation provided in *chuchotage* for the Cantonese-speaking defendant. For interactions between the court personnel such as counsel's opening/closing speeches and the judge's summing-up, interpretation is provided in *chuchotage* for the Cantonese-speaking defendant only, making it impossible for other monolingual Cantonese-speaking court actors such as the public gallery to follow the talk and thus excluding them from the encounter, as will be demonstrated later in this chapter.

6.2.3 The interpreter as only one of the bilinguals in court

Interpreters working in the Hong Kong courtroom nowadays, as has been demonstrated in Chapter

3, often have to work with counsel or judges or even witnesses who share their bilingual knowledge. With the presence of these other bilinguals, the notion of reception roles in interpreter-mediated trial talk becomes far more complicated than in other jurisdictions where the interpreter is the only bilingual as was noted in Chapter 4. The bilingualism of court actors and the use of consecutive interpretation mean that bilingual court actors have access to both the SL and the TL versions of the trial talk, making the interpretation susceptible to scrutiny and challenge by other bilingual court actors. That means bilingual court actors, despite their official roles as, for example, addressees of a designated version of the proceedings, may also overhear the other version of the talk not intended for them, thus qualifying as overhearers; this will be exemplified in the following section of this chapter.

6.3 Participant roles in interpreter-mediated trial talk in the Hong Kong courtroom

The aforementioned attributes featuring the bilingual Hong Kong courtroom make it a special, if not unique, setting for examining the roles of individual court actors in a trial. The following sub-sections will illustrate the participant roles of court actors in different phases of the trial in this particular court setting. By uncovering these roles, I hope to identify the problems peculiar to interpreter-mediated trials in Hong Kong, and to embark on a more in-depth discussion of some of these problems in the chapters that follow.

6.3.1 Participant roles in counsel/judge/jury interactions – whispered interpreting

As has been demonstrated in Chapter 5, trial talk consists not only of legal-lay interactions such as witness examination and verdict/sentence delivery, but also of interactions between the legal personnel themselves, such as counsel's opening addresses, instructions to the jury, summings-up, closing speeches, mitigation and legal arguments of many sorts. In an English-medium trial in the Hong Kong courtroom, as in courts in other jurisdictions, verbal encounters between legal professionals, who speak the same language, are by default interpreted in *chuchotage* for the non-English-speaking defendant. Interpretation in *chuchotage* in a courtroom where the defendant is the only person requiring interpretation service, would produce pretty much the same reception roles as in a monolingual trial, with the interpreter working non-intrusively in the background (see Chapter 5 for participant roles in counsel's closing submission, for example). In an English-medium trial in the Hong Kong courtroom, however, where the defendant is only one of the majority requiring interpretation service, provision of interpretation in *chuchotage* inevitably disadvantages other non-English-speakers in court such as the audience in the public gallery, in which one would expect to see the defendant's and the victim's families, friends and other people unrelated to them but interested in the case. These people, being unable to hear the interpretation of the legal talk, are immediately excluded from the reception roles and are thus unable to access the trial in its entirety.

One may argue that the exclusion of the public gallery from the trial talk has little impact on the administration of justice, as they anyway have only a passive reception role and are not supposed to react or respond to what they have heard. An example from a blackmail case (Case 4) however shows that these supposedly silent bystanders as overhearers of the talk sometimes wish to exert their influence by making their voice heard, and when they do, their status changes from non-participating to one of primary participants, potentially impacting on the proceedings and on the administration of justice. In this case, a witness in his late seventies was telling the court in Shanghainese how the defendant made an unwarranted demand of $300,000 (approximately £24,000) from him with menaces. The witness was assisted by two interpreters, a staff interpreter working between English and Cantonese, and a freelance interpreter working between Cantonese and Shanghainese, using relay interpreting consecutively. The witness, having elected and affirmed to give evidence in Shanghainese, was however giving evidence in a mixture of Shanghainese and broken Cantonese, which was misunderstood and hence misinterpreted by the Shanghainese interpreter, and whose error was then reproduced by the other interpreter in English, rendering the witness's testimony nonsensical and subsequently leading to a communication breakdown (Example 6.4)

Example 6.4 Shanghainese witness testifying through a Shanghainese-Cantonese interpreter (IB) and Cantonese-English interpreter (IA), Case 4

Turn	Speaker	SL utterance/interpretation	English gloss
1.	W	<in broken Cantonese>我見你啦，出出入入，我見你啦。我要我要**幫**你<綁(bong2)" mispronounced as"幫 bong1" >	*I saw you, going in and out. I saw you. I want I want to* ***help*** *you. <a tonal shift from "bong2 (kidnap)" to "bong1 (help)"*>
2.	IB	哦。佢話：「我出出入入有**幫**你六個月喇」	*Oh. He said, "I in and out* ***have helped*** *you for six months"*
3.	W	我要—	*I want—*
4.	IA	**幫**你？	*Help you?*
5.	W	<in broken Cantonese>要**幫...幫**我啦	*Want to* ***help help*** *me.*
6.	IB	係	*Yes.*
7.	W	<in broken Cantonese> 我出出入入，你出入我見你六個月啦，有	*I in and out, you in and out I've seen you for six months.*
8.	IB	看到儂阿是啦?	*Have seen you?*
9.	W	呀	*Yeah.*
10.	IB	進進出出看到儂阿是啦?	*In and out have seen you? Is that right?*
11.	W	呀.	*Yeah*
12.	IB	啫係我出出入入見倒你六個月喇	*That is, I in and out have seen you for 6 months*
13.	W	嗄	*Yeah*
14.	IB	係咪咁嘅意思呀？	*Is that what you mean?*
15.	W	嗯	*Mm*
16.	IA	Em I've been seeing you going in and out for six months, I **help** you	

17.	PC	(6) Could–	
18.	J	Er Mr...Mr. W, em do you want to give your evidence in Shanghainese or Cantonese?	

The problem originates from the witness's mispronunciation of the Cantonese word *bong2*[41] (綁 – to kidnap) as *bong1* (幫 – to help). Chinese, including all its dialects, is a tonal language, which means that tones distinguish words that are otherwise pronounced identically. Pronouncing a word with a wrong tone is most likely to cause confusion and misunderstanding on the hearer. The mispronunciation of the word (a crucial one in this case) *bong2* as *bong1* leads to the misrepresentation by the Shanghainese/Cantonese interpreter (IB) in the Cantonese interpretation and the mistake is reproduced in the English interpretation by Cantonese/English (IA) in turn 16. This nonsensical interpretation has rendered the prosecutor at a loss about what to do. When he is about to say something after a long pause of 6 seconds, the judge steps in to inquire about the language in which the witness wishes to testify and later advises him to stick to the language he has chosen. The witness however continues to testify in broken Cantonese and the problem persists (Example 6.5).

Example 6.5 Shanghainese witness testifying, Case 4 (continued)

Turn	Speaker	SL utterance/interpretation	English gloss
1.	W	嗄，用上海話麼，(xxx)就講囉，伊講 <in Cantonese again>我而家呢，噲，啊:::，大家做個朋友，我唔想**幫**你。吓，大家做個朋友，我唔想**幫**你。	*Ah, speak in Shanghainese. (xxx) so (he) said, he said, <in Cantonese> Now, I, look, ah:::, let's make friends, I don't want to* ***help (bong1)*** *you. Yea, let's make friends, I don't want to* ***help*** *you.*
2.	IB	嗄，等等吓。佢話我大...er 我哋大家做個朋友，我唔想**幫**你	*Uh, please wait. He said "let...uh let's make friends, I don't want to* ***help*** *(bong1)you."*
3.	W	嗯	En
4.	IA	Uh let's [(1) make friends with each other, I don't want to **help** you	
5.	<people whispering in Shanghainese>	[綁票個綁	*[bong2 as in bong2piao4 <kidnap, to kidnap >*
6.	J	Oh?	
7.	PC	Uh, [uh	
8.	J	[Em (.) I'm very sorry there seems to be some (0.5) [hah <chuckling sound of Judge and counsel> can you see…see he use in Shanghainese?	

[41] Romanisation of Cantonese characters in this study is based on *Jutping*, a Cantonese Romanisation system developed by the Linguistic Society of Hong Kong. This system distinguishes 6 tones in Cantonese and the number at the end of a syllable is a tone marker.

9.	IB	[我唔(.)我勿想**幫**儂呀？	*I don't (.) I don't want to* ***help*** *you?*
10.	W	呀	*Aar.*
11.	IA	你可唔可以用上海話講出來呀?	*Can you say it in Shanghainese*
12.	IB	儂講上海閒話	*Please say it in Shanghainese*
13.	W	嗄嗄嗄上海閒話	*oh yes, yes, Shanghainese.*
14.	IB	[儂講上海話伊講大家做個朋友，*跟勒哪能*?	*Please say it in Shanghainese about what he said "let's make friends" , and what did he say afterwards*
15.	W	[唉唉我講	*OK, OK, I'll say (it)*
16.	W	大家做個朋友，我勿想**幫**儂	*Let's make friends, I don't want to* ***help*** *you*
17.	IB	勿想**幫**儂啥意思？	*What does "don't want to help you" mean?*
18.	W	嗄	Ha.
19.	Someone <in Shanghainese>	**綁票**的**綁**，**綁票**的**綁**，勿想**綁票**儂	*kidnap, kidnapping, don't want to kidnap you.*
20.	IB	噢…噢…噢，**綁架**的**綁**，阿是呀，噢…So…sorry	*Oh, I see, I see. Kidnap, to kidnap. Is that right? Oh, So...sorry. …So…sorry*

The judge's instruction to the witness to testify in Shanghainese does not seem to help. First of all, the witness must have felt obliged to repeat the blackmailer's utterance in Cantonese, which was the language used by him when making the demand over the phone. That is why in Count 1, the witness still uses Cantonese when reporting to the court what the caller said to him. However, the witness obviously has a problem mastering the tones of Cantonese and continues to pronounce *bong2* (kidnap) as *bong1* (help). IB's clarification with him in turn 2 is nonetheless of no avail. This again leads to misrepresentation of his utterance by IB and subsequently by IA in the English interpretation. In turn 6, some people (most likely the audience in the public gallery) are whispering the word "kidnap", which IB however fails to capture and tries to clarify with the witness again, but without any success. It is not until someone from the public gallery shouts out loud in turn 19 that IB realises the problem of miscommunication.

Although the public gallery were later told by the judge to keep quiet (Example 6.6), their "outcry" did help solve the miscommunication problem. This example suggests that interpretation provided consecutively may be more "transparent" and accessible by all those present in the courtroom and is thus in the better interests of justice. Had the interpretation been provided in a whisper, the mistake might have escaped notice. The example of Dr. James Legge as a spectator in the court pointing out the interpreter's mistake, cited in Chapter 3, is yet another example of the impact an overhearer can have on the court proceedings and hence the administration of justice when s/he takes on a speaker role in the proceedings.

Example 6.6 Judge addressing the public gallery, Blackmail

J	Em can I ask em that...I understand that em people may get a bit er (.) upset about em...maybe the...they think the translation should be some way, but please don't (.) speak from the public gallery

A more worrying problem associated with the provision of WI in the Hong Kong courtroom is perhaps the participation status of the jury, which is nowadays predominantly composed of bilingual locals with Cantonese as their first language. People eligible for jury service are presumably proficient in the court language as required by the law as noted in Chapter 4 (Section 4.6.2). There is, however, no knowing to what extent they are able to follow the legal language of the judge and the lawyers, which may prove difficult even for native English speakers. It has been argued for example that "jury instructions are 'mumbo jumbo' to even well-educated Americans" (O'Barr, 1982, p. 26) and that "members of the public have long expressed frustration with legal language" (Tiersma, 1999, p. 199). In one of the trials I observed (Case 9), and of which I have subsequently obtained recordings, one of the jurors whose name had been drawn from the ballot box told the judge in Cantonese that she wished to be exempted for fear that she would not be able to follow the trial in English. She was however talked into accepting the jury duty by the judge, who reassured her that the trial would be bilingual with the assistance of an interpreter (see Example 6.7 below).

Example 6.7 Would-be juror addressing judge through interpreter, Case 9

JR	<through Interpreter> Your Lordship, because I am a Chinese em language teacher. All along I have been em using (.) em Chinese as er teaching medium, and very seldom using em English. Now I'm worried that during the whole process, em (.) I will not understand some of the questions
J	(1) Well, you will hear them in both languages Madam
I	<Interpretation in Cantonese>
JR	<through Interpreter> In that case, I am willing to accept that
J	And er, I will be summing up at the end of it. But er, (.) that summing up will also be (.) interpreted. So, you have a chance to hear it in both languages again.

The judge was right as far as interpretation of testimony provided consecutively was concerned. Interactions between the court personnel throughout the trial including the summing-up are nonetheless interpreted in *chuchotage* and audible only to the defendant. That means jurors who have a problem with their comprehension of the talk might, like the monolingual Cantonese-speaking court actors, be excluded from participation despite the fact that they are most of the time the direct addressees of these judicial and legal monologues.

6.3.2 Participant roles in legal-lay interactions when the interpreter is the only bilingual in the Hong Kong courtroom – consecutive interpreting

In the Hong Kong courtroom, as has been noted above, there is a general linguistic dichotomy between lay and legal participants, with the former usually speaking Cantonese and the latter

English. Interactions between lay and legal participants are therefore by necessity conducted consecutively. The following is an example illustrating a Cantonese-speaking witness testifying through an interpreter. (Example 6.8)

Example 6.8 Cross-examination of witness by defence counsel through interpreter, Case 8

1	DC	On the afternoon of the 17th of August, you had seen your father lying in a coma in a hospital bed, is that right?
2	I	<Interpretation in Cantonese>
3	W	<Answer in Cantonese>
4	I	Yes.
5	DC	And er did you er… was it your belief er that your father was in a serious condition?
6	I	<Interpretation in Cantonese>
7	W	<Answer in Cantonese>
8	I	Yes.

Assuming that all the court personnel including the jury speak only English and the lay participants are Cantonese monolinguals, a simplistic participation framework similar to Table 6.3 can be constructed as in Table 6.6, except that, in the case of the Hong Kong courtroom, apart from the testifying witness, the defendant and the public gallery also have to rely on the Cantonese interpretation of the defence counsel's questions in English to follow the talk.

Table 6.6 Participant roles in cross-examination of Witness by Defence Counsel through Interpreter (Example 6.8)

IR	PR						
	SR			AR			
	animator	author	Principal	addressee (responder)	reporter/ recapitulator	auditor	overhearer
DC	+	+	−	+ of English rendition of W's answers	−	−	−
I	+	+	−	−	+	−	−
W	+	+	+	+ of Cantonese rendition of DC's question	−	−	−
D	−	−	−	−	−	+ **of Cantonese version of the talk**	−
PC/J/JR	−	−	−	−	−	+ of English version of the talk	−
PG	−	−	−	−	−	−	+ **of Cantonese version of the talk**

This conceptualised participation framework is however applicable only to the courtroom setting in Hong Kong's early colonial days as described in Chapter 3 when courts were dominated by expatriate court personnel including the jury and the majority of the lay participants involved in court proceedings were barely-educated locals with little knowledge of the English language. The reality of the Hong Kong courtroom today is far more complicated with the presence of bilingual court actors other than the interpreter. This inevitably alters the participation status of these bilinguals as well as other monolingual court actors.

6.3.3 Participant roles of bilingual court actors

As has been pointed out above and in Chapter 4, the bilingualism of court actors necessarily complicates the notion of audience roles in an interpreter-mediated trial. For a comparison between the audience roles in interpreter-mediated trials *with* and *without* the presence of other bilinguals, see Table 4.8 in Chapter 4.

6.3.3.1 Bilingual counsel

As illustrated in Chapter 4 (Table 4.8), if the examining counsel is bilingual, in addition to his/her default role as addressee of the witness's interpreted answers, s/he may also overhear the witness's answer in Cantonese as well as the interpreter's rendition of his/her question into Cantonese, qualifying as overhearers, and draw the court's attention to any interpretation mistake s/he may have identified as in Example 6.9 below.

Example 6.9 Defence Counsel correcting interpreter, Case 9

Turn	Speaker	SL utterances/interpretation	English gloss
1	DC	Vent your anger	
2	I	當你好嬲嘅時候呀	*That is, when you are angry.*
3	DC	(1)洩忿， vent your anger....	*Vent your anger <in Cantonese>. Vent your anger....*

In the above example, the interpreter might have misheard the defence counsel, resulting in her misinterpretation of his utterance, which is however picked up by the defence counsel, whose bilingual knowledge enables him to access the interpreter's Cantonese interpretation, although it is not intended for him. He thus combines the reception roles as both addressee of the witness's interpreted answer, and overhearer of the Cantonese interpretation and the witness's answer in Cantonese. When the defence counsel suggests the Cantonese interpretation of his utterance and repeats it in English, he is obviously addressing the interpreter, who therefore has a reception role of addressee of the defence counsel's suggestion and repetition, in addition to the roles of recapitulator and reporter of counsel's utterance in turn 1 (Table 6.7). As a matter of fact, when the defence counsel provides the Cantonese interpretation of his earlier utterance, he has in a way taken over the role of the interpreter. For the sake of brevity, the reception roles of the other court

actors are not included in the following table.

Table 6.7 Participant roles when bilingual Counsel corrects Interpreter in witness examination (Example 6.9)

IR	PR						
	SR			AR			
	animator	author	Principal	addressee (responder)	reporter/ recapitulator	auditor	overhearer
DC	+	+	+/−	+	−	−	+ Of Cantonese interpretation of his own question
I	+	+	−	+ Of DC's correction	+	−	−

Similarly, if the non-examining counsel is bilingual, s/he may, in addition to his/her official role as auditor of the talk in English – the language in which the trial is conducted – also slip into the role of an overhearer of the witness's answers in Cantonese and the interpreter's rendition into Cantonese and raise the issue of misinterpretation in the course of overhearing as illustrated in Example 6.10 below.

Example 6.10 Prosecution counsel informing the court of discrepancy between defendant's testimony and interpreted version, Rape

PC	It was...it was...the Chinese was *saam1*. One can (.) play back the video...the...the digital (.) recording. Although "garment" was the word er used by the lady interpreter, the Chinese out of the mouth of the witness was *saam1*, which means "upper garment".

In the above example, taken from Case 9, the prosecution counsel, having heard the defendant's evidence-in-chief and later accused the defendant of contradicting his own evidence in his cross-examination, is telling the court that there is a discrepancy between the defendant's testimony in Cantonese and the interpreted version in English, as the latter fails to show the inconsistency in the defendant's testimony. This is evidence that the prosecutor, in addition to his official participant role as auditor of the interpreted version of the defendant's evidence, has acquired through overhearing the defendant's testimony in Cantonese.

6.3.3.2 Bilingual witness/defendant

In some cases, a witness or a defendant may be bilingual or part-bilingual, but elects to give evidence in Cantonese, making it possible for her/him to overhear the questions put to him/her in English and the interpreter's rendition of his/her answers into English (Example 6.11).

Example 6.11 Bilingual defendant correcting interpreter, Case 1

Turn	Speaker	SL utterances/interpretation	English Gloss
1	D	而嗰一日呢(.)嘅:::第二日，我哋...我哋個...我哋個區會呢，就有一個係教師發展日	*And the::: following day, it was the Teachers Development Day of our...our District Association*
2	I	And because er the next day there was a (.) er teachers development day in our district	
3	PC	Yes	
4	D	(1)唔係.....唔係嗰個區，意思係我哋哩個會呀，啫係我哋個五邑工商總會，我哋哩個教育團體	*(1) No...Not "the district", what I mean is our association. We belong to the Five District Business Welfare Association, our educational organisation.*
5	I	Correction, not in the district. For our (.) er...	
6	D	[教育團體	*educational organisation*
7	I	[educational (2)	
8	D	<in a whisper> organisation=	
9	I	=organisation	

In Example 6.11, the defendant, a primary school English teacher charged with theft, is being cross-examined. Both the prosecution and the defence counsel are bilingual but the magistrate speaks only English. After the interpreter has rendered her utterance and the prosecutor has responded with a "yes" with a rising tone, which is a signal for her to continue, the defendant however feels the need to correct the interpreter in turn 4 by clarifying and elaborating her own answer. When the interpreter still seems to have a problem with her translation, she helps first by repeating the Chinese term in turn 6 and later by suggesting the translation in turn 8. This is evidence that the bilingual defendant takes on not only a reception role as addressee of counsel question (technically through the interpreter, though she must have understood counsel's question even without the mediation of the interpreter), but is at the same time overhearing the interpreter's rendition of her answers into English, and presumably counsel's questions in English.

6.3.3.3 Bilingual judge

As was noted in Chapter 3, many lower courts in Hong Kong are nowadays presided over by local judges, who are bilingual in Cantonese and English and have access to both the SL speech and the interpretation in an English trial, rendering the interpreting process more transparent and the interpreter susceptible to criticism. It is therefore not uncommon for bilingual judges who are not satisfied with the interpretation provided to criticise interpreters from time to time. Li (2008) cites an example of a bilingual judge, dissatisfied with the interpretation of a word she had uttered, ordered the interpreter to look it up in a dictionary and to read its dictionary definition out aloud in open court. The interpreter found this public humiliation too much to endure, so much so that she resigned from office. The incident as reported by SCMP (Chow & Chin, 1997) and cited in

Chapter 3 (Section 3.3.2) is yet another example to illustrate that the bilingual judge, like other bilingual court actors, cannot help slipping into the role of overhearer because of the bilingual knowledge he possesses.

6.3.3.4 Bilingual counsel and monolingual judge

In witness examination, bilingual counsel are sometimes found to respond to witnesses' answers without waiting for them to be interpreted into English as shown in Example 6.12 below, taken from Case 2, in which the defendant is charged with the offence of Making a False Declaration to an Immigration Officer. In this case, the prosecutor and the defence counsel are locals speaking both English and Cantonese while the magistrate is a native English-speaking expatriate. An immigration officer is testifying through an interpreter, and when she is asked about the time when the defendant signed her notebook, she gives her reply with manifest hesitation (turn 3). Before her answer is interpreted into English, for the record and for the monolingual magistrate, the bilingual prosecutor goes on to ask her if she needs to look at her notebook to refresh her memory (turn 4). Seeing that the prosecutor has already responded to the witness's answer, the interpreter skips the interpretation and proceeds to render the prosecutor's question into Cantonese for the witness, thus leaving the witness's answer absent from the record. The omission of interpretation denies the monolingual magistrate his role as auditor and thus also access to the witness's evidence in its entirety.

Example 6.12 Bilingual counsel responding to witness's answer without waiting for interpretation, Case 2

Turn	Speaker	SL utterances/interpretation	English gloss
1.	PC	Uh-huh. Do you remember around what TIME did you ask the defendant to sign on your notebook?	
2.	I	你記唔記得當時大約咩時間，係叫嗰位當事人去…喺嗰個筆記簿度簽署架？	<CI in Cantonese >
3.	W	係 er (3)大概(.)八點:::	*It's er (3) around (.) ei:::ght.*
4.	PC	(1) Do you need to refresh your memory by taking a look at (.) your notebook?	
5.	I	你需唔需要睇一睇嗰個(.)筆記簿，去提一提你架	<CI in Cantonese >
6.	PC	If (.) that could be permitted, Sir. (1) Do you have your notebook with you?	

As the prosecutor carries on with her examination without realising that the witness's answer has not been rendered into English, the magistrate, obviously upset over the omission of interpretation and the resulting unavailability of the witness's answer, has to inform the prosecutor of the omission a few turns later (Example 6.13). The witness is subsequently asked to repeat her answer for it to be rendered into English.

Example 6.13 Judge informing counsel of omission of interpretation

Turn	Speaker	SL utterances/interpretation
1.	J	So, there's a bit of her answer that has not been translated=
2.	PC	= Oh, I am so sorry, Sir. I do apologise.
3.	J	Because you've jumped it.
4.	PC	<laughing embarrassedly > I do apologise

Notwithstanding the fact that all court proceedings in the Hong Kong courtroom are nowadays digitally recorded and that both Chinese and English have an official status in court as was noted in Chapter 3, in a bench trial like the one under discussion, the monolingual expatriate magistrate can only rely on the English interpretation of witnesses' testimony for his verdict at the end of the trial. It is therefore essential for witnesses' testimony to be interpreted accurately and *in full*. An omission of the testimony in the interpretation may have dire implications for the administration of justice.

6.3.3.5 Bilingual jury

According to the 2011 census, about 90% of the Hong Kong population speaks Cantonese as their usual language, while around 43% of the locals also speak English as their other language (see Appendix 1). To qualify for jury service, one is required by law to be proficient in the language in which a trial is conducted as was noted in Chapter 4. It follows that the majority of the jurors in an English trial should be bilingual locals speaking Cantonese as their native language. These passive listeners remain silent for much of the trial except when it comes to the time when a verdict has to be passed. However, while in their official role as auditors of either version of the trial talk as they see fit (now that both English and Cantonese are official languages and that everything said in court is digitally recorded), bilingual jurors may from time to time slip into the role of overhearers of the version of the talk other than the one they are following. They nonetheless rarely draw to the court's attention any inconsistency they may have identified between the interpreted version and the original of the talk.

6.3.3.6 Bilingual public gallery

The public gallery and other court personnel such as the court clerk may or may not be following the talk closely, qualifying them as overhearers. When they do listen to the talk, they are more likely to follow the Cantonese version than the English one. However with a certain degree of competence in English, they may be able to catch some of the talk in English, resulting in overhearing of the talk in the English version. As has been demonstrated earlier on in Section 6.3.1, the bilingual public gallery may sometimes have an impact on interpreted trial talk.

6.3.4 The interpreter as a primary participant

Findings of my data show that interpreters in the Hong Kong courtroom, like their counterparts in other bilingual courts, from time to time take on the role of a primary participant in the course of

relaying and coordinating, by clarifying with counsel or witnesses for example, thus creating their own talk. In a bilingual setting where the interpreter is the only bilingual in court, as has been illustrated in Sections 6.1.4 and 6.1.5 of this chapter, any interpreter-initiated conversation in one language necessarily excludes the participation of court actors speaking the other language. In the Hong Kong courtroom, where the interpreter is most of the time only one of many bilinguals, the clarification process is more "transparent" in that court actors speaking one language in court still have access to the interpreter-initiated verbal encounter in the other language if they are bilingual.

6.3.4.1 Clarification with witnesses

Example 6.14 below is taken from Case 9, in which the witness, the alleged victim, is describing the defendant's sexual advances to her.

Example 6.14 Interpreter clarifying with witness, Case 9

Turn	Speaker	SL utterances/interpretation	English gloss
1.	W	<crying> 佢伸咗隻手入去摸我下面，跟住，又(.) [插隻手指入去	*He stretched his hand down to touch me down there (vagina), then inserted his finger(s) inside.*
2.	I	He…[He just (.) em (.) <crying sound of witness> stretched his arm (.) in <sniffing sound of witness>, and then, even...and then, put his finger (.) inside. <sniffing sound of witness> 係一隻手指定兩隻手指呀？	*One finger or two fingers?*
3.	W	<crying> 唔知	*Don't know.*
4.	I	<crying and throat-clearing sound of Witness> Finger or fingers	

As nouns in Chinese (like their counterparts in Korean (Lee, 2009, p. 97) and in many other Asian languages), have no morpheme marker like the English "s" to mark their plurality, interpreting from Chinese into English can be problematic as Lee (2009) demonstrates with her study of interpreting from Korean into English in the Australian courtroom. The interpreter, without the syntactic or contextual clues to help with her rendition of the meaning of the witness's utterance – 手指 finger(s), first renders it into a singular form, but later decides in the same turn to clarify with the witness about the meaning. In so doing, she creates her own talk and assumes a speaker role as animator, author and principal, while at the same time takes on a listener role as responder of the witness's utterance in turn 1 and renders herself a direct addressee of the witness's reply in turn 3.

The change in the interpreter's participant role at the same time alters the participation status of the other court actors. In a bilingual setting where the interpreter is the only bilingual, the clarification sequence would be exclusive to the witness and the interpreter, with the other court actors being excluded from the entire interaction (see Table 6.3 above). In the Hong Kong courtroom however, as has been mentioned earlier, the majority of the court actors speak

Cantonese, so clarification with a Cantonese-speaking witness does not necessarily exclude the participation of the other court actors. In this case, both the prosecution and the defence counsel are bilingual (BI) in Cantonese and English but the judge is a monolingual English-speaking expatriate (MONO), who would therefore be excluded from this interpreter-initiated clarification sequence while the majority of the court actors including the bilingual counsel/jury and the monolingual Cantonese-speaking defendant and spectators in the public gallery all have a participant role in the encounter (Table 6.8).

Table 6.8 Participant roles of court actors in interpreter-initiated clarification with Witness (Example 6.14)

IR	PR						
	SR			AR			
	animator	author	principal	addressee (responder)	reporter/ recapitulator	auditor	overhearer
PC (BI)	+	+	+/−	+ of English rendition of W's answer	−	−	+ of Cantonese interaction between W and I
W	+	+	+	+	−	−	−
I	+	+	+	+	+	−	−
DC JR (BI)	−	−	−	−	−	+ of English rendition of W's answer	+ of Cantonese interaction between W and I
D (MONO)	−	−	−	−	−	+ of Cantonese version of trial talk	−
PG (MONO)	−	−	−	−	−	−	+
J (MONO)	−	−	−	−	−	−	−

6.3.4.2 Clarification with counsel

As illustrated in Table 6.8, with the exception of the monolingual judge, all the other court actors have a participant role in the above interpreter-witness interaction. Where however an interpreter-initiated clarification is made with an examining counsel as in the following example (Example 6.15), a different participation framework with regard especially to the reception roles would apply.

Example 6.15 Interpreter clarifying with the examining counsel, Case 8

1	PC	Did you see him in the hallway while this dispute was taking place or not?
2	I	Hallway, where was it?
3	PC	The hallway
4	I	The hallway, you mean (.)
5	PC	The corridor
6	I	The corridor inside the premises?

When clarifying the meaning of "hallway" with the prosecution counsel, the interpreter is speaking in her own voice as animator, author and principal, and at the same time takes on a listener role as responder of the prosecutor's question in turn 1 and renders herself a direct addressee of the prosecution counsel's replies in turns 3 and 5. The prosecution counsel has the speaker role of animator and author of his question in turn 1 and one which includes also principal in his subsequent replies to the interpreter's questions, and a listener role as addressee of the interpreter's questions. In a bilingual setting where interpreting services are provided for the benefit of the linguistic minority such as a non-English-speaking witness in an English trial (see Example 6.3), the witness is most likely the only court actor to be denied a participation status in the counsel-interpreter interaction (see Table 6.4 above). In the bilingual Hong Kong courtroom however, not only the testifying monolingual witness, but all the other monolingual lay-participants like the defendant and the public gallery, who do not speak English, would be immediately excluded from participation in this counsel-interpreter interaction (Table 6.9).

Table 6.9 Participant roles of court actors in interpreter-initiated clarification with Counsel (Example 6.15)

IR	PR						
	SR			AR			
	animator	author	Principal	addressee (responder)	reporter/ recapitulator	auditor	overhearer
PC	+	+	+/−	+	−	−	−
W (MONO)	−	−	−	−	−	−	−
I	+	+	+	+	+	−	−
D (MONO)	−	−	−	−	−	−	−
DC/J	−	−	−	−	−	+	−
JR	−	−	−	−	−	+	−
PG (MONO)	−	−	−	−	−	−	−

6.3.4.3 The interpreter speaking on behalf of the magistrate

As noted by Wadensjö (1998, p. 93), "the individual's participation status is partly a question of her choice, partly a matter of how co-present people relate to her and to others present". In the course of interpreting, the interpreter sometimes does not choose his/her role and participation

status, but is rather ascribed a role by the interlocutors as is illustrated in the following example (Example 6.16).

Example 6.16 Interpreter instructed by magistrate to speak on his behalf in plea-taking, Case 1

Turn	Speaker	SL utterances/ interpretation	English gloss
1.	J	The trial will be on the 16th of May (.) at er nine thirty, in courtroom five. Bail extended. <whispering to interpreter> You know the warnings of the bail [and representation.	
2.	I	[Yes, Sir. <in an authoritative manner> 安排喺五月十六號，上晝九點半喺五號法庭進行審訊。相同條件，繼續擔保。**警告你遵守所有擔保條件，包括當日要準時出庭。如果唔係嘅話，可以充公你嘅擔保金，撤消你嘅擔保，將你扣留。亦都可以控告你不依期歸押，要罰錢同坐監架。要請律師，無論私人律師或者當值律師，一定要事先安排，嗰日方律師，而申請將案件押後，我哋唔會輕易批准，到時你就要自辨㗎啦，明唔明白？**	<in an authoritative manner>*Trial is fixed for the 16 of May at 9:30am in court number 5. Bail extended on the same conditions.* ***(I) warn you to observe all the bail conditions, which include appearing in court on time on the day of the trial; otherwise, (I) can confiscate your bail money, revoke your bail and detain you in custody. (I) will also charge you with failing to surrender to custody, for which you will be liable to a fine and imprisonment. (If you) want to hire a lawyer, (you) have to make arrangements in advance. (If you) have no lawyer on that day and ask for an adjournment, we will not approve (that) readily. Then you will have to represent yourself. Do you understand?***
3.	D	明白	*Understood.*
4.	I	I understand. 坐喺後邊等	*Sit at the back and wait.*

In this example, taken from the plea-taking in a theft case (Case 1), the defendant, having pleaded not guilty to a charge of theft, is being addressed by the magistrate on issues relating to the trial date and her bail. The magistrate, having told the defendant about the trial date and the extension of her bail, simply asks the interpreter[42] to explain the bail conditions to the defendant and her legal representation in the trial without himself uttering those words. In so doing, the magistrate is entrusting to the interpreter duties which should be discharged by himself. The participant roles of the three court actors could be construed as in Table 6.10. Again for the sake of brevity, other court actors are not included from the table.

[42] This is a male interpreter working in the plea court. A different interpreter (female) later works in the trial of this case. By hierarchical ranking, interpreters working in the plea court of a magistracy are senior (usually at the grade of Court Interpreter I) to those working in the side courts of the same court level.

Table 6.10 Participant roles in plea-taking when interpreter speaks on behalf of Magistrate (Example 6.16)

IR	PR						
	SR			AR			
	Animator	author	principal	addressee (responder)	reporter/ recapitulator	auditor	overhearer
J	＋	＋	＋	＋	—	—	—
D	＋	＋	＋	＋			＋ of J's utterance in English/I's interpretation in English
I	＋	＋	＋/—	＋	＋	—	—

Obviously, the second half of the magistrate's utterance is addressed to the interpreter, who is being *given* a responder's role by the magistrate and is thus expected to introduce content of her own (Wadensjö 1998, p. 92), in addition to the roles of recapitulator and reporter of the magistrate's first half of the utterance directed at the defendant. The interpreter's response to the magistrate "Yes, Sir" in turn 2 and his command to the defendant "sit at the back and wait" in turn 4 are made in his own voice with the speaker role as animator, author and principal. The rest of the interpreter's speech in turn 2 comprises of a rendition of the magistrate's first half of his utterance in turn 1 and a self-produced speech of the magistrate's *unspoken* words as instructed by him, rendering him both animator and author, or source in Levinson's (1988) categories, though not principal (which remains with the magistrate), in the production format (Goffman, 1981). The interpreter thus becomes a spokesman for the magistrate. Entrusted with the duty to explain bail conditions and legal representation to the defendant, the interpreter speaks in a highly authoritative manner when addressing the defendant as if he was himself the magistrate, or at the very least part of the court personnel, who is vested with the power to "warn" the defendant, to "confiscate" her bail money, to "revoke" her bail and to "detain" her in custody. Notice also the interpreter's use of the first-person plural pronoun 我哋 (we – an exclusive "we" which excludes the addressee) in his advice for the defendant to retain the service of a lawyer, which is evidence of his alignment with the court.

From my own experience in court interpreting, it is not uncommon for magistrates in the plea court, which has to deal with a great number of cases every day, to ask interpreters to speak on behalf of them without themselves uttering the words, on issues relating to bail, legal representation and even trial procedures, in an obvious attempt to save their own effort and presumably time of the court. This however might give rise to the issue of interpreter's actual and perceived impartiality and the role of the interpreter in the eyes of the co-present court actors.

6.3.5 When a witness gives evidence in English

Given the predominantly Cantonese-speaking population in Hong Kong, witnesses mostly elect to

give evidence in Cantonese, either because they are Cantonese monolinguals, or because they are not sufficiently confident to testify in English, which for most of them is only a language they learned at school and may have used at work. There are some English trials, albeit rare, which do involve a witness testifying in English. Those who elect to give evidence in English are either native English speakers, or English and Cantonese bilingual locals. The latter are usually expert witnesses, who might find it more prestigious to testify in English or otherwise suffer a loss of face if, in their position as expert witnesses, they have to rely on the interpreter for interaction with the legal professionals. Where a witness testifies in English, WI is provided for the benefit of the Cantonese-speaking defendant in a typical bilingual setting as described earlier in this chapter. However, the provision of WI in the Hong Kong courtroom necessarily excludes the participation of the other court actors including the monolingual audience in the public gallery and even some of the jurors who may have a problem following the evidence in English as is illustrated in Example 6.7. Denying the jurors (who are entrusted with the responsibility of returning a *true* verdict at the end of the day) full access to the evidence is likely to compromise the administration of justice.

In addition to the possibility of excluding the other court actors from participation in the proceedings, another issue associated with a non-native English-speaking witness, as observed in Case 8, is the problem of communication between the witness and the examining counsel, which may as a result impact on their participation in the interaction (Example 6.17).

Example 6.17 Examination-in-chief of expert witness, Case 8

1.	PC	Where are you currently attached?
2.	W	(1)
3.	PC	Which hospital?
4.	W	Kwong Wah Hospital.
5.	PC	And you were attached to that hospital (.) on the 16th of August last year?
6.	W	(2) e:::m, no.
7.	PC	Where were you attached then?
8.	W	Since e:::m (2), uh since e:::m the...the first of (.) the, the first of the::: January in the 1997.
9.	PC	(1) Oh, OK, but you...you've been with that hospital since January 1997.
10.	W	Yeah, but in the meantime I was promoted to Princess Margaret as a gen...Senior Medical Officer in neurosurgery. I returned back at 200...2003.
11.	PC	So you have been CONSTANTLY at Kwong Wah since 2003.

In Example 6.17, taken from Case 8, a local medical doctor is called to give evidence on the medical treatment he provided to the deceased. He is first of all asked by the prosecution counsel, as a general practice, about his current attachment. The doctor however seems to have a problem comprehending the word "attached" as evidenced first by his silence in turn 2. His hesitation has prompted the prosecutor to furnish his preceding questions with a piece of additional information in turn 3. Only then is the witness able to supply the answer the prosecutor is seeking from him. The word "attached" however continues to trouble the witness in turn 5, where he is asked about

his attachment on the day in question (i.e. the day when the deceased was sent to the hospital to which he was attached), which he obviously takes to mean the date of his first attachment to the hospital as is evidenced by his subsequent responses. His negative answer in turn 6 must have come as a surprise to the prosecutor, as reflected in his tone of voice when he asks the follow-up question "where were you attached then?" in turn 7. The witness's answer in turn 8 is non-responsive to the prosecutor's question, though it does provide the prosecutor with some useful information and enables him to summarise his evidence in turn 9.

This example shows that unlike in other Anglo-American common law courtrooms, witnesses testifying in English in the Hong Kong courtroom not only results in the exclusion of the monolingual Cantonese-speaking court actors from participation in the court proceedings, but may also lead to miscommunication between the interlocutors and thus impairs their own participation in the encounter.

6.3.6 When the trial involves a witness speaking a language other than English and Cantonese

When a trial involves a witness testifying in a dialect or language other than Cantonese or English, a second interpreter has to be used. If it so happens that the staff interpreter possesses that working language, relay interpreting can be dispensed with, though WI must still be provided by a second interpreter for the benefit of the Cantonese-speaking defendant. This is the case of the murder trial (Case 8), which involves a Mandarin-speaking witness. In this case, both the judge and counsel are native English-speaking expatriates, and the defendant, who later elects to give evidence, speaks Cantonese. Since the full-time staff interpreter is trilingual and speaks Mandarin in addition to the usual languages of Cantonese and English, counsel's questions are interpreted from English into Mandarin and the witness's answers from Mandarin into English direct without a relay interpreter, who would otherwise have to be used as in Case 4 cited above under Section 6.3.1. At the same time, a second interpreter is providing WI of the English-Mandarin interactions into Cantonese for the benefit of the defendant. Depending on his/her language combination, the interpreter working in *chuchotage* may work from Mandarin to Cantonese only *or* from Mandarin/English to Cantonese. Freelance Chinese dialect interpreters usually work from and into Cantonese, not English, because most of the Chinese dialect interpreters are local residents who have migrated from Mainland China to Hong Kong decades ago and have little knowledge of English. Therefore if the second interpreter is a freelancer, the chances are s/he is working into Cantonese from the witness's answers in Mandarin and the interpreter's Mandarin interpretation of counsel's questions (*de facto* relay in *chuchotage*). Where a freelance interpreter is used in court, s/he has to take the oath/affirmation before the witness takes the stand. Staff interpreters however are sworn in only on the day they formally assume duty as court interpreters, *once and for all*, in their entire career life as court interpreters. In Case 8 under discussion, since no interpreter

swearing-in procedure is heard to have been performed, the second interpreter is presumably a staff interpreter, whose presence is made known to the other court actors only by the judge, who announces that two interpreters have to be used because the witness speaks Mandarin. Since the Cantonese interpretation is provided in *chuchotage*, this effectively excludes all the other Cantonese-speaking court actors from participating in the court proceedings. A salient finding of this case is that it registers the highest occurrences of interpreter interruptions of the Mandarin-speaking witness in both her examination-in-chief and cross-examination, as compared with the examination of other witnesses in the same case and the witness examinations in all the other cases. The interpreter-initiated interruptions often lead to lengthy turn exchanges between the interpreter and the witness. These verbal exchanges in Mandarin are nonetheless inaccessible to the court actors who do not speak Mandarin, including the monolingual English-speaking judge and counsel, the Cantonese-speaking audience in the public gallery and the English/Cantonese bilingual jurors, with the exception of the defendant, whose communication needs are being taken care of by the other interpreter. This case manifests the differences in the linguistic power and thus the participation status of individual court actors. The interpreter, being possibly the only Mandarin/English bilingual in the courtroom, is seen to assume a much more powerful participant role in negotiating meaning with the speaker – the same extra power that an interpreter usually enjoys in a setting where s/he is the only bilingual, as suggested by Anderson (2002); this is a rare occurrence in the Hong Kong courtroom of nowadays, however. A detailed analysis of the relationship between court actors' participation status and power and control in interpreter-mediated court proceedings will be presented in the following chapter.

6.3.7 The intervening judge

As was noted in Chapter 5, in a common law courtroom, the conduct of the trial is largely in the hands of counsel, particularly in the evidential phase of the proceedings, where the judge assumes a relatively passive auditor role and interrupts the proceedings only to clarify an obscure question/answer or to rule on the admissibility of certain evidence. An interfering judge in the bilingual Hong Kong courtroom inevitably impacts on the participation status of non-English-speaking court actors by excluding them from the audience.

In Case 5, the judge is observed to intervene in the examination of the witnesses by both the prosecutor and the defence counsel a large number of times, criticising the prosecutor for his way of questioning and the defence counsel for his poor English and for not making himself clear. In a typical bilingual setting, the verbal exchanges between the judge and counsel as a result of the intervention are accessible to most of the court actors, who speak the language of the court, which however is not necessarily the case in the Hong Kong courtroom. In Example 6.18, the judge's intervention renders the defence counsel's question for the witness uninterpreted and the resulting verbal exchange between the judge and the defence counsel is also left uninterpreted and is thus

inaccessible to the monolingual Cantonese-speaking court actors, including the witness and the defendant. The problems arising from judicial intervention during the evidential phase of a trial will be discussed in detail in Chapter 8.

Example 6.18 Examination-in-chief of PW1, Case 5

Turn	Speaker	SL utterances/interpretation	English gloss
1.	DC	Well, when you say, "disagree, disagree, disagree", you mean the… none of those would happen er to someone who is suffering from withdrawal symptom	
2.	I	噢—	*Now*—
3.	J	I don't understand the question	
4.	DC	Well, your Honour—	
5.	J	Are…are you suggesting that when an drug addict is suffering from withdrawal symptom, she is more suggestible, mo:re pliable? I don't know what you are saying	
6.	DC	More vulnerable to… to… to any request or…or er any impropriety as done on… on he or he… she, (2) com…compared with or as opposed to normal person	

6.3.8 Interpreting the voice of legal professionals

Another significant finding from my data is the interpreter's deviation from the generally held principle which requires professional interpreters to interpret in the first person, using direct speech. It has been observed from the data (and from my own experience in court interpreting) that when interpreting legal professionals' speech which incorporates a first-person pronoun "I", from English to Chinese (Cantonese and Mandarin alike), the interpreters would invariably avoid speaking in the first person, either by using reported speech and referring to the speaker in his/her official capacity (see Example 6.19 below) or by omitting the first-person pronoun in the Chinese interpretation (Example 6.20). The shifts are uniform in the sense that they occur only in one direction – a phenomenon which theories proposed in existing literature fail to explain and will thus be examined in more detail in Chapter 9 with the aim of adding a new dimension to the issue.

Example 6.19 Delivery of verdict by Judge, Case 4

Turn	Speaker	SL utterances/interpretation	English gloss
1.	J	**I** do take into account, however, this is the defendant's first criminal offence, and it will be his first time in prison	
2.	I	咁但係呢**法官**都會考慮到呢，今次係被告第一次犯事，同埋呢將會係第一次呢入獄架	***The judge*** *will however take into account that this is the first time the defendant has committed an offence and will be his time in prison.*

Example 6.20 Cross-examination of defendant, Case 8

Turn	Speaker	SL utterances/interpretation	English gloss
1.	D	Er…**我**唔係好專業	*Er…**I** am not that professional*
2.	I	Well, **I** wouldn't claim myself to be a professional	
3.	PC	**I** am not suggesting that you are, Sir	
4.	I	亦都唔係話你好專業	*ϕ not suggesting you are.*

6.3.9 The trainee interpreter

In Hong Kong, as was pointed out in Chapter 3, the training provided for all the new recruits of full-time court interpreters is an induction course of about four weeks, during which the trainee interpreter has to understudy an experienced court interpreter for a couple of weeks before working on his/her own, accompanied by and under the supervision of the interpreter s/he has understudied. The supervising interpreter will provide help or suggestions if the trainee interpreter encounters any problem. In Case 2, the defendant from Mainland China faces two charges, one of which is "Making a False Declaration to an Immigration Officer", and it is alleged that she has committed the offence by first divorcing her husband and subsequently entering into a marriage of convenience with a Hong Kong resident in order for her to be granted her right of abode in Hong Kong. At the trial it was revealed that the defendant's brother, a resident of Hong Kong, was arrested for the offence of "aiding and abetting another person to make a false declaration". During the trial the trainee interpreter (Interpreter B and presented in the transcript as IB), working under the supervision of Interpreter A (represented in the transcript as IA), is observed to make many mistakes including omissions and distortions of the SL utterance, as well as grammatical mistakes as illustrated in Example 6.21.

Example 6.21 Witness testifying through a trainee interpreter, Case 2

Turn	**speaker**	**SL utterances/interpretation**	**English Gloss**
1.	W	Er 我哋嘅隊員 er 敲門要求做一個證件嘅檢查	*Er, our team members uh knocked on the door to demand a document check.*
2.	IB	OK. Our team members **knock the door**, and **seek…and want to have the investigation on her identity**	
3.	PC	Yes=	
4.	W	=Er 我哋嘅隊員入咗屋啦	*=Er so our team members went into the premises.*
5.	IB	And then our team members **get** inside the premises	
6.	W	Er 屋裏面有三個人	*Er there were three persons inside.*
7.	IB	There **are about third**…er there are three (.) **person** inside	
8.	W	Er 除咗哩一名中國 <coughing sound of judge> 籍女子，我地後尾知道她就係我地要	*Apart from the Chinese female, later known as XSL,*

		搵嘅 XSL，之外 [仲有—	*whom we were looking for, [there was—*
9.	IB	[Er beside (.) this Chinese female, **which is a person** we **are** looking for	
10.	W	Er 另外仲有一名中國籍嘅男子喺一張 er 碌架床嘅上格度**瞓緊覺**	*Er there was a Chinese male who was **sleeping** on the top bed of a bunk bed.*
11.	IB	And there is (.) also one Chinese male, **which is** on the er upper deck of the…of the bed	

There were also times when he displayed a lack of legal terminology. As a result, IA had to correct his interpretation in a whisper and IB would then be observed to follow her suggestion by providing a fresh interpretation (see Example 6.22 below).

Example 6.22 Witness testifying through IB, assisted by IA

Turn	**speaker**	**SL utterances/interpretation**	**English Gloss**
1.	W	Er 我哋(.)有理由懷疑佢同一宗 er 協助及教唆他人作出虛假陳述嘅案件有關	Er we (.) had reasons to believe that she was connected with a case of aiding and abetting another person to make a false declaration.
2.	IB	<silence of 7 seconds>	
3.	IA	<whisper> we have reasons to believe that	
4.	IB	We have reasons to believe that	
5.	IA	<whisper> she was [in connection with	
6.	IB	[She was (.) She was in…she was in connection with the offenses of <silence of 2 seconds>	
7.	IA	<whisper> aiding and abetting	
8.	IB	<silence of 5 seconds>	
9.	IA	<whisper> aiding and abetting	
10.	J	<sighing aloud and tapping on the bench> (6) shall we stand down? Can we just stand down?	

Note that in Example 6.22, IB obviously has a problem encoding the legal expression 協助及教唆 (aiding and abetting) in English and there is a dead silence of 7 seconds after the witness has finished his utterance and before IA decides to offer help. Therefore from turns 3 to 6, IB is simply repeating after IA instead of providing his own interpretation. He is simply animating the words scripted by IA, who can be argued to have a participant role as author of IB's interpretation. In turn 8 however, IB is not able to hear the expression "aiding and abetting" whispered by IA in turn 7, even after she has said it for the second time in turn 9. The judge is then observed to let out a sigh of resignation and to tap on his bench impatiently before he finally orders a short adjournment, obviously for IB to get the terminology right. The impact of this on-the-job training on the performance of the interpreter and thus on the professional image of the interpreter will be evaluated in the conclusion chapter.

6.3.10 The interpreter's audience in the Hong Kong courtroom

As has been illustrated earlier in the present chapter, in a bilingual courtroom where the interpreter is the only bilingual, s/he has two distinct audiences, one as a result of the interpretation *into* the court language and the other of the interpretation *out of* it. In the Hong Kong courtroom nonetheless, the interpreter has a larger and varied audience. The defendant and witnesses requiring interpreting services are usually *not* the exclusive audience of the Cantonese interpretation, which is accessible to the majority of the court actors, actors who are either Cantonese monolinguals or English/Cantonese bilinguals. On the other hand, interpretation from Cantonese to English is not exclusive to the English-speaking court personnel either but might be accessible to Cantonese-speaking lay-participants possessing a greater or lesser degree of bilingualism. In other words, the notion of *recipientship* (Goffman, 1981) or audience (Bell, 1984) becomes more complicated as it would be possible for one to be addressee/auditor of one version of the talk and at the same time overhearer of the other version. The interpreter's decision or interpreting style may not merely be a response to the addressee or auditor of the target audience, but also to the overhearers for whom the interpretation is not intended.

6.4 Conclusion

This chapter has explored the role(s) of the interpreter in court proceedings and two different bilingual settings, one with the interpreter as the *only* bilingual and the other being the atypical Hong Kong bilingual courtroom, where the interpreter has to work with other bilingual court actors. It has compared the usual modes of interpreting and the majority and minority languages in the two settings, as well as their implications for the participation status of the court actors in the proceedings. It has also illustrated how the interpreter's or other co-present court actors' change of footing or participant role may alter or otherwise disadvantage the participation status of the other court actors in the two settings. This chapter has also demonstrated how the bilingualism of court actors in the Hong Kong courtroom may impact on the interactional dynamics and thus the participation status of individual court actors, and finally it has demonstrated how the notion of audience is further complicated in the Hong Kong bilingual courtroom. The next chapter will focus on the Hong Kong bilingual courtroom highlighting the participation status of individual court actors and how this affects their power and control in the triadic interaction.

CHAPTER 7
POWER AND CONTROL IN AN INTERPRETER-MEDIATED TRIAL

The previous chapter explored the participant roles of court actors in interpreted trials in both the typical bilingual courtroom and the atypical bilingual Hong Kong courtroom and it identified the problems inherent in both settings, particularly in the latter. This chapter moves one level up to examine how the participant roles of the court actors as construed in the previous chapters, including that of the interpreter, affect their power and thus control over the interpreter-mediated interaction. According to Fairclough, "power in discourse is to do with powerful participants controlling and constraining the contributions of non-powerful participants" (1989, p. 46). For the purpose of this study, power is taken to mean a participant's ability to control the flow of communication or even the communication itself. It will explore how the power of a court actor is realised in his/her participant role (and those of others) in interpreter-mediated court proceedings. Based on the bilingual context of the Hong Kong courtroom, it is the aim of this chapter to compare the relative power of interpreters working with bilingual court actors in the day-to-day Hong Kong courtroom with that of their counterparts working with monolingual court actors as in any other normal bilingual courtroom. This chapter will illustrate how the participant roles of the other court actors in the proceedings impact on the participant role of and thus the power of the interpreter in the triadic exchange, and it will explore the implications of the power shifts in the courtroom for the administration of justice.

7.1 Power and control in monolingual and in interpreted court proceedings

A trial in the adversarial common law courtroom is notably marked by the power asymmetry, with counsel as questioners enjoying the institutionalised power and control over lay participants as answerers (see Atkinson & Drew, 1979; Cotterill, 2003; Gibbons, 2008; Harris, 1984; Walker, 1987; Woodbury, 1984). Walker (1987, pp. 58-59) has identified three sources of power enjoyed by the legal professionals, namely a *sociocultural base of power* stemming from their roles as authorised participants to resolve disputes in a recognised societal institution, a *legal base of power*, which stipulates counsel's right to ask questions and at the same time imposes sanctions against those refusing to answer, and a *linguistic base of power*, which originates from the right to ask questions and thus to manipulate the question forms in order to control the answer to the question put.

In an interpreter-mediated trial however, counsel may lose some of this power and thus control over the proceedings, though K. H. Ng (2009, p. 162) suggests that the use of the consecutive mode in court interpreting gives counsel an extra layer of control over witnesses, who cannot tell their stories and interact with counsel as freely as their counterparts in a monolingual court as they have to pause frequently for interpretation and to interact with counsel *through* the interpreter. However, many argue that counsel's power as stipulated by the law to ask questions

and to manipulate the question forms by means of various rhetorical devices (i.e. linguistic base of power) may be diminished if the pragmatics of the questions are not reproduced in the interpreted version. As has been pointed out in Chapter 2, studies by Hale (1999, 2004), Rigney (1999), Berk-Seligson (1999) and Hale and Gibbons (1999) all illustrate a change of the pragmatic force in the interpreter's renditions of counsel's strategically formulated questions. These studies show that counsel's power to manipulate the questions in order to exercise control over witnesses' answers is very much reduced or even lost when the questioning is performed through an interpreter.

Hale (2001) points out that another way counsel may lose control of the evidence is when interpreters move away from their strict role as mouthpiece and become active participants by interrupting the proceedings, thus assuming "power by virtue of the control they take away from the examining lawyer or the witness" (p. 1). In other words, where the interpreter does not adhere to his/her prescribed role as a mere *conduit* of words, but assumes a more active role in interrupting and negotiating meanings with the speaker or responding to questions from witnesses, s/he thus casts him/herself in a lawyerlike position, and counsel may lose some of their *legal base of power* to the interpreter.

7.2 Bilingualism, participant roles and power of the interpreter and of other court actors

Anderson (2002) suggests that bilingualism is itself a rare skill, which inevitably casts the interpreter "in a highly important role vis-à-vis his clients" and the interpreter's position in the middle "has the advantage of power inherent in all positions which control scarce resources" (2002, p. 212). However, he points out at the same time that the interpreter's monopolistic power disappears "if a client happens to be bilingual" (p. 214). It could thus be argued that the linguistic power of the interpreter to a large extent depends on the co-present court actors' degree of bilingualism. The state of affairs in court interpreting in the early colonial days as depicted in Chapter 3 shows how powerful a court interpreter could become when bilingualism was "a rare skill which the other parties to the interaction are unable or unwilling to acquire" (Anderson, 2002, p. 212). In an interpreter-mediated trial, the degree of bilingualism of the co-present actors determines their participation status, or the participant roles they are capable of playing. As posited in the introductory paragraph above, the more participant roles a court actor takes on or is capable of playing, the more power and thus control s/he has over the communicative act and vice versa.

7.3 Power and participant roles of court actors with the interpreter as the only bilingual

As has been pointed out above, where the interpreter is the only bilingual, s/he is cast in the highly important role of facilitating a communicative act for monolingual interlocutors, who otherwise would not be able to interact with one another. The interpreter is thus "a power figure, exercising

power as a result of monopolisation of the means of communication" (Anderson, 2002, p. 214). Anderson suggests that the monopolistic power combined with "the relative ambiguity of the interpreter's role, allows him considerable latitude in defining his own behaviour vis-à-vis his clients' and thus to translate selectively without his monolingual clients knowing the difference "unless he oversteps rather wide bounds" (2002, pp. 212-213). It could thus be argued that, being the only bilingual in the encounter, the interpreter has the "power" to depart from the ethical code that requires interpreters to be among other things faithful and impartial as noted in Chapter 3. A staff interpreter working between English and Cantonese in the present-day bilingual Hong Kong courtroom however rarely enjoys this monopolistic power that an interpreter has in a typical bilingual setting due to the presence of the other bilinguals, except in trials involving a witness speaking another language of which the other court actors have little knowledge. Then the court will function as a typical bilingual setting for as long as the testimony of that particular witness lasts.

7.3.1 Data

The data to be used for illustrating a bilingual setting described in 7.3 above are taken from a High Court murder trial (Case 8). In this trial, the Cantonese-speaking defendant is charged with one count of murder for hacking his landlady's separated husband to death when he came over to the leased premises to demand rent arrears, accompanied by the landlady. The judge, the prosecution counsel and the defence counsel are all English-speaking monolinguals. As a matter of fact, this is the only trial in my data where neither the counsel nor the bench speak Cantonese. The first prosecution witness (PW1), the landlady, testifies in Mandarin. As has been pointed out in Chapter 6, when a trial involves a witness or defendant speaking a language other than Cantonese or English, a second interpreter usually has to be used and in an English trial, if the second interpreter's other working language is Cantonese, not English, relay interpreting is often inevitable, with the staff interpreter working between Cantonese and English and the second interpreter working between Cantonese and the other language, as in the blackmail trial (Case 4) cited in Chapter 6. In Case 8, the case under discussion, however, since the staff interpreter is trilingual and also speaks Mandarin, counsel's questions are interpreted from English into Mandarin and the witness's answers from Mandarin into English direct without a relay, in open court and in the consecutive mode. However, as noted in the previous chapter, this case does involve a second interpreter for providing WI of the English-Mandarin interactions into Cantonese for the benefit of the Cantonese-speaking defendant, who otherwise would be excluded from participation in the proceedings. However, since the Cantonese interpretation is provided in *chuchotage*, audible only to the defendant, the other Cantonese-speaking monolinguals in court are effectively excluded from participating in the proceedings.

With the counsel and the judge being monolingual, and the witness testifying in a language

unfamiliar to most in court, the interpreter enjoys the same or a similar degree of power as that of a bilingual in a typical bilingual court. The augmentation in her power is manifest in the active role she assumes in initiating conversation turns with the interlocutors, especially with the Mandarin-speaking witness. Since initiating turns, especially with a witness, is a key element of the power shift in that it inevitably takes away the control of the witness from the examining counsel, the next section of this chapter will be devoted to a closer examination of this phenomenon.

7.3.2 Interpreter-initiated turns – the norm

In various codes of ethics governing the practice of court interpreting, stress is always placed on the need for the interpreter to adhere to the principles of accuracy and impartiality. The former requires interpreters to provide a faithful rendition of the source-speaker's words, without addition or omission, while the latter emphasises the need for interpreters to maintain professional detachment and to avoid bias and any real or perceived conflict of interest. The principle of impartiality also requires interpreters to limit their role to interpreting and to refrain from engaging in private conversations with anyone involved in the court proceedings.

With regard to accuracy in court interpreting and impartiality of the interpreter, the *Basic Guidelines for Part-time Interpreters* issued by the Judiciary of Hong Kong state:

> A Part-time interpreter must interpret faithfully – without addition or omission – everything said in court. [...] He/she should never give the people in the courtroom an impression that he/she is engaged in a private conversation with the witness, *particularly when those present do not speak the language or dialect he/she speaks* (emphasis added). The interpreter is expected to try his/her utmost to interpret accurately and faithfully what was said in full, regardless of how little sense it may make and leave the task of clarification to counsel or the bench……...(Judiciary, 2003, p. 3)

As was pointed out in Chapter 3, these guidelines are specifically intended for part-time interpreters and as for full-time interpreters, there do not seem to exist any written guidelines of this kind, though there is no reason to assume that such guidelines do not apply as well to full-time interpreters. Note that the guidelines emphasise the need for the interpreter to refrain from clarifying with the witness, "particularly when those present do not speak the language or dialect he/she speaks". This is presumably intended to minimise the power the bilingual interpreter enjoys over the monolingual interlocutors as suggested by Anderson (2002) and thus its impact on the proceedings. In what follows, I am not interested in ethical issues, but will merely be presenting the reality, without making value judgments.

7.3.3 Interpreter initiated turns – quantitative results

Throughout PW1's examination-in-chief and cross-examination, the interpreter is observed to initiate turns with her on many occasions, without seeking permission from the court, and often

casts herself in the role of the examining counsel, or as a coordinator of the talk. Table 7.1 below shows the turn distributions in both the examination-in-chief and cross-examination of PW1.

Table 7.1 Turn distribution in Mandarin-speaking PW1's examination-in-chief and cross-examination, Case 8

Speaker	**No. of turns (in-chief)**	**%**	**No. of turns (cross)**	**%**
Interpreter	715	47.5%	911	47.7
PW1	**424**	**28.1%**	**471**	**24.7%**
Prosecution Counsel	**308**	**20.5%**	9	0.5%
Defence Counsel	8	0.5%	**453**	**23.7%**
Judge	51	3.4%	63	3.3%
Unidentified speaker			1	0.1%
Total number of turns	**1506**	**100%**	**1908**	**100%**

The turn distribution table above shows that PW1, despite her prescribed role as a responder who can only take questions from counsel, has far more speaker turns than the examining counsel, especially in her examination-in-chief, where PW1's turns exceed those of the prosecution counsel by more than one third. This suggests that part of PW1's turns may have resulted from interpreter-initiated turns (hereafter abbreviated as IITs), instead of turns in response to the examining counsel's questions. This is itself evidence of the examining counsel's loss of control over the turn taking in the communicative process.

A close examination of the turn exchanges reveals a total of 200 IITs in the examination-in-chief of PW1, representing 13.3% of the total turns, or 28% of the total interpreter turns. Of the 200 IITs, 190 are made with PW1 and 10 with the examining counsel (see Table 7.2 and Figure 7.1).

Table 7.2 IITs in PW1's examination-in-chief and cross-examination, Case 8

Type of IITs	**in-chief**	**% of total speaker turns (1506)**	**% of total interpreter turns (715)**	**cross**	**% of total speaker turns (1908)**	**% of total interpreter turns (911)**
IITs with PW1	190	12.6%	26.6%	102	5.4%	11.2%
IITs with examining counsel	10	0.7%	1.4%	6	0.3%	0.7%
Total	**200**	**13.3%**	**28%**	**108**	**5.7%**	**11.9%**

Figure 7.1 IITs vs. interpretation turn in Mandarin-speaking PW1's examination-in-chief, Case 8

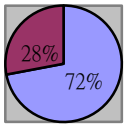
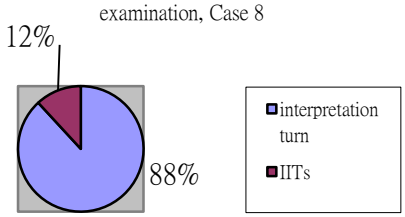


Figure 2. IITs vs. interpretation turns in Mandarin-speaking PW1's cross-examination, Case 8



The cross-examination of PW1 too has a large number of IITs, although the interpreter intervenes less frequently than she does in the examination-in-chief, presumably because she has been furnished with most of the details of the case and thus the need for clarifications is significantly reduced. The other reason is that the majority of the questions in cross-examination are confirmation-seeking questions (CSQ) whereas questions in examination-in-chief are mostly information-seeking (ISQ – commonly known as WH-questions) (see Hale, 2004; Harris, 1984; Woodbury, 1984 for question categories in witness examination), and the witness's answer is often limited to a choice between an "yes" or a "no", typically in the form of "do you agree with me…" or "is it true that…". The need to clarify with the witness in cross-examination thus diminishes though the interpreter may sometimes need to clarify with the examining counsel in cases of long and syntactically complicated questions. There are 108 IITs in the entire cross-examination process, representing 5.7% of the total turns or about 12% of the total interpreter turns. Of the 108 IITs, 102 are made with PW1 and 6 with the examining counsel (see Table 7.2 and Figure 7.2).

In comparison, the examination-in-chief and the cross-examination of the Cantonese-speaking defendant have only 6 and 10 occurrences of IITs out of a total of 534 and 963 turns respectively (Table 7.3), and in each case represent only slightly over 2% of the total interpreter turns (Figures 3 & 4).

Table 7.3 IITs in D's examination-in-chief and cross-examination, Case 8

Type of IITs	**in-chief**	**% of total speaker turns (**534**)**	**% of total interpreter turns (253)**	**cross**	**% of total speaker turns (963)**	**% of total interpreter turns (459)**
IITs with defendant	5	0.9%	2%	5	0.5%	1.1%
IITs with examining counsel	1	0.2%	0.4%	5	0.5%	1.1%
Total	**6**	**1.1%**	**2.4%**	**10**	**1%**	**2.2%**

Figure 7.3 IITs vs. interpretation turns in Cantonese-speaking D's examination-in chief, Case 8

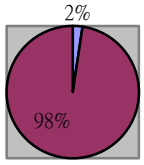
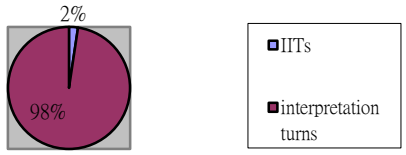


Figure 7.4 IITs vs. interpretation turns in Cantonese-speaking D's cross-examination, Case 8



7.3.4 Typology of IITs

Berk-Seligson (1990) regards the dialogues initiated by interpreters as "the interpreter's attention-drawing behavior" (p. 65), arising from the need to clarify witnesses'/defendants' answers and attorneys' questions, to account for witnesses'/defendants' side comments, to prompt witnesses/defendants to speak, or otherwise to silence them. Hale's study of the New South Wales courtroom in Australia suggests the following 7 reasons for interpreter interruptions (2001, p. 2):

1) To ask for clarification of a question or an answer
2) To correct a question when it is an obvious unintentional mistake
3) To finish interpreting a previous, interrupted utterance
4) To provide unsolicited information
5) To offer a personal opinion
6) To protest to the bench for being interrupted
7) To help the witness with his/her case

The above categories are subsequently reduced to 6 in her later study (Hale, 2004), with category no. 7 removed from the list (a sensible move as the claim itself could not be easily substantiated; the example cited to illustrate this category simply shows the interpreter repeating her interpretation when the counsel seems to have deliberately misquoted it to help his case).

With Berk-Seligson's and Hale's typologies as a point of reference, I have arrived at a typology of 9 categories of the IITs identified and quantified in the examination of PW1 and present them in Table 7.4 below.

Table 7.4 IITs in PW1's examination-in-chief and cross-examination, Case 8

Types of IITs	**in-chief**	**%**	**cross**	**%**
1. To seek confirmation	78	39%	33	30.6%
2. To seek clarification	70	35%	57	52.8%
3. To seek further information	15	7.5%	3	2.8%
4. To coach the witness	12	6%		
5. To respond to the witness	12	6%	9	8.3%

6. To prompt the witness (especially after interrupting the witness)	11	5.5%		
7. To inform the court of the need to finish an interrupted interpretation	2	1%		
8. To acknowledge the understanding of the witness's utterance			5	4.6%
9. To point out a speaker mistake			1	0.9%
Total	**200**	**100%**	**108**	**100%**

Some of these categories coincide with those of Berk-Seligson's and Hale's typologies, though mine comprises more categories, some of which, especially the first three, may partially overlap each other. The reason why they are treated as categories in their own right is that in Category 1, the interpreter simply repeats or rephrase the speaker's utterance to check her understanding without clarifying ambiguity or seeking further information (Example 7.1), whereas in Category 2, the interpreter takes the initiative to clarify ambiguity either arising from contextual problems (Example 7.2), or due to linguistic or cultural differences. In Category 3, the interpreter explicitly requests further information from the speaker (Example 7.3), which results from neither a decoding problem nor ambiguity of any kind. The following examples are drawn from my data to illustrate all these categories.

7.3.4.1 To seek confirmation

Most of the IITs occurring in the witness's examination-in-chief are checking turns used by the interpreter to check her understanding of the witness's utterance by repeating or rephrasing what is said by the witness – also the second-most frequent type of IITs in the witness's cross-examination – as demonstrated in Example 7.1.

Example 7.1 Examination-in-chief of PW1, Case 8

Turn	Speaker	SL utterance/interpretation	English gloss
1.	W	我打他的電話, 他睡覺，[他也	*I called his phone. He was sleeping, [and he*
2.	I	[他睡覺？	*[he was sleeping?*
3.	W	他睡覺，電話響他不聽	*He was sleeping, and did not answer the call.*
4.	I	Er 電話響他不聽？ Well, I tried to call him, but um he was asleep. He did not answer the call	*Er, he did not answer the call?.*

On the surface, the interpreter is making use of these turns (turns 2 and 4) to check her understanding of the speaker meaning, but it may well be the case that the interpreter uses these turns as a stalling tactic to buy her time for better reformulating her interpretation, as shown in turn 4, where the interpreter's turn is immediately followed by her rendition without waiting for the witness's confirmation. Example 7.2 is yet another of this kind.

Example 7.2 Examination-in-chief of PW1, Case 8

Turn	Speaker	SL utterance/interpretation	English gloss
1.	PC	Go on	
2.	I	然後呢？	And then?
3.	W	然後我那個前夫去看那，就看到了姓 W 的在家裡，他們, 去叩門	*Then my ex-husband went to have a look and found them, Mr. W, home. (He) went to knock on the door.*
4.	I	你的前夫去叩門，看到了這個 W 先生？ Well, my ex-husband went up to the premises. He knocked on the door and managed er to see Mr. W	*Your ex-husband went to knock on the door, and saw Mr. W?*

7.3.4.2 To seek clarification

Apart from seeking confirmation from the witness, the interpreter interrupts the proceedings frequently to clarify the meaning of PW1's utterances. Example 7.3 is one of this kind.

Example 7.3 Examination-in-chief of PW1, Case 8

Turn	Speaker	SL utterance/interpretation	English gloss
1.	W	後來 W 先生也在我前面在走出…走出去的	*Later Mr W walked out…walked out in front of me*
2.	I	W 先生，這個租客 W 先生？	*Mr. W, Mr. W the tenant?*
3.	W	不是，我先生，因為我走出來嘛，我…我先生看到我走出來，他在…在前邊走囉	*No, my husband, because I came out. My…my husband saw me coming out, so he walked out in…in front of me.*

Since both the defendant and the deceased have the same surname – W, the interpreter is found to clarify on a number of occasions with the witness when she makes references to a Mr. W as demonstrated in Example 7.3 above in the course of her interpreting. The clarification turn in this case obviously does not stem from a comprehension problem, but is rather more to do with the role the interpreter assumes. Admittedly, it sounds rather unusual that the witness should be referring to her separated husband as Mr. W, which is probably why the interpreter deems it necessary to ask the witness whether she is referring to the tenant (i.e. the defendant). The witness may have done that on purpose, because she has been emphasising in her evidence that the deceased was no longer her husband, but had become a casual friend of hers, and that he helped her as a friend to chase the outstanding rent from the defendant. The formal appellation is presumably chosen to downplay the intimacy or close relationship between her and the deceased. However, by clarifying with the witness, the interpreter takes on a primary participant role – a listener role as responder in turn 1, a speaker as animator, author and principal in turn 2, and finally as addressee of the witness's reply in turn 3. Her attempt to disambiguate the meaning of the witness's utterance however might have been censured by the counsel/judge were they equipped with the linguistic knowledge to access this side conversation between the interpreter

and the witness.

7.3.4.3 To seek further information

In Example 7.**4**, the interpreter asks the witness a follow-up question for further information before interpreting her utterance, possibly in an attempt to make a more complete and grammatically adequate rendition, though the fragmented utterances could have been interpreted as such without the requested information as shown in the English gloss. The irony is that the witness would probably have been able to provide the requested details had she not been interrupted by the interpreter. Here the interpreter ostensibly takes on the examining counsel's role by controlling not only the form, but also the content of the interaction.

Example 7.**4** Examination-in-chief of PW1, Case 8

Turn	Speaker	SL utterance/interpretation	English gloss
1.	PC	What happened next?	
2.	I	然後怎樣？	*What happened then?*
3.	W	後來我就問下面有一個老頭，er—	*Then I asked an old man down there er—*
4.	I	um 問他什麼？	*um what (did you) ask him?*

Example 7.5 below is another example of the interpreter asking the witness for further information before rendering her preceding utterance into English.

Example 7.5 Examination-in-chief of PW1, Case 8

Turn	Speaker	SL utterance/interpretation	English gloss
1.	PC	When was that?	
2.	I	什麼時侯開始的？	*When did that start?*
3.	W	E::r 八月……七月份。	*E::r August…July.*
4.	I	七月份？什麼年份？	*July? Which year?*
5.	W	Er 零五年七月份	*Er July year 05.*
6.	I	Um er July 2005	

7.3.4.4 To coach the witness

The examination-in-chief reveals 12 instances of the interpreter coaching the witness. In most of these examples the interpreter tells the witness to speak slowly as in Example 7.6 below. The interpreter's coaching turns can be seen as her attempt to control the pace at which the witness testifies and thus the flow of the communication so as to facilitate her work of interpreting.

Example 7.6 Examination-in-chief of PW1, Case 8

Turn	Speaker	SL utterance/interpretation	English gloss
1.	W	然後我…W 先生就說如果你要吵呢 er 你地…你地死梗啦，我說我不…不會來跟你嘈，是商量—	*Then I...Mr. W said, "if you are here to quarrel (with me), for sure you will be doomed". I said, "I'm not here to quarrel with you, but to negotiate—*
2.	I	慢慢、慢慢、慢慢說，W 先…[W 先生怎麼說？	*slowly, slowly. Speak slowly. Mr. W, [what did Mr. W say?*

7.3.4.5 To respond to the witness

The interpreter is also found to repeat, rephrase or elaborate counsel's question when the witness's answer appears to be non-responsive, thus leaving the witness's utterance uninterpreted as in Example 7.7. In this case, the interpreter might have held herself responsible for PW1's non-responsive answer, thinking that the witness must have misheard her, and thus takes the liberty to respond to her. It might as well be the case that the interpreter is worried that reproducing PW1's non-responsiveness would be face-threatening as the majority non-Mandarin-speaking participants in court might mistakenly conclude that there is an interpreting problem. However, by responding to PW1's non-responsive utterance and leaving it uninterpreted, the interpreter has denied the monolingual English-/Cantonese-speaking participants' access to it.

Example 7.7 Examination-in-chief of PW1, Case 8

Turn	Speaker	SL utterance/interpretation	English gloss
1.	PC	And what did he say?	
2.	I	他說什麼？	*What did he say?*
3.	W	我就說—	*I said—*
4.	I	**他**說什麼？**他**，W先生說什麼？	*What did HE say? What did HE, Mr W say?*

At other times, the interpreter is observed to respond to a witness's question direct without interpreting it and referring it back to the examining counsel as in Example 7.8, which again denies the non-Mandarin-speaking participants' access to the witness's questions in Mandarin.

Example 7.8 Cross-examination of PW1, Case 8

Turn	Speaker	SL utterances/ interpretation	English gloss
1.	DC	Hmm. But this question of being alone at night you see, in fact, did you not tell the police eventually in your first statement that although you're unemployed, you helped your friend to hawk clothes from a hawker's stall in Shum Shui Po, Mong Kok from time to time.	

2.	I	那你不是曾經跟警方說過，在這…第一份口供裡面說過，就是你不時會幫助你的朋友，在深水埗區er er 當小販，售賣這個衣服，你不是說過嗎？	*Didn't you tell the police in the...your first statement, that you sometimes helped your friend with hawking, selling clothes in the district of Sham Shui Po. Didn't you say that?*
3.	W	什麼…什麼小販？我聽不懂。什麼深水埗？	*What...what hawking? I don't understand. Sham Shui Po?*
4.	I	深水埗當小販賣衣服。	*Hawking clothes in Sham Shui Po.*

As has been mentioned above, the prescribed role of the witness in the judicial process is to answer, not to ask questions, and the *legal base of power* stipulates counsel's right not only to ask questions, but also to impose sanctions against those refusing to answer, The interpreter's response to the witness's question without interpreting it and referring it back to the defence counsel in this case has in a way legitimated the witness's right to ask questions and deprived the examining counsel of his right to censure the witness for not answering his question. Had the question been interpreted instead of being responded to by the interpreter, the defence counsel might have protested against it, as is evidenced in Examples 7.9 and 7.10 below, in which the interpreter does not respond to but interprets the witness's clarifying questions for the defence counsel.

Example 7.9 Cross-examination of PW1, Case 8

Turn	Speaker	SL utterances/ interpretation
1	I	Well, are you talking about my describing my husband as my friend instead of my ex-husband?
2	DC	Please try not to answer my question with a question.

Example 7.10 Cross-examination of PW1, Case 8

Turn	Speaker	SL utterances/ interpretation	English gloss
1	DC	Have you ever er (2) worked as a part-time real estate agent?	
2	I	那你曾…...有沒有曾經在 er 地產公司裡面當 er 做過兼職？	*So have you ever...ever uh worked as a part-timer in a real estate agency?*
3	W	地產公司？	*Real estate agency?*
4	I	Real estate agent?	
5	DC	You had my question. Please give us an answer	

7.3.4.6 To prompt the witness

Prompting mostly occurs after the interpreter has rendered an obviously unfinished utterance by the witness. This can be seen as a repair strategy on the part of the interpreter as in Example 7.11 below, where the interpreter starts interpreting before the witness is able to finish her turn. After rendering her answer into English, the interpreter recapitulates it in Mandarin for the witness, as a reminder of what the witness has said, before prompting her to carry on with her testimony. The interpreter may have deemed it necessary to prompt the witness to go on with her testimony and

that the turn might be taken over by the examining counsel.

Example 7.11 Examination-in-chief of PW1, Case 8

Turn	Speaker	SL utterances/ interpretation	English gloss
1.	W	我站在鐵門—	*I was standing by the iron grille—*
2.	I	Well, I stood by the metal gate 你站在鐵門，[然後呢？	*You stood by the iron grille, [and then?*

7.3.4.7 To inform the court of the need to finish an interrupted interpretation

Since both the prosecution and the defence counsel in this case are monolingual English-speaking expatriates and thus have no access to the witness's testimony in Mandarin, there are two instances of the prosecution counsel trying to take back his turn to carry on with his questioning, having taken the interpreter's hesitation pause as an end-of-turn pause. As a result, the interpreter has to interrupt the prosecution counsel in order to finish her turn. This however would not usually happen with bilingual counsel, who would then be able to tell if the interpreter has completed her turn by overhearing the witness's testimony in the source language. In this case, it could be argued that the interpreter intervenes in order to adhere to the ethical code on accuracy and completeness, that is, to be accurate and complete in her rendition as required by interpreters' code of ethics. Example 7.12 below is one of the two examples identified.

Example 7.12 Examination-in-chief of PW1, Case 8

Turn	Speaker	SL utterance/interpretation	English gloss
1.	W	我就跟他說，你要什麼條件，你可以講，只要是合理的不要過份	*I said to him that he could tell me if he had any conditions as long as they were reasonable ones, not too demanding.*
2.	I	Uh-huh. Well um what conditions <throat-clearing sound> do you propose? Just tell me. Um (2)	
3.	PC	You said—	
4.	I	Er um I haven't finished.	

7.3.4.8 To acknowledge the understanding of the witness's utterance

Example 7.13 illustrates the interpreter signalling her understanding of PW1's answer by means of back-channelling, which is evidence of the interpreter listening as a responder (Wadensjö, 1998, p. 92). This might also be taken as the interpreter's strategy to stop PW1 from giving an answer which is too lengthy to be rendered accurately and completely. Note the overlap of the interpreter's voice with PW1's utterance, which is cut short by the interpreter's back-channelling.

Example 7.13 Cross-examination of PW1, Case 8

Turn	Speaker	SL utterances/ interpretation	English gloss
1.	W	(2)但是，以::以前是這樣，後來他零:六年我見到他，他脾氣就比以前好多了，因此我	(2) *But, (he) wa:: was like that before. Then he, in o::6, I met him (again), and he was much better-tempered than before. So when I*

		叫他幾次什麼的，他都勸我說哎呀找政府囉，[我就怕麻煩，因為我覺得他脾氣改了	*asked him (to do) something several times, he urged me to seek help from the government. [I didn't want to go through it all, though. So I found there's a change in his temper.*
2.	I	[嗯嗯嗯，嗯嗯，明白，嗯嗯	*Mhm, mhm, got it, mhm.*

7.3.4.9 To point out a speaker mistake

In Example 7.14 below, the defence counsel has made an obvious mistake about the date on which PW1 made her statement with the police. As the month in question is August, not September, the interpreter is sure that the defence counsel has made a mistake and alerts him to it in a whisper. The interpreter's intervention in this case is presumably to avoid the confusion which might be caused to the witness if the mistake is preserved in the rendition. This might also be regarded as the interpreter's face-saving strategy because any confusion likely to be caused by the reproduction of counsel's mistake might be attributed to an interpreting problem. In any case, this is evidence that the interpreter does not see herself as a copying machine (the conduit myth) but one who plays an active role in coordinating talk and facilitating communication, by listening, in this case, as responder and speaking in her own voice as animator, author and principal.

Example 7.14 Cross-examination of PW1, Case 8

Turn	Speaker	SL utterances/ interpretation
1.	DC	Er you've just been asked some questions (1) about witness statement you made (.) to the police. In the early morning, the first one in the early morning, I asked (.) of the 17th September
2.	I	<in a whisper> 17th August.

With the participant roles of court actors in mind and the implications for their power and control over the triadic communication, Sections 7.3.5 and 7.3.6 below will explore the impact of such IITs. In her study of interpreter interruptions with the examining counsel, Hale (2001, p. 8) contends that interpreter interrupting counsel will interfere with their questioning strategies or line of questioning, taking away some of their inherent power and thus control over the testimony of the witness. While Hale's study focuses on interpreter interruptions of the examining counsel, my analysis will focus on the impact of IITs with the witness, which account for over 90% of the total number of IITs in both the examination-in-chief and cross-examination of PW1 (see Table 7.2).

7.3.5 The impact of IITs on participant roles of court actors

In the examples cited above, the interpreter is seen to take on a primary participant role and assumes much latitude in negotiating meaning with the speaker. In these IITs, the interpreter ceases to be the voice of the key interlocutors, but is speaking in her own voice, combining the roles of animator, author and principal (Goffman, 1981). By initiating talk with the witness, she has also made herself a direct addressee of the witness's response. These interpreter-witness turn exchanges have effectively excluded the participation of not only the monolingual

English-speaking counsel and judge, but also the predominantly Cantonese-speaking jury and the audience in the public gallery. The exception is the defendant, who has had whispered Cantonese interpretation provided to him by a second interpreter as noted in Chapter 6 and thus retains his auditor role in the participation framework. (Table 7.5)

Table 7.5 Participant roles when Interpreter clarifies with Witness

IR	PR						
	SR			AR			
	animator	author	Principal	addressee (responder)	reporter/ recapitulator	auditor	overhearer
I	+	+	+	+	−	−	−
W	+	+	+	+	−	−	−
D	−	−	−	−	−	+	−
C/J/JR/PG	−	−	−	−	−	−	−

During these IITs, the monolingual judge and counsel, as Bell puts it, become "uncomprehending hearer[s]" and are thus rendered "a nonmember" because of the use of a language unintelligible to them (1984, p. 176).

7.3.6 The impact of IITs on the power of the monolingual counsel/judge

Having been excluded from these IITs, the monolingual counsel and judge have little control over the flow of the testimony. By no means are they able to access these interpreter-witness verbal exchanges, let alone intervene in the process. In the above-cited examples, the interpreter could be described to have usurped some of the power of the examining counsel, displaying considerable control over the flow of testimony. Example 7.15 below best illustrates the interpreter as a power figure monopolising the communication while the monolingual judge and counsel display a total loss of control over the evidence of the witness and are forced to accept confusing and blatantly nonsensical answers arising from a series of interpreting mistakes, which have nonetheless gone unnoticed. In this example, the judge is trying to clarify how the defendant was holding the knife when the assault took place. Her attempt nonetheless leads to even more confusing answers.

Example 7.15 Examination-in-chief of PW1, Case 8

Turn	Speaker	SL utterance/interpretation	English gloss
1.	J	Just one minute. You mean one hand on the handle and one hand on the blade	
2.	I	Uh was one…one hand on the…?	
3.	J	The **tenant** had **one hand on the handle** and **one hand on the blade**, with the sharp point (laying downwards)	
4.	I	你說的是**你的前夫**兩隻手都是抓	*Do you mean **your ex-husband had***

		著租客的手，還是你的前夫始其中一隻手拿著刀，是哪一個？	***both his hands on the defendant's hands**, or **your husband had one of his hands holding the knife**? Which one?*
5.	W	那…那個租客是拿著刀嘛	*It was the…the tenant who was holding the knife.*
6.	I	不是你的前夫？	*Not your ex-husband?*
7.	W	我前夫，就因為這個刀就這麼闊，兩隻手就抓不到，就抓在上面囉	*My ex-husband…because the knife was only as wide as this, (his) two hands could not get hold of (it), and could only grasp the top*
8.	I	你的前夫兩隻手都是抓著[租客的兩隻手？	*Your ex-husband's hands were grasping the hands of the tenant?*
9.	W	[上面，er上面囉	*On top…er…on top of*
10.	I	抓著他的兩隻手？	*Grasping his hands?*
11.	W	他就是……他這樣……這樣抓兩隻手囉，[抓不到那個刀….	*He was…he was…like this…grasping the two hands, [could not grab hold of the knife.*
12.	I	**[**你的…**你聽我說好不好？**	*Your…CAN YOU PLEASE LISTEN TO ME?*
13.	W	嗯	*Em*
14.	I	你的前夫雙手都是抓著租客的雙手？	*Your ex-husband's hands were grabbing the tenant's hands?*
15.	W	係::囉	*Yeah::*<in Cantonese>
16.	I	Well, my ex-husband has both of his hands um grasping the hands of the tenant	
17.	PC	Yes, but we, Her Ladyship was asking you: "did **the tenant** had one of HIS hands on the handle of the (.) knife?"	
18.	I	但是**你的前夫**有沒有拿著er這個刀柄？沒有？	*But did **your ex-husband** hold the handle of the knife? No?*
19.	W	沒有	*No*
20.	I	No	

The problem starts with the interpreter's failure to understand the question of the judge in turn 1 as is evidenced by her clarifying question in turn 2. The judge repeats the question in turn 3, which the interpreter again fails to grasp. While the judge asks the witness how the *tenant* was holding the knife (chopper), the interpreter has misinterpreted it in turn 4 as the witness's *ex-husband*, which confuses the witness as she is saying all along that it was the tenant who was holding the knife, not her ex-husband. Her confusion however has led to the agitation of the interpreter, who is found to raise her voice ordering the witness to listen to her in an authoritative tone, displaying herself as a power figure (turn 12). During this lengthy clarifying process both the judge and the examining counsel are rendered helpless, are completely excluded from the entire process, and are clueless about the communication problem between the witness and the interpreter. This continues until the interpreter finally renders an obviously non-responsive answer to the question put (turn 16). The prosecutor must have suspected a misinterpretation by then

when he intervenes in turn 17 by reiterating the judge's question, which is again misinterpreted when "tenant" is rendered as "your ex-husband" (turn 18). With the misinterpretation of counsel's question in turn 18, the meaning of the witness's simple answer "no" is inevitably distorted; while the witness's answer based on the interpreter's rendition in turn 18 suggests that her ex-husband was not holding the handle of the knife, the court will inevitably take it to mean that the tenant did not have one of his hands holding the handle of the knife, which any reasonable person would find hard to imagine. This may impact on the credibility of the witness and the prosecution case, and one may wonder if this has any bearing on the jury's subsequent finding of the defendant not guilty of murder he was charged with, but of a lesser offence of manslaughter.

This example best illustrates how monolingual interlocutors lose control over the witness's evidence as the bilingual interpreter monopolises the communication. If the witness had spoken Cantonese instead of Mandarin, the interpreting mistakes would probably not have escaped notice, because even if the counsel/judge did not speak Cantonese, the instructing solicitor or the prosecution assistant (who are usually Cantonese-speaking because of the need to communicate with the predominantly Cantonese-speaking defendants and witnesses) would be able to alert the court to the interpretation mistakes; the same goes for anyone in the public gallery, as in Case 4 cited in Chapter 6 when an audience member from the public gallery cried out loud to correct the Cantonese-Shanghainese interpreter's mistake. This shows how a witness testifying in Mandarin can give the interpreter an extra layer of linguistic power.

7.3.7 The impact of IITs on the evaluation of counsel, the witness and the interpreter

The IITs may also have an impact on jurors' impression of the counsel and the witness whose utterances are interrupted by the interpreter. Berk-Seligson's (1990; 2002) experiment with mock jurors to evaluate the impact of interpreter intrusiveness shows that the attorney interrupted by the interpreter was found by the sample of listeners as a whole to be less competent and by Hispanic listeners as a subgroup to be both less competent and less intelligent (p. 188). On the other hand, interpreter interruptions of the witness were found to have no impact on the attorney's competence, intelligence and persuasiveness (p. 191), but the witness whose testimony was interrupted by the interpreter was found to be significantly less convincing and less competent by Hispanic mock jurors. Berk-Seligson (ibid.) notes that the results suggest that those observing interpreted proceedings make a distinction between an interpreter's interruptions of an examining counsel and of a witness. She suggests that an interpreter's interruptions of an examining counsel "can be perceived as a veiled criticism" of his/her performance, thus rendering him/her less competent; an interpreter's interruptions of a witness however seem to be seen by mock jurors "partially as a problem of the interpreter's and partially a defectiveness in the witness", but as unconnected to the examining counsel's "professional capabilities" (ibid.).

In the light of Berk-Seligson's findings, it could be argued that the IITs with the witness

might render her less trustworthy and less competent in the eyes of the jurors, who might perceive her to be evasive and uncooperative. On the other hand, the interpreter herself might suffer a negative appraisal by others in the courtroom as being incompetent and unprofessional.

7.4 Power and participant roles of court actors with the interpreter as one of the bilinguals

The monopolistic linguistic power that an interpreter has in a normal bilingual setting as demonstrated above is now rare in the day-to-day bilingual Hong Kong courtroom, where the interpreter works with bilingual legal professionals and witnesses and where defendants speak the majority language of the court, i.e. Cantonese.

In a bilingual courtroom where the interpreter is but one of the bilinguals, s/he ceases to enjoy the monopolistic power as postulated by Anderson (2002). As has been illustrated in the previous chapters, interpreters in the Hong Kong courtroom often have to work with court actors who share their bilingual knowledge. This, coupled with the use of the consecutive mode of interpretation for much of the trial, renders the triadic communication relatively transparent to all the court actors with knowledge of both the SL and the TL. The rest of this chapter will examine the participant roles of court actors in this atypical bilingual Hong Kong courtroom setting. It will explore how the participant roles the other court actors take on or are capable of playing impact on the participant role and power of the interpreter.

7.4.1 Data

Analysis will in the main focus on Case 9, a High Court rape trial, supplemented with examples drawn from other trials in my data in which interpreters work with bilingual legal personnel. In the rape trial, the defendant is accused of raping his lesbian younger sister's ex-girlfriend. In this trial, both the prosecutor and the defence counsel are local lawyers bilingual in English and Cantonese, but the judge is expatriate and speaks only English. All the witnesses, the alleged victim and the defendant included, testify in Cantonese.

7.4.2 The interpreter as relayer

Compared with the murder trial, this case registers very few occurrences of IITs, which represent less than 1% of the total turns in both PW1's examination-in-chief and cross-examination (Table 7.6 and Figures 7.5 & 7.6).

Table 7.6 IITs in PW1's examination-in-chief and cross-examination, Case 9

Type of IITs	**in-chief**	**% of total speaker turns (1647)**	**% of total interpreter turns (796)**	**cross**	**% of total speaker turns (2667)**	**% of total interpreter turns (1304)**
IITs with PW1	8	0.49%	1%	2	0.07%	0.15%

IITs with examining counsel	1	0.06%	0.13%	5	0.19%	0.38%
Total	**9**	**0.55%**	**1.13%**	**7**	**0.26%**	**0.53%**

Figure 7.5 IITs vs. interpretation turns in Cantonese-speaking PW1's examination-in-chief, Case 9

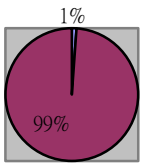
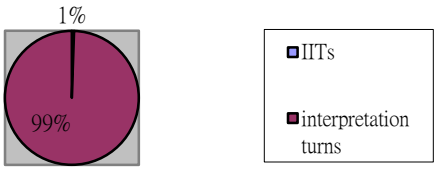


Figure 7.6 IITs vs. interpretation turns in Cantonese-speaking PW1's cross-examination, Case 9



The low occurrences of IITs suggest that the interpreter in this case, unlike the English-Mandarin interpreter in Case 8, assumes a far less active role in the triadic communication or takes on the role of *relayer* rather than *coordinator*. Here are some examples.

Example 7.16 Examination-in-chief of PW1, Case 9

Turn	Speaker	SL utterance/interpretation	English gloss
1.	PC	How old was she? [Er	
2.	I	[Er 有幾大呀？	*How old?*
3.	W	(1)宜家呀？	*(1) Now?*
4.	I	You mean now?	

In Example 7.16, the prosecution counsel asks the witness how old the defendant's baby girl was. Since the Cantonese interpretation does not include any temporal marker, the witness clarifies with the interpreter in turn 3, which the interpreter interprets without taking the question to herself as does the interpreter in Case 8 most of the time.

In Example 7.17 below, the witness is describing the defendant's sexual advances to her. Her testimony is fragmented with the ellipsis of the subjects in her utterances. Unlike the interpreter in the murder trial, the interpreter in this case does not attempt to clarify with the witness or try to make her rendition more complete and grammatically adequate. Instead, she renders the utterances in the TL by preserving the fragmented style of the SL speech.

Example 7.17 Examination-in-chief of PW1, Case 9

Turn	Speaker	SL utterance/interpretation	English gloss
1.	W	(2)跟住係咁錫我囉	*(2) then kept kissing me*
2.	I	And then, kept kissing me	
3.	W	(2)跟住，又摸我囉	*(2) then, caressed me.*
4.	I	And then, (.) caressed me	
5.	W	咁囉	*Like that.*
6.	I	Like that	

Obviously the interpreter in this case tends to adhere more closely to the interpreter's code of ethics with regard to accuracy and impartiality and does little to change the discourse or pragmatics of the utterances. Example 7.18 further illustrates the interpreter's adherence to both the content and the form of the SL utterances by reproducing not only the propositional content of the witness's utterance, but also the subject ellipsis and the repetition.

Example 7.18 Examination-in-chief of PW1, Case 9

Turn	Speaker	SL utterance/interpretation	English gloss
1.	PC	(2) So, how long did this conversation (.) last?	
2.	I	咁而哩一個嘅對話呢，係維持咗幾耐呀？	*So how long did this conversation last?*
3.	W	(2)唔知 [...唔知	*Don't know…[Don't know.*
4.	I	[Don't know. [don't know	

7.4.3 Increase in participant roles of bilingual counsel

As has been pointed out above, the access of the bilingual counsel to both the SL and the TL versions of the speech enables them to take on more participant roles in the interaction, which enhances their participation status and control over the discourse. The following examples are taken from the cross-examination of PW1. With access to the witness's testimony in Cantonese and the interpreter's Cantonese rendition of his questions, the defence counsel is observed, during the examination process, to correct the interpreter from time to time for either a real interpreting mistake (Example 7.19) or an interpretation problem which has nonetheless stemmed from his own expression in English (Example 7.20).

Example 7.19 Cross-examination of PW1, Case 9

Turn	**Speaker**	**SL utterances/ interpretation**	**English gloss**
1.	DC	Alright. Now, when you...after the sexual intercourse, you must feel very **aggrieved**	
2.	I	嗱，咁係呢，係你進行完性交之後呢，咁應該呢，就係呢，係覺得呢，**好辛苦**，係咪？	*Now, so after the sexual intercourse, you must feel very **hard/bad**. Is that right?*
3.	W	係	*Yes*
4.	I	Yes	
5.	DC	No, "aggrieved", "aggrieved" em	
6.	J	Upset	
7.	DC	didn't feel...would er:: very bitter	

Example 7.20 Cross-examination of PW1, Case 9

Turn	Speaker	SL utterances/ interpretation	English gloss
1.	DC	Now, but (.) I don't think it's er important. But, (.) do you (.) I'd like confirm is that, at one time, you tried to commit suicide (.) by jump[sic.] over the...the handrail aft...as a result of a row with WSC	

2.	I	咁 er 想指出嘅呢，就係話呢，係(.)em 有一次呢，就係你呢，就係同哩個嘅 X er 嗌交啦，咁然之後呢，你就喺個大廈 er 外面嗰啲嘅圍欄嗰度呢，你就係係跳咗過去㗎=	*So (I) would like to point out is that, (.) em once, you had a row with X, and then you jumped over the handrail outside the building*
3.	DC	=No, try, threaten to jump	

While Example 7.19 can be regarded as a real interpreting mistake, in that 辛苦 *san1fu2* (which can mean "hard, tired/tiring or bad") is too vague whereas "aggrieved" is much more specific, Example 7.20 is obviously one that has arisen from the defence counsel's own problem of expression in English. The utterance that the witness "tried to commit suicide by jump [sic.] over the handrail" suggests that an actual act of jumping was performed by the witness in an attempt to commit suicide, which is what the interpreter has taken the phrase to mean and is reflected in the Cantonese interpretation. The defence counsel's correction/elaboration in turn 3 has an adverse impact on the image of the interpreter in the eyes of the monolingual court actors (including in this case the presiding judge), who are without the required bilingual skills and are not in a position to tell where the problem of communication lies. As a matter of fact, some local lawyers do have a problem expressing themselves adequately (or grammatically as is evidenced in the above example) in English, which in most cases is not their everyday vernacular, but merely a language of work.

Example 7.21 below is taken from a District Court wounding trial (Case 7), in which the monolingual English-speaking defence counsel is cross-examining a prosecution witness (a police officer) about the clothing of the identity parade actors.

Example 7.21 Cross-examination of PW, Case 7

Turn	Speaker	SL utterances/ interpretation	English gloss
1.	DC	Yes. And the DEFENDANT o::n the video was seen to be wearing these rather, slightly baggy, three-quarter LENGTH trousers (1) [Quite different to all the other trousers	
2.	I	而呢，er–[而呢，係(.)又睇...反而呢，就睇倒被告所着嘅褲呢，就係呢，嗰啲係比較鬆身嘅，er 三個骨嗰啲咁嘅褲呢	*But, er…[but it was seen that the trousers the defendant was wearing were slightly baggy, er…three quarter-length trousers.*
3.	W	(1)Er 我唔係太記得，但係我好肯定一樣嘢就話，唔會有兩個好大嘅 si...差別，就係話(.)有人着短褲，有人着長褲	*(1) Er…I don't quite remember, but what I am sure of is that there was not such a big difference like some were wearing shorts while others were wearing trousers.*
4.	I	嗯嗯。I do not really remember, but er (.) 但係點樣話？	*Mhm.* I don't really remember, but er (.)*…but what?*
5.	W	我唔發覺呢有好大嘅差別，[我又	*I didn't find such a big difference, [and I*
6.	I	[I...I...I did not (.) find such a (.) big difference as (.) in terms of the length of	

		the trousers	
7.	W	啫係意思啫係話有人着短褲，有人着長褲=	*What I mean is, like some were wearing shorts while others were wearing trousers=*
8.	I	=By that I meant (.) some of them were wearing trousers wearing... whereas some others were wearing er (.) shorts	
9.	DC	That's not the case, I am sorry, from [the video clip (.) I'm sorry	
10.	PC	[No...no...no...no...no, the trans...<chuckling> the translation is: I did not find it that different, like, for instance, if someone was wearing shorts and someone was wearing trousers	

In this case, although both the judge and the defence counsel are monolingual English-speaking expatriates, the prosecution counsel and the testifying witness are bilingual locals. Both of them are found to have a certain degree of control over the interpreted testimony. In turn 7, the witness might have noted (through overhearing the English interpretation of his answers because of his knowledge of English) that the interpreter did not provide a full rendition of his utterance when he repeats on his own initiative what has been omitted in the interpretation in the preceding turn. When the interpreter has finally finished his interpretation of the witness's utterance with the help of the witness himself, the prosecution counsel, again due to his knowledge of both the witness's utterance in the SL and the rendition in the TL, does not appear to be satisfied with the interpretation and intervenes to improve on it in turn 10. This demonstrates that the pluralistic participant roles both the bilingual witness and the bilingual prosecution counsel are capable of playing empower and enable them to exercise a degree of control over the interpreted testimony.

Example 7.22 below, taken from Case 5, illustrates another instance of bilingual counsel correcting the interpreter, who obviously has misheard the word "wet" as "red".

Example 7.22 Cross-examination of PW by Defence Counsel, Case 5

Turn	Speaker	SL utterances/ interpretation	English gloss
1.	DC	That's all? (1)[Are you serious? How about the running nose? Snif…Sniffing and (1) wet eyes?	
2.	I	嗱咁呢係咁多嘅意思即係話唔會話流鼻涕呀，要索鼻呀又或者呀隻眼紅哂咁呀？	*Does "That's all" mean there was no running nose, sniffing or **red** eye(s)?*
3.	DC	Wet, wet eyes	

7.4.4 Diminished role of the interpreter

As bilingual counsel see an increase in their participant roles in the triadic communication, the role of the interpreter is diminished. In Example 7.23 below, extracted from Case 9, the defence counsel, is found to respond to the witness without waiting for the interpreter's rendition, because of the bilingual knowledge he possesses and the extra role he is capable of playing, that of

overhearer. In so doing, he has effectively diminished the role of the interpreter, who nonetheless goes on with her interpretation; otherwise the non-Cantonese-speaking judge would be denied access to the witness's utterance, as is the case illustrated in Examples 6.12 and 13 in the previous chapter.

Example 7.23 Cross-examination of PW1, Case 9

Turn	Speaker	SL utterances/interpretation	English gloss
1.	DC	Alright. <throat-clearing sound of Interpreter> So, you would realise, would you? That she...she would not come back	
2.	I	咁所以呢，你當時應該係知道呢，佢根本就唔會番嚟開門，佢唔會番嚟喇，係咪呀？	*So you must know that she would not come back to open the door. She would not come back.*
3.	W	我唔知佢會唔會講大話=	*I didn't know if she had told a lie.*
4.	DC	=Oh, I see...[oh, I see	
5.	I	[I didn't know that whether she would lie or not	

Example 7.24 below further serves to underline the interpreter's diminished role in the bilingual Hong Kong courtroom. In turn 1, the defence counsel includes in his question a poetic Cantonese expression, which he obviously has a problem expressing in English. This however does not pose any problem for the interpreter, who anyway has to render the whole utterance into Cantonese. The prosecutor protests a few turns later (turn 6) by pointing out to the court that the Cantonese expression in the defence counsel's question has not been put on record as it has not been translated into English. When the embarrassed defence counsel suggests asking the interpreter for help (turn 7, here the defence counsel is probably envisaging a role of a language helper or even a dictionary for the interpreter), the judge dismisses it by saying that "we have record in that thing which is said"[43]. This is evidence that the role of the interpreter working with bilingual counsel and jury is further diminished and is in a sense rendered redundant.

Example 7.24 Cross-examination of PW1, Case 9

Turn	Speaker	SL utterances/interpretation	English gloss
1.	DC	In Chinese we called it 「癡癡地等」喇, isn't that right?	*"waiting with infatuation (for a lover to come back)"*
2.	I	喺用中文嚟講喇，我地就係話呢，係「癡癡地喺度等」喇	<CI in Cantonese>
3.	W	係	*Yes.*

[43]What the judge refers to as 'record' can be twofold. Firstly, one can always go back to the recordings for anything said in court, now that the court proceedings are digitally audio recorded. Secondly, as has been pointed out in Chapter 6, the jurors are mostly bilingual locals speaking Cantonese as their usual language. The jurors would understand the evidence in Cantonese anyway and would therefore have that part of the question in their record, and in a jury trial it is the jurors who decide on the verdict at the end of the day, not the judge.

4.	I	Yes=	
5.	D	=Alright. Now—	
6.	PC	Er it...it hasn't been put on the record what that means	
7.	DC	Well, then (.) <chuckling > perhaps I may...I would lend <sic.> [the assistance of—	
8.	J	We...we...we have record in that thing which is said. Doesn't matter.	

7.4.5 Loss of linguistic power on the part of the interpreter

The later argument in the rape trial over the meaning of an ambiguous Cantonese word *saam1* 衫 uttered by the defendant in his evidence-in-chief reinforces the interpreter's role as one deprived of the inherent linguistic power possessed by their counterparts working in the other bilingual setting. The word *saam1* in Cantonese is polysemous. The *New Chinese Dictionary* (Liu, 1993) gives two meanings to this Chinese character: 1. 單上衣(upper garment); 2. 泛指衣服(a generic reference for clothes). In other words, *saam1* can be a generic term to refer to clothing/garment (usually used without a quantifier), or a more specific term, usually used with a quantifier *gin6* 件 (piece) to refer to a piece of clothing worn on the upper part of one's body (a shirt, a blouse, a jumper and even a jacket) – "upper garment" is how it is usually translated in the Hong Kong courtroom if it is understood in the latter sense. However, the use of a quantifier alone does not serve as a clear-cut distinction between the meanings of this problematic word. For example, the expression *ngo5 dong1 si4 mou5 zeok6 saam1* 我當時冇著衫 (without the presence of the quantifier *gin6*) can be taken to mean *both* "I was not wearing any clothing at that time, i.e. being naked" *and* "I was not wearing any upper garment at that time". In other words, the absence of *gin6* does not automatically give the word a generic sense, and *vice versa*. For example, the utterance *ngo5 jat1 gin6 saam1 dou1 mou5 maai5 dou3* 我一件衫都冇買到 is usually understood to mean "I didn't buy even a single piece of clothing" despite the presence of the quantifier *gin6*. The argument in this case lies in the interpretation of the meaning of this particular word in Cantonese.

It is the prosecution's case that the defendant had sex with the witness, without her consent. According to the witness's evidence and the defendant's own evidence-in-chief, the defendant was wearing only a pair of shorts prior to sexual intercourse, without any clothing on the upper part of his body. The defendant did not dispute having sex with the witness, but alleged that the sexual intercourse was consensual and that it was the witness who pulled his *saam1*, which he took as an invitation for him to have sex with her and so acted accordingly. The following extract from the transcript of his testimony in chief and its rendition by the interpreter contains his description of the witness's actions.

Example 7.25　Examination-in-chief of Defendant, Case 9

Turn	Speaker	SL utterances/interpretation	English gloss
1.	D	咁喺同一時間:，(.)佢就: si: eh 用佢嘅:左手就(.)少少彎彎地，就拉住我**件衫**，啫係腰度**件衫**。	*Then at the same time, (.)she si: eh slightly bent her left arm to pull my **piece of garment/upper garment (gin6 saam1)**, that is, my **piece of garment/upper garment (gin6 saam1**)at the waist area.*
2.	I	And then...你再講多一次。	*And then...say that again.*
3.		Er 佢用佢嘅左手拉我 er 腰度，啫係腰部份**嘅件衫**。	*She used her left hand to pull my waist area, that is, the **garment...piece of garment/upper garment (gin6 saam1**) at my waist area.*
4.	I	And then, she used her left hand to pull the um (.) **garment** at my eh waist area.	

Note that the quantifier **件** *gin6* is used before the word *saam1* by the defendant, which seems to suggest a more specific meaning of the word – upper garment, which is probably why the interpreter seems to be taken by surprise as it has been established by both the witness's and the defendant's earlier evidence that he was not wearing any upper garment at the material time. The interpreter's request in turn 2 for the answer to be repeated without first asking for the court's leave to do so may be regarded as a delaying tactic to buy her time as she searches for an English equivalent for the Cantonese word *saam1*. After the defendant has repeated his answer in more or less the same wording, the interpreter decides not to engage in further clarification to remove the ambiguity, which might be considered professionally unethical and would most likely be objected to by the bilingual prosecutor. Instead, she decides to opt for an interpretation consistent with the witness's and the defendant's earlier evidence.

Crucially, the interpreter's goal to strive for unity and consistency nonetheless goes against that of the cross-examiner, whose goal is to discredit the witness and hence the opposing side's version of events. The interpreter's rendition of *saam1* as "garment", which has in effect removed a possible contradiction with the defendant's earlier utterances, was nonetheless not challenged by the prosecutor at this stage. It is possible that the prosecutor wants to leave a reasonable doubt in the mind of the jurors, who in this case as in many other cases are all English/Cantonese bilinguals[44] with Cantonese as their native language, as has been pointed out in the previous chapter, and who would most likely rely on witnesses' testimony in Cantonese rather than the interpreted version for their verdict. Challenging the interpreter's rendition in the defendant's evidence in chief would give the defence counsel an opportunity to clarify with the defendant what he meant by the word *saam1*, which would most likely result in contextual ambiguity and hence a reasonable doubt being removed.

Instead, the prosecutor chooses to question the credibility of the defendant's testimony in his

[44] I witnessed the jury empanelment of this trial as I took my students to the High Court for a visit.

cross-examination of him by pointing out the contradiction in his evidence. He first gets the defendant to confirm that he was not wearing any upper garment at the material time before accusing him of fabricating a story about the witness's pulling of his upper garment as he was not wearing one. His accusation has necessitated the expatriate judge's review of his notes, which however show no such discrepancy because of the interpreter's rendition of *saam1* as "garment", not "upper garment" (Example 7.26).

Example 7.26 Judge responds to Prosecution Counsel, Case 9

J	Well, my note reads "she used her left hand to pull my garment at the waist area.

The prosecution in Example 7.22 however tells the court that he has the defendant's evidence in both Chinese and English, suggesting a more advantageous participation status for himself as a result of his bilingualism as compared with the monolingual judge, who has no access to the witness's evidence in the SL.

Example 7.27 Prosecution Counsel addresses Judge, Case 9

PC	I have got the note, er My Lord. I've got both the Chinese and the English

In Examples 7.28 and 7.29, the prosecutor goes on to point out that the word "garment" is the translation of the interpreter, whereas the word from the mouth of the defendant is *saam1*, which he has understood to be "upper garment" – a result of his de-contextualisation of the word – and suggests an interpreting mistake.

Example 7.28 Prosecution Counsel addresses Judge, Case 9

PC	It was...it was...the Chinese was *saam1*. One can (.) play back the video...the...the digital (.) recording. Although "garment" was the word er used by the lady interpreter, the Chinese out of the mouth of the witness was *saam1*, which means "upper garment".

Example 7.29 Prosecution Counsel addresses Judge, Case 9

1.	PC	*Saam1*, the Chinese used by the accused himself was *saam1*, and it was translated (.) as "garment"=
2.	J	=Yes, you say that the translation is incorrect. It should be "upper garment"?
3.	PC	To be er...to be exact, it should be "upper garment".

Examples 7.26 to 7.29 manifest the multiple roles the bilingual prosecutor has in his participation in the interpreter-mediated interaction. It is evident that the bilingual prosecutor, apart from his prescribed role as addressee of the interpreted evidence, takes on also the role of overhearer of the witness's original evidence in Cantonese (turn 1). The roles further empower him to act as an adjudicator or assessor for the accuracy of the interpretation and eventually to raise the issue of a possible misinterpretation.

An allegation of misinterpretation inevitably places the interpreter in a dilemma: adopting the suggestion of the prosecutor is tantamount to the confession of an interpretation error, whereas insisting on her earlier interpretation would certainly spark further heated discussion and would

most likely attract criticism or even hostility from the prosecutor. The former would entail a loss of face on the part of the interpreter while the latter would entail a confrontation with authority, neither of which seems to be an easy way out for the interpreter. Accepting counsel's "correction" would understandably result in a negative appraisal of the interpreter's competence by other court actors, many of whom possess a degree of bilingualism as was mentioned in the previous chapters. With the bilingual counsel's flagging up of interpreting inaccuracy, these full or part bilinguals, who have had access to the witnesses' testimony in Cantonese and its rendition in English, might then cast doubt on the accuracy of the interpretation. The interpreter might also suffer a negative evaluation by monolinguals, who are however not able to tell whether the rendition is accurate or not. In this case, since the judge is monolingual and does not speak Cantonese, he is not equipped to adjudicate in the matter and therefore has to leave it entirely in the hands of the interpreter as indicated in turn 1 of Example 7.30 below. The interpreter's response in turn 2 is ambiguous and has led the judge to believe that she wishes to leave the interpretation as just "garment" (turn 3). The judge seems to be taken aback by the interpreter's decision to adopt the prosecutor's suggestion and there seems to be also a tone of resignation in the judge's utterance (turn 5), which in a way reflects his diminished power due to his disadvantaged status of participation in an interpreted encounter where the other interlocutors are bilingual.

Example 7.30 Interaction between Judge and Interpreter, Case 9

1.	J	(7) Well, I suppose insofar as the first one is concerned, the question is whether my interpreter is happy with the interpretation she's uh...she's given, or whether she wants to er qualify that in any way.
2.	I	< in a low voice >Yeah, I am happy with that=
3.	J	=You are happy with interpretation just "garment"?
4.	I	Er with er "upper".
5.	J	"upper garment", okay. <sighing > Right.

Meanwhile, the interpreter's decision to change her rendition is in itself evidence of a loss of monopolistic linguistic power on her part, an obvious result of the presence of the other bilinguals and hence their enhanced participation status in the interpreted encounter as suggested by Anderson (2002). In other words, the interpreter has seen her power in the encounter diminished by the bilingual counsel and her latitude to interpret an ambiguous utterance based on earlier utterances restrained. Her concession may also be regarded as a submission to the powerful participants in court, where the power asymmetry between lay participants and legal professionals is palpable as has been pointed out earlier (For a detailed discussion of this case, see Ng, 2012 & 2013).

7.5 Conclusion

This chapter has illustrated how a court actor's power and control over an interpreter-mediated trial vary with the participant role(s) s/he takes on or is capable of playing in the proceedings and

with the participation status of the co-present court actors. It has compared the variables in two different bilingual settings in the courts of Hong Kong: firstly one that resembles a typical bilingual setting in which the interpreter works with monolingual English-speaking legal personnel and a witness speaking a language unfamiliar to most in court, and secondly an *atypical* bilingual setting in the present-day Hong Kong courtroom, where the interpreter works with bilingual counsel and most of the other court actors speak the language of the witness. It is found that the power of a participant and thus his/her control over a triadic exchange is realised not only in the role(s) s/he is capable of playing, but also the participant roles of the co-present court actors. The interpreter working with monolingual court actors seems to enjoy monopolistic linguistic power and thus greater control over the communicative process as is evidenced in the latitude she assumes in interrupting and negotiating meanings with the key interlocutors. On the other hand, the interpreter working with bilingual counsel sees her power considerably reduced by these other bilinguals, who take on not only the roles of speakers (questioners) and addressees of witnesses' interpreted evidence, but also of overhearers of the witnesses' answers in the SL and of the interpreted questions, and ultimately as adjudicators of the accuracy of interpretation.

It is suggested that the participant role the interpreter assumes inevitably impacts on the court proceedings in one way or another. By assuming a primary participant role in the proceedings through interrupting and clarifying with the key interlocutors, the interpreter takes away some of the inherent power of the examining counsel, while at the same time disadvantaging the participation of monolingual court actors in the proceedings. The repeated clarifications with the witness may also give an impression to the other court actors that the witness is being evasive and uncooperative, which may in turn impact on the credibility of the witness. On the other hand, by adhering strictly to the prescribed role as mouthpiece of the key interlocutors, and refraining from clarifying with the speaker even in the face of ambiguous and contradictory utterances, the interpreter may risk misinterpreting the speaker meaning, or being accused of so doing by bilingual counsel. It can be argued that the interpreting process with the presence of other bilinguals is more transparent and thus in the better interests of justice as any mistakes (which would most likely go unnoticed if the interpreter were the only bilingual as in Case 8) would rarely escape the notice of these other bilinguals. However, this relatively *transparent* interpreting process does have a bearing on the image of the interpreter: the flagging up of an interpreting mistake, real or perceived, by bilingual counsel may lead monolingual court actors to cast doubt on the capability of the interpreter.

Following Bell's model of audience design (1984), it could also be argued that the behaviours of the interpreters are a response to the audience in court. In a trial in which the majority, if not all, of the court actors do not speak the language of the witness, the interpreter seems to enjoy more power and thus latitude in the communicative process and to depart from the normative practice. However, in a trial involving bilingual legal professionals with the witness

testifying in Cantonese, a majority language in both the courtroom and the local community, interpreters are conscious of the presence of these other bilinguals in their respective roles as addressee, auditors, or overhearers and are thus more mindful about the need to abide by their ethical code.

The next chapter will explore how counsel as well as the interpreter may lose power and control of the discourse to a judge who takes on extra participant roles by interrupting the examination of a witness and how that might impact on the participation status of monolingual court actors and hence the administration of justice.

CHAPTER 8
JUDICIAL INTERVENTION IN INTERPRETER-MEDIATED TRIAL TALK

The previous chapter examined how the participant roles of court actors affect their power and thus control over the interpreter-mediated interaction and demonstrated that the power of a court actor is realised in his/her participant role (and those of others) in interpreter-mediated court proceedings. It examined two different bilingual settings and found that the interpreter working with monolingual court actors tends to play an active and intervening role in the proceedings, thus taking away control of the witness and hence power from the examining counsel. However, the interpreter working with bilingual counsel sees her role and linguistic power diminished as bilingual counsel take on more participant roles thus assuming more power and control over the evidential process. Building on my assertion that the more participant roles a court actor takes on, the more power and control s/he has over the proceedings, this chapter examines how counsel may lose their power and control to a judge, who intervenes in the process of witness examination, thus turning from a default auditor role to a speaker (questioner) role and hence an addressee when responded to. It explores how judges' increased power and control as a result of the intervention in the proceedings impacts on the participation status of other court actors who do not speak the language of the court in the special context of the Hong Kong courtroom. Finally it will address the implications of the court actors' disadvantaged participation status for the administration of justice. For the purpose of this study, judicial intervention or intrusion refers to a judge's interruption of the examination of a witness.

8.1 The judge's role in a common law courtroom

As noted in Chapters 5 and 6, in the adversarial common law courtroom, the role of the judge is largely passive and supervisory (see Damaska, 1975; Danet & Bogoch, 1980) and the conduct of the trial including the calling and examining of witnesses is in the hands of the prosecution and the defence counsel, though the judge as a factfinder (Damaska, 1975, p. 1090) (in the case of a non-jury trial) may intervene from time to time to clarify ambiguity or to rule on the admissibility of certain evidence or a procedural issue. A judge's power in the evidential process thus lies in "his ability to intervene as and when required" (Cotterill, 2003, p. 94). This judicial intrusion in the adversarial system is however, as suggested by Damaska (1975, p. 1090), "necessarily limited" because extensive interventions are "regarded as interference in the lawyer's work" (Danet & Bogoch, 1980, p. 37) and can be cited as grounds for an appeal, which may eventually "lead to the reversal of the judgment" (Damaska, 1975, p. 1090).

8.2 Data and methodology

In order to identify the occurrences of judicial intervention in the evidential phase of a trial, I have taken the examination-in-chief of one prosecution witness (PW) from each trial in my data as my

sample and I have performed a quantitative study by counting the judge's turns in the nine transcripts produced from the recordings. Generally speaking, judges are expected to have more speaker turns in the examination-in-chief of a witness than in the cross examination, as exhibits are produced in a witness's examination-in-chief, and it is the duty of the judge to assign exhibit numbers and declare them in open court. A frequency table showing judges' turns and total turns for each sample transcript was produced and transcripts with a higher proportion of judges' turns were singled out and examined more closely for qualitative analyses. The other transcripts with lower frequencies of judges' turns were also reviewed to confirm the findings. Examples are primarily extracted from, but not limited to, Case 5, which has the highest frequency of judicial intervention. The analysis of judicial interventions is to serve the wider interpreting-related considerations in Section 8.4.

8.3 Findings and analysis

8.3.1 Quantitative results of judges' turns

Table 8.1 is a frequency table showing the judge's turns as opposed to the total turns in the witness's examination-in-chief in each trial under study. Column 2 of the table shows the trial and the witness involved, while the levels of courts in which the cases were tried are indicated in column 3. The results show that the judge's turns range from 1.8% to 9.4% of the total turns.

Table 8.1 Quantitative results of judges' turns in examination-in-chief of PWs in 9 trials

Case No.	Charge	Court[45]	Judge's turns/total turns
1	**Theft (PW1)**	**Magistrates' Court**	**28/390 (7.2%)**
2	Making a False Declaration to an Immigration Officer (PW1)	Magistrates' Court	6/260 (2.3%)
3	**Attempting to Distribute an Infringing Copy of a Copyright Work (PW1)**	**Magistrates' Court**	**36/524 (6.9%)**
4	Blackmail (PW2)	District Court	16/564 (2.8%)
5	**Trafficking in Dangerous Drugs (PW1)**	**District Court**	**63/670 (9.4%)**
6	Arson with intent (PW2)	District Court	3/110 (2.7%)
7	Wounding (PW1)	District Court	17/390 (4.4%)
8	Murder (PW1)	High Court	51/1506 (3.4%)
9	Rape (PW1)	High Court	29/1647 (1.8%)

8.3.2 Functions of judges' turns

To find out what lies behind the relatively higher proportion of judges' turns in Cases 1, 3 and 5 in the frequency table, a qualitative study was conducted and it is found that these turns are primarily used by the judges to perform three functions, i.e., (1) to carry out administrative and procedural

[45] In Hong Kong, all criminal trials in the High Court are heard before a jury of 7 members, while cases in the District Court and the Magistrates' Court are tried by a sole magistrate/judge.

duties such as administering the exhibit tendering procedure and passing rulings on objections, (2) to clarify with witnesses, and (3) to challenge the relevance or validity of counsel's questions or modus operandi in conducting the examination of witnesses. It is found that the judges' turns identified in Cases 1 and 3 are mostly associated with the performing of the first function with a small number of turns resulting from the judge's clarifications with the witnesses and counsel, as these two trials, especially the copyright trial, involve a large number of exhibits which the prosecution sought to be tendered in court and admitted as evidence. The judges' turns identified in the other six trials are in the main found to perform also these two functions. In Case 5, however, the majority of the judge's turns are a result of her interruptions of the proceedings to perform the third function mentioned above, with a small number of them serving the first two functions. Since a judge performing the first function as part of his/her institutionalised duties is not considered to be interfering with the proceedings, these non-intervening turns are excluded for the purpose of this study, though these turn exchanges between counsel and the judge do have an impact on the participation status of the non-English speaking court actors as was mentioned in the previous chapters. This is because interactions between legal personnel are not interpreted consecutively in open court, or at times not interpreted at all. Examples 8.1 and 8.2 below serve to illustrate the judges' turns used for administering the exhibit tendering procedure. In both cases, the interaction between the judge and the prosecutor is not interpreted for the witness in the witness box or the defendant in the dock.

Example 8.1 Examination-in-chief of PW1, Case 1 (production of exhibits in court)

1.	J	P1. The carrier bag?
2.	PC	P2
3.	J	P2
4.	PC	Er the...the bag with the biscuits, P3
5.	J	Biscuits, P3
6.	PC	And then the Mannings bag's P4
7.	J	Yeah

Example 8.2 Examination-in-chief of PW1, Case 3 (production of exhibits in court)

1.	PC	Sir, I am wondering whether er...er Your Worship is going to mark it as an exhibit [counted—
2.	J	[Uh. Called it exhibit. What exhibit number are you going to give it?
3.	PC	(1)Ha?
4.	J	You...as you know what...what exhibit you've got, so (.) give me a number.
5.	PC	Sir, thirty two.
6.	J	Alright=
7.	PC	=PP32
8.	J	Exhibit 32. I don't know about "PP", it's an exhibit. It's either admissible or it's not, but it's an exhibit.

8.3.2.1 Judges' turns to question witnesses

The rest of this section will focus on judges' intervening turns. In the following examples, the

judges are seen to question and elicit information from the witnesses, which in the adversarial system is the duty of counsel for the parties. Both Examples 8.3 and 8.4 show the judges interrupting counsel, rendering counsel unable to finish their questions and thus resulting in the non-interpretation of counsel's questions, though not of the judge's questions, which are addressed to the witnesses and thus have to be interpreted consecutively in open court. A question targeted at counsel will prove more problematic as will be illustrated in Section 8.3.3.

Example 8.3 Examination-in-chief of PW1, Case 1

Turn	Speaker	SL utterance/interpretation	English gloss/remarks
1.	PC	So, em now after she discard <sic.> the wrappings—	<no interpretation>
2.	J	Well, hold on, hold on. After she took that, what did she do?	
3.	I	佢攞咗哩一...哩一個子母袋之後，佢點呀？	<CI in Cantonese>

Example 8.4 Examination-in-chief of PW1, Case 5

Turn	Speaker	SL utterance/interpretation	English gloss/comments
1.	PC	And where did you make that record?	
2.	I	嗰個紀錄你寫咗係邊㗎？	<CI in Cantonese >
3.	W	Er 係我本 er 警誡口供嗰本 er 記事冊裡面，我嘅警察記事冊	*Er in my er notebook where cautioned statements are recorded, my police notebook*
4.	I	In my police notebook where…er…cautioned statements (1) are supposed to be recorded.	
5.	PC	Alright. (3.5) [Could you look at—	<no interpretation>
6.	J	[When did you do that?	
7.	I	你幾時 er 寫呢個記錄㗎?	<CI in Cantonese>

In Example 8.5, extracted from Case 3, the judge's intervention too has initially left counsel's question unfinished and uninterpreted. However, since the judge in this case later realises counsel's question has not been put due to his interruption, he produces a repair turn a couple of turns later (turn 7) inviting counsel to repeat his question. This gives the prosecution counsel a chance to finish his question and the interpreter to render it into Cantonese.

Example 8.5 Examination-in-chief of PW1, Case 3

Turn	Speaker	SL utterance/interpretation	English gloss/remarks
1.	PC	It was a truthful and accurate—	<no interpretation>
2.	J	(you wrote) that at the premises?	
3.	I	喺現場嗰度補錄嘅	<CI in Cantonese>

4.	W	Yes[46]	
5.	PC	I am (xxx), Sir	
6.	I	最好講番中文 <in a whisper>	<in a whisper> *Better stick to Chinese*
7.	J	So, your question was (.) [It—	
8.	PC	[It was an accurate and truthful record?	
9.	I	Er 裏面:所紀錄嘅，係準確同埋係事實嚟家嘛？	<CI in Cantonese>

While Examples 8.3, 8.4 and 8.5 show counsel tolerating the judges' intervening turns, Example 8.6 shows the prosecutor trying to resist the judge's intervention in a polite way, most probably in an attempt to regain his control over the flow of testimony. Note that the interpreter's rendition in turn 2 is interrupted by the judge, and that the judge's question and counsel's response have been left uninterpreted.

Example 8.6 Examination-in-chief of PW1, Case 5

Turn	Speaker	SL utterance/interpretation	English gloss/remarks
1.	PC	And later, (1) did you make a further entry in your notebook with regard to this matter?	
2.	I	較.....再之[後—	*Late...la[ter*
3.	J	[I'm sorry. Having made that entry, what happened? Did she sign, did you read it over? Did she sign it?	<No interpretation>
4.	PC	Uh I am coming to that, Your Honour, if I may just start this further question.	

8.3.2.2 Judges' turns to challenge counsel's questioning

As noted above, the judge's intervening turns identified in the examination of PW1 in Case 5 in the main serve to challenge the relevance of counsel's questions and the way they conduct their examination of witnesses. This finding is not limited to the examination of PW1 but is true also of the examination of the other PWs and the defendant. In this case, the defendant is appearing in the District Court on a charge of trafficking in dangerous drugs and a charge of attempting to escape from lawful custody. She is represented by a bilingual local lawyer, who is sometimes observed to have a problem expressing himself adequately in standard English. The judge is Singaporean Chinese and the prosecution counsel is a monolingual English-speaking expatriate.

A trial in the adversarial courtroom, as has been pointed out above, is conducted largely by counsel, with the judge assuming the role of a referee whose primary responsibility is to ensure that the parties adhere to the rules of procedure. In this trial, the judge is often found to depart

[46]The witness, a Customs and Excise officer, produces this answer in English, despite the fact that he has elected to testify in Cantonese. His response in English in turn 3 has prompted the interpreter to remind him quietly to stick to Chinese in turn 6. This from my observation of my data and my own experience in court interpreting is not uncommon with bilingual witnesses.

from this institutional role by taking on not only the role of the examining counsel, but also of a coach or a director of the court drama. In the other trials in my data, judicial interruptions are less frequent and rarely meet with resistance from counsel. As a result, the judicial intervention process is relatively brief. In this trial however, the judge's incessant interruptions of the witness examination process produce much resistance from counsel and often lead to extensive turn exchanges between counsel and the judge. An examination of the data for this trial also seems to reveal that the majority of the judge's intervening turns have often resulted not from the need to clarify ambiguity with witnesses or counsel, but rather from an attempt on the part of the judge to exercise control over the proceedings and to dictate the conduct of the trial.

In Example 8.7 below, the prosecutor is in a *voir dire*[47] asking for a document certifying the defendant's receipt of a copy of the video of her interview to be produced as a provisional exhibit. The judge, however, insists that the video be produced before the document. She also goes on to instruct the prosecutor that he has to establish that no threat or inducement has been made to the defendant in taking the statement and conducting the video-recorded interview (VRI), despite the fact that the prosecutor in this case is experienced and moreover the way in which he presents his case displays an aura of seniority.

Example 8.7 Examination-in-chief of PW1, Case 5

Turn	Speaker	SL utterance/interpretation	English gloss/remarks
1.	PC	Your Honour, may that be entered provisionally?	<No interpretation>
2.	J	Yeah, but it's afterwards. What about the video?	
3.	PC	Yes, I'll, I'll come to that, Your Honour	
4.	J	Well, you should come to that before, not put the cart before the horse.	
5.	PC	Alright, Your Honour	
6.	J	And before you can put all that in, you have to establish, Mr. (.) B=	
7.	PC	=Yes, Your Honour.	
8.	J	You have to establish that there was no threat or inducement with regard to the post-record as well as the video.	
9.	PC	Yes, Your Honour	

As counsel and the judge can freely interact with each other without the mediation of the interpreter, no interpretation is provided for this judge-counsel interaction. Usually *chuchotage* is provided for interactions between the legal personnel, as noted in the previous chapters. In this case however, since this judicial dialogue takes place while the witness is testifying in the witness box through the interpreter, it would be difficult, in practice, for the interpreter to leave the witness alone and to go to the defendant in the dock to perform *chuchotage* (see Appendix 10 for a

[47] A mini-hearing held during a trial to determine the admissibility of contested evidence, usually a confession statement, and in this case, the VRI in which the defendant confessed the guilt of drug trafficking.

simplified courtroom layout in the High Court of Hong Kong). The impact of this non-rendition on the participation status of the court actors will be explored in Section 8.4 of this chapter.

In Example 8.8, the defence counsel and the judge are obviously at odds regarding the witnesses to be called by the prosecution in the *voir dire* in which the alternative procedure[48] is being adopted. When the defence counsel asks for more witnesses to be called, the judge rejects his request and makes it clear to him that *she*, the judge, is the one who is directing the conduct of the trial (turns 12 & 14).

Example 8.8 Interaction between DC and J at the close of prosecution's case for *voir dire*, Case 5

Turn	Speaker	SL utterance/interpretation	English gloss/remarks
1.	DC	Your Honour, I…I think the alternative procedures is when that the (1) my learned friend has to call the other witnesses as well	<dockside WI provided for D; barely audible and could not be picked up by the recording system>
2.	J	No	
3.	DC	There's something for the second charge.	
4.	J	No. We are on the voir dire. What… what other witnesses do you want? We are on the voir dire. It has now reached the stage (.) where (.) the defendant—	
5.	DC	Well I stand to be corrected. I understand the procedure is that (1) this is a <sic.> alternative procedure.	
6.	J	It is the alternative procedure.	
7.	DC	And not only these four officers have been called, but the other two officers concerning Charge 2 should also be called first now.	
8.	J	No.	
9.	DC	And then the prosecution closes his case subject to the admissibility or the special issue.	
10.	J	Well—	
11.	DC	Then I will call the defendant if she chose to testify=	
12.	**J**	**=well I am directing**	
13.	DC	for the special issue.	
14.	**J**	**I am directing**	
15.	DC	Yea, I…in that case I[in that case—	
16.	J	[That it is the voir dire.	
17.	DC	I follow Your Honour's er er practice.	

In this case, since the conversation takes place after the last prosecution witness has finished his testimony and before the defendant takes the stand, the interpreter is able to provide a dockside WI of the conversation to the defendant.

In Examples 8.7 and 8.8 cited above, both the prosecution counsel and the defence counsel succumb, reluctantly as it may seem, to the authority of the judge and act according to the judge's instructions without much resistance. There are however other instances of counsel resisting the

[48] A combined procedure to deal with both the special issue (voir dire) and the general issue (the trial in its entirety to determine if the defendant is guilty as charged).

intervention and apparently fighting back, often resulting in extensive turn exchanges and an ensuing power struggle between counsel and a judge who insists on having her way and who refuses to give in.

Example 8.9 is one of many of this kind. In this example, the defence counsel, having been repeatedly interrupted and criticised by the judge in his cross-examinations of the prosecution witnesses, resents the judge's interference with his examination-in-chief of the defendant, which eventually leads to an interactional "crossfire" between the judge and the defence counsel and subsequently to a short adjournment of the trial for the latter to 'cool down', as the judge puts it.

Example 8.9 Examination-in-chief of D, Case 5

Turn	Speaker	SL utterance/interpretation	English gloss/remarks
1.	DC	Now roughly about 11pm, where were you, can you recall?	
2.	I	嗱你仲記唔記得啦約莫喺夜晚黑 11 點鐘嘅時候當時你喺邊呢？	<CI in Cantonese>
3.	J	Why don't you take her to the time of arrest? [We are just doing this special issue, are we not?	<no interpretation >
4.	DC	[Oh in that case…yes I uh mm. Your Honour, I…I…I hate to be (1) saying this. I don't want to be push <sic.>, Your Honour, with the greatest respect. I have been push<sic.> by Your Honour.	<summary WI provided for D in the witness box> *Now your barrister doesn't want to say this, BUT, doesn't hope (the judge) to push him, that is your barrister.* *Now no pushing on your barrister <inaudible> It is said that it is a <inaudible> procedure. We are now dealing with the statement, that is the video recorded interview.* *Hope the judge will understand that the incident happened when you were intercepted. That's why questions were asked about (what happened) at around 11 o'clock* *But in that case, why not….* *You were at that time near your home.* *Hope your barrister can lead you to that, and hope in this case your barrister can deal with (the matter) as briefly as possible.* *Now the judge is assisting the defence counsel, but the defence counsel does not think the judge is helping him because he knows what he is doing, unless the defence*
5.	J	Mr. (.) C, you haven't been pushing… you haven't been pushed into a corner. This is how this procedure takes place. We are now on the special issue.	
6.	DC	And this special issue, if Your Honour appreciate <sic.>, started from the time when she was intercepted.	
7.	J	Yes exactly.	
8.	DC	Then that is why after from 11 o'clock what happened.	
9.	J	Well, can't you lead her?	
10.	DC	Well, in that case—	
11.	J	You asked where she was. We all know that she was on Patterson Street near where she lived, right?	
12.	DC	It was near Hamilton Street and Portland Street.	
13.	J	Well. I am so sorry. Portland Street	
14.	DC	Well in that case, I try to be brief and simple and just discharge my duty as brief <sic.> as possible, Your Honour, in that case—	
15.	J	I am just assisting you because—	
16.	DC	I don't think you are assisting me, Your Honour, with the greatest respect. I know what I am doing (3) unless I	

		suddenly go wrong and I apologise, Your Honour, but I just try to do my job—	*counsel has done something wrong and has to apologise.* *That is….the concern is not to waste too much of the court's time.* *The judge's concern is that the defence counsel does not talk about things before the arrest,…because it's not relevant to what we are dealing with now.* *Of course your defence counsel knows that—*
17.	J	You are—	
18.	DC	Without wasting too much of the court's time. That's my concern.	
19.	J	All I am doing is assisting you so she doesn't talk about what happened before the arrest which is not (.) the issue before me now.	
20.	DC	I know. I won't ask her what has she done, eating, dining, walking—	
21.	J	LOOK, Mr. C.—	
22.	DC	Of course I get to the point=	
23.	J	=Mr. C, I think you are getting the wrong end of the stick. I suggest we take a morning break for you to [cool down.	
24.	DC	[Well, okay.	
25.	I	上午休庭	*Morning break* <CI in open court>

Note that the intervening process takes up as many as 24 turns, which can be seen as an attempt on the part of the judge to direct and control the way in which the defence counsel conducts the examination of the defendant. The judge proclaims in turn 15 that she is simply assisting the defence counsel, but the defence counsel disagrees (turn 16). On the contrary, he is of the view that the judge has been pushing him (turn 4). In this case, since the defendant is testifying by the interpreter's side, she is able to provide *chuchotage* for her from turn 4, when the interpreter must have sensed the start of a lengthy debate between the defence counsel and the judge. However, several factors come into play here. The overlap and rapidity of the speech typical of a debate, the proximity of the interpreter to the SL speakers (which means the interpreter's voice would inevitably compete with that of the SL speaker, and the overlapping voices of the interpreter and of the SL speaker would confuse the defendant), and the unavailability of simultaneous interpretation (SI) equipment rule out an accurate rendition. As a result, the interpreter has only been able to provide a summary WI for the defendant, with many details omitted[49] as is illustrated in the right hand column (column 4) of the table.

Many of the interruptions obviously arise from the judge's reluctance to settle for a passive role and to let the evidence unfold through examination-in-chief and cross-examination of witnesses as judges in the adversarial system are supposed to. Instead, she in many ways displays her readiness to meddle in the examination of witnesses, ignorant of the fact that counsel for the parties, because of the need to question witnesses and to prepare them for the court appearance, must have familiarised themselves with the case before the testimonial evidence is given in court.

[49] WI provided to the witness/defendant in the witness box, where there are built-in microphones for both the interpreter and the witness is clearly picked up by the recording system, but not WI provided by the side of the dock, where no recording device has been installed.

At the same time the judge as an impartial decision maker is not supposed to have any prior knowledge of the case. It follows that counsel are much better informed about the case than the judge. The intrusion as shown in Example 8.10 is a result of the judge's ignorance of her own limited cognitive information of the case when she challenges the relevance of the prosecution counsel's question put to PW1 about the contact from outside the room during the defendant's VRI.

Example 8.10 Examination-in-chief of PW1, Case 5

Turn	Speaker	SL utterance/interpretation	English gloss/remarks
1.	PC	During the uh time, (3) during the time that (2) this video (1) interview was being conducted, Officer, did you have any contact from outside the room?	<No interpretation >
2.	J	Well, that's not the allegation, is it? This is, it's videoed.) It's before, there's an allegation that (1) they taught her what to say.	<No interpretation >
3.	PC	Yes, Your Honour, but um, I don't need to lead that or, or, or I, what I wish to establish is that during the interview, there was contact from outside, if I may just put my question. (2)Were you given any instructions, whilst this interview was being conducted, Officer, whilst you were inside the room?	<First part of PC's utterance (response to J's intrusion) not interpreted>
4.	I	拿咁當時當進行緊呢個嘅 er 會面嘅時候呢，當你係間房裡面嘅時候啦，當時係咪有俾過指示你㗎？	*So when you were conducting the interview, when you were inside the room, were you given any instructions?*
5.	J	There's no such allegation	<No interpretation >
6.	PC	I'm not… it's nothing to do with allegation, Your Honour. I'm just asking this question [if I may.	
7.	J	[Why?	
8.	PC	<sigh> Because this is what happened during the, the proceedings, Your Honour.	
9.	J	(4) Was there an interruption?	
10.	DC	I think that towards the end of the interview, someone (1) placed a piece of the paper underneath the door and put it into the interview room. Either this officer or the other officer (xxx), for the purpose of their enquiry.	*During the VRI, someone inserted a piece of paper into (the room) from underneath the door* <WI of DC's response for PW1 in the witness box>
11.	J	I see. Sorry. Yes.	<no interpretation>

In this example, the prosecution counsel is asking PW1 how he conducted the VRI with the defendant. The prosecution has sought to produce the video of the interview as an exhibit, to which the defence has objected on the grounds that the defendant was threatened, induced and taught how to answer the questions during the VRI. This presumably constitutes the judge's whole understanding of the VRI. Therefore, when the prosecution counsel asks PW1 about "the contact

from outside the room", this must have struck the judge as irrelevant because it was not mentioned in the defence counsel's grounds of objection. There is obviously a tension between the prosecution counsel and the judge as the prosecution counsel insists on putting the question to the witness while the judge disallows this. It is not until the defence counsel steps in by telling the court that at one point during the VRI a piece of paper was inserted into the room from outside (turn 10) that the judge realises her own problem. Again the interruption has resulted in the non-interpretation of most of the utterances made by the interlocutors as indicated in column 4. As in Example 8.7, this conversation takes place whilst the witness, not the defendant, is giving evidence, so *chuchotage* cannot be provided for the defendant, who, as in Example 8.7, is physically removed from the interpreter. Hence the WI provided in turn 10 is for PW1, not for the defendant.

Example 8.11 below is another instance of judicial intrusion, resulting in an even lengthier debate – a war of words – which grows intense and eventually leads to a standoff between the judge and the prosecution counsel.

Example 8.11 Cross-examination of Defendant, Case 5

Turn	Speaker	SL utterance/interpretation	English gloss/remarks
1.	PC	But er but you said that they found the drugs not in your room, they found it on your male friend.	<no interpretation >
2.	J	No, you misunderstand the situation. What she is saying is that it was the police plant. Neither she nor her male friend had drugs.	*The judge is correcting the prosecutor's understanding.* <WI for D in the witness box>
3.	PC	Well—	<no interpretation>
4.	J	It was the police plant.	
5.	PC	But—	
6.	J	And it was the sergeant who said, "this was found on the male person".	
7.	PC	Yeah. Yes. Your Honour, I appreciate the inference the…that this witness is trying to … eh…put, of course. But I am trying to cross examine her, on her, what she said during her testimony. And her testimony was: and he told me, he told me those things were found after search of my male friend.	
8.	J	Right.	
9.	PC	Right, so I am just putting the question to her. Now about what they, the police are saying, that they found this on her male friend inside the bedroom.	
10.	J	Yeah?	
11.	PC	She couldn't see what whether they found it on her, on her male friend or not. That's what the police told her.	
12.	J	Yes?	
13.	PC	Right. So I am asking her about this. If they found this on her male friend—	

14.	J	Well, they didn't. That's what the police said.	
15.	PC	Well, how do you know? Eh…eh. [How… how would—	
16.	J	[Because <louder>BECAUSE her male friend was…, she is saying they were both searched on the street, nothing was found. [She knew there was nothing in her home.	
17.	PC	[With resp…Right. With respect, Your Honour. There are… there are tons of body searches that you do on the street, which are called pat-down searches. They are not intrusive searches because you can't take—	
18.	J	Why don't you ask her to clarify then before you do (this)?	
19.	PC	<annoyed> Then, well, I'm, madam, oh, sorry, Your Honour, I am trying to do my cross-examination, and I am trying to put it the witness. If I am confusing the witness, or if I am asking a question that is inadmissible, I apologise. But can I just ask my questions… in my way? And if it is inadmissible, I'll withdraw the question. And if I'm putting something to her that shouldn't be put to her, then I'll withdraw it. But from what I understood from her testimony earlier, Your Honour, was the fact that she said, after they came out of the room, the police said they found these drugs on her male friend. Now I am pursuing on that basis of what she was told. Now if I am not allowed to proceed on this basis, Your Honour, then…then I'll move on to another matter. But may I just put this to the witness as I was? And if it is a matter that I'm not permitted to put to the witness, then I'll withdraw it. But it's [entirely up to you, Your Honour.	*still talking about the same thing.* < WI for D in the witness box>
20.	J	[What…<sigh> What was your question?=	
21.	PC	=I have no idea now, Your Honour. This is what happens, Your Honour, when it… counsel are interrupted in the middle of cross-examination, they lose their train of thought. Now if it was an inadmissible question, it is perfectly permissible (.) for Your Honour to interrupt and say this is inadmissible or this is wrong. But it wasn't wrong for her testimony. And now I have lost my way. And I have to gather [my thought—	*still not clear about what the question is.* < WI for D in the witness box>
22.	J to I	<To the interpreter> [Can you just repeat the question for the…counsel?)	
23.	I	No <inaudible>	
24.	PC	I don't want to appear to be difficult, Your Honour, but it is how she had put the matter.	
25.	J	OF COURSE, IT WAS.	
26.	PC	Exactly.	
27.	J	Except I couldn't see where it was going and I don't see that it could be understood.	*the judge is explaining why she had to interrupt.*

		<louder>Part of the reason I do (1) stop counsel is because unless the question is understood by me and my interpreter, that correct interpretation of the question is not put, and then we get a wrong answer.	*That is unless the question is understood—* < WI for D in the witness box>
28.	PC	Well, I do apologise that my question was put in a way that you didn't understand it, Your Honour. Perhaps I can have the question read back to me. I'll…I'll rephrase it so Your Honour can understand it.	<no interpretation>
29.	J	<sternly> Did you get the question, Miss Interpreter?	
30.	I	I think I have lost it.	
31.	J	Yeah.	
32.	PC	As…as I said, <low voice> Your Honour, this is what happens. <louder> Right, Madam, you, according to your testimony earlier, you said the police officers… the police officer… the sergeant came out, of the room and he had some drugs, and he told you that they had been found on your male friend. Is that right?	
33.	J	That's exactly the question you asked.	
34.	PC	Yes, that's what I'm going to ask.	
35.	J	Yes.	
36.	PC	Yes.	
37.	J	And you didn't lose your way.	
38.	PC	Well, I just managed to re…find it then.	
39.	J	Wonderful.	
40.	PC	Was there something about the question you didn't understand? Should I rephrase it, Your Honour?	<WI> *still discussing the question*
41.	I	(6) 嗱咁呢就根據你頭先係法庭上面所比嘅證供嚟講啦，咁呢就係阿警長呢就係由嗰個房間出嚟啦，咁跟住呢就係 er 攞住啲毒品啦就話係你個男性朋友身上面所搵到嘅，係咪咁先？	(6) *so according to your earlier evidence in court, the sergeant came out from the room with the drugs and said that they had been found on your male friend, is that right?* <CI in open court>

Note that this judicial intervention has produced as many as 40 turns before counsel's question is finally interpreted in turn 41. As has been noted above, since the defendant is testifying in the witness box when this judicial intrusion occurs, it is in theory possible for the interpreter to interpret the conversation to the defendant in a whisper. The reality is that the majority of the turn exchanges in the above dialogue have been left uninterpreted as indicated in column 4. Again as in Example 8.9, the overlapping and rapidity of the utterances, the proximity of the interpreter to the speakers and the unavailability of SI equipment may all have contributed to the non-rendition of the encounter. The interpreter is asked twice (turns 22 and 29) by the judge whether she is able to repeat the question for counsel after he claims to have lost his train of thought. With the distraction

of the crossfire between counsel and the judge, it is simply natural for the interpreter to have lost the question. After the prosecution counsel has finally gathered his thoughts and has put the question to the defendant again in turn 32, it seems that the judge is ready to start another war of words when she tries to mock him for claiming to have lost his train of thought because of her interruption. The prosecution counsel fights back by asking the judge which part of his question she does not understand, referring to her earlier utterance in turn 29. There is a dead silence of 6 seconds before the interpreter produces her rendition in turn 41. During this long silence, the interpreter must have been waiting for the judge to respond to counsel's rebuke, which however does not happen.

While Examples 8.7 to 8.11 extracted from Case 5 displays the judge as an all-too-powerful director and controller of the court drama, Example 8.12 taken from Case 8 illustrates the judge's unsuccessful attempt to stop the defence counsel's lengthy and perceived off-the-point questioning of the second prosecution witness (PW2) over the lie she told the police about her relationship with her mother. Note that the entire conversation is not interpreted either for the witness in the witness box nor for the defendant in the dock. Obviously both the witness and the defendant in this case, not to mention other non-English speaking court actors, require interpretation to access the argument between counsel and the judge. The primary concern of the court would be to place the defendant on an equal footing with other participants who speak the language of the court. However, the fact that the judicial intervention takes place while the interpreter is providing consecutive interpretation for the witness's testimony and counsel's questions renders it practically impossible for WI to be provided for the defendant, who as in some of the examples cited above, is not testifying in the witness box, but is in the dock, physically removed from the interpreter. As a matter of fact, the witness too has the right to know what is being exchanged between counsel and the judge, whose questioning makes her one of the interested parties. Apparently WI cannot be provided to *both* the defendant *and* the witness without the use of SI equipment.

Example 8.12 Cross-examination of PW2, Case 8

1.	J	[LISTEN, MR H, this witness has already admitted that she told a lie to the police and what the lie WAS, in respect of the lie, I don't see why we should go to the statement in a way you've gone through her mother's statement.
2.	DC	My Lady, I just want to… in my [experience—
3.	J	[What's the purpose of this?=
4.	DC	=In my experience, when you cross-examine the witness about the statement and it's only fair to her to have the statement in front of her. That's the first point. The second point is that the certificate at the top of the statement emphasises the gravity, the seriousness of what she is doing.
5.	J	Well, the fact that she's been given an immunity already emphasises the gravity of what she has been doing and I am sure she has no doubt about the seriousness [of the matter.
6.	DC	[Some people would think that the fact that she's given an immunity may even give her an excuse to escape any criminal responsibility for what she's done. I don't know if it implies any gravity, it may just produce a reaction of relief for what I

		know.
7.	J	Oh, what's the purpose of cross-examining on this criminal matter that is already be…before the jury and she's already admitted the lie?
8.	DC	Because she may be able to help us to make an assessment of the strength or otherwise character of her mother who she said was a person who asked her to do this.
9.	J	Well, in that case, you can just direct the question to that point, rather than going to the statement, which doesn't help at all.
10.	DC	Well, I… it… it… if Your Lady should and my learned friend would bear with me for a minute, I am not [inexperienced.
11.	J	[We've been bearing with you for a very long time, Mr. H, over this matter.
12.	DC	Yes, and if I may say so, Your Lady may (.) later on find the observations about matters being irrelevant coming from the bench at this stage might prejudice a trial, because in fact, I will respectfully submit and be able to establish that what I have developed is relevant which may not be obvious to some people at the moment, but I certainly won't be wasting time on irrelevance.
13.	J	I don't think it's not relevant. It's just (xxx).
14.	DC	Er ( ), yes, well, My Lady, I'd like to approach it in my own way, I can assure you that I'm not er dealing with (1) irrelevant matters. Her evidence is only relevant in relation to her mother and I should get along to that in due course in my own way if I may. (3) You see, the position is she said at the police station her mother isn't there, there's every opportunity placed to a serious certificate like this to reveal her decision. It may be that the mother's influence is so strong that she daren't (1) even when she's in the police [station.
15.	J	[(xxx) just put to the witness directly rather than going through …through this pro…procedure again.
16.	DC	Well, if I may, I… I… I… am sorry if I am being a bit traditional, but I always found that the traditional approach under the rule of law might be the best one in the end. That's why I wanted her to see the statement before I asked her questions about it. I have had many judges tell me quite sharply that the witness ought to see her statement before she is asked questions about it. (4) Lady, my question in fact, this…this discussion is taking more time than my question would have done. I want to ask her whether she remembers signing that certificate, about its truthfulness in the police station when she was well away from her mother.
17.	J	(3) Yes, very well <in a resigning tone>

8.4 Impact of judicial intervention on participation status of court actors in the courtroom of Hong Kong

To start with, a judge's intrusion into the evidential process, whether in a monolingual or in a bilingual trial, necessarily changes his/her participant role from auditor as it is construed in the previous chapters, to a key interlocutor (as speaker and addressee) and it inevitably leads to a power struggle with the examining counsel who feels his/her control of the evidence is being jeopardised by the judge's intervention as illustrated in the above examples. In taking the liberty to question the witness as in Examples 8.3 to 8.6, the judges have taken over counsel's turns, thus taking away from counsel the control over the witnesses and the flow of testimony. Judges' interference with counsel's examination of witnesses as demonstrated in the above examples can be interpreted as an attempt to control the proceedings or otherwise to ensure that counsel's questioning conforms to the rules of procedure, and in resisting the judicial intervention, counsel

seek to regain their control of the presentation of evidence in court.

In a monolingual setting, any judicial interference and the ensuing power struggle would be transparent to all present in the courtroom and would not usually disadvantage the non-participating court actors, though it would inevitably change the participation status of the interlocutors in the encounter, turning, for example, a testifying witness or examining counsel from a speaker/addressee to an auditor, while the court actors with reception roles as auditors, or overhearers remain unaffected. In other words, if the above-cited judicial intervention examples had taken place in a monolingual courtroom, all those present in court would have had access to the talk in its entirety.

In an interpreter-mediated trial, however, judicial interference with the evidential process will not only result in a change in production roles (Goffman, 1981) as mentioned above, but will also have an impact on reception roles, though the impact of such interference is determined by the bilingual settings in which the interpreting service is provided. In a typical bilingual setting, where interpreting is provided only for the linguistic minority, for example a witness or a defendant, the impact of judicial intervention on the proceedings would be less of a problem than in the bilingual Hong Kong courtroom, where interpreting is provided for the benefit of the linguistic majority.

8.4.1 Impact on the participation status of lay participants.

In a trial conducted in English in the Hong Kong courtroom, as noted in the previous chapters, more often than not, the majority, if not all, of the lay participants, i.e. the defendant, the witnesses and the audience in the public gallery, have to rely on the Cantonese interpretation of the court personnel's utterances in English for their participation in the trial. The provision of CI in the evidential phase and in the verdict/sentence delivery of the judicial phase of the trial ensures the participation of these lay non-English-speaking court actors in the process. As noted in Chapter 6, the provision of WI for judicial monologues/dialogues inevitably prejudices non-English-speaking court actors in the Hong Kong courtroom (see Section 6.3.1). Therefore, judicial intervention interpreted in a whisper to the defendant/witness, or worse still, not interpreted at all, as illustrated in the above examples, necessarily denies the access of non-English-speaking court actors to the proceedings in its entirety.

It is found that with regard to the participation status of non-English-speaking court actors, judges' *uncontested* questions/comments addressed to witnesses (Examples 8.3 to 8.5) are less problematic than when their intervention is contested by counsel (Example 8.6) and than their intervention to challenge counsel's questions (Examples 8.7 to 8.12). This is because a judge's question addressed to a witness has to be interpreted in the consecutive mode in open court (though not counsel's interrupted questions). Where the judge's utterance is targeted at counsel, interpretation, if any, is only provided in *chuchotage*, which is exclusive to *either* the witness *or* the defendant for whom the interpretation is provided. Moreover, judicial interference with the

examination of a witness is proved to be more problematic than with the examination of a defendant, as the interpreter cannot provide WI for *both* the defendant *and* the witness simultaneously.

8.4.2 Impact on the participation status of jurors

In a jury trial (Example 8.12), judicial intervention in the evidential phase may imply an even graver problem. As has been noted in Chapter 6, jurors serving in a trial conducted in English are mostly bilingual locals with Cantonese as their first language and English their second. There is however, no knowing whether their proficiency of English will enable them to access the trial talk in its entirety. There is no test whatsoever to assess prospective jurors' English language proficiency and jurors are chosen simply on the basis of their educational level. I have cited an example in Chapter 6 (Example 6.7), where a juror candidate whose name had been drawn from the ballot box told the court that she was worried that she might not be able to follow the trial in English; this serves to highlight the problem many other jurors may also have but do not have the courage to admit. Therefore the provision of WI or non-interpretation of the judicial intervening process might as well exclude the participation of jurors – the ultimate decision makers in the trial – who have a problem with their comprehension of the talk.

8.5 Conclusion

It must be noted that judicial intervention per se is not endemic to the Hong Kong legal system but rather has to do with the judges' individual styles of conducting trials, and can occur in any legal setting, monolingual or bilingual. It is in the special context of the Hong Kong courtroom that judicial intervention appears to be more problematic than in the other settings, a phenomenon that I have discovered in my data and have decided to investigate with the court actors' roles in mind. This chapter has demonstrated how judges, not settling for a passive auditor role during the process of witness examination, take on a speaker role and hence an addressee role by intervening in the process, thereby increasing their power and control over the court proceedings. This is followed by an analysis of the resulting interactional dynamics and their impact on the participation status of the other court actors, many of whom do not speak the language of the court in an English-medium trial in Hong Kong. I have shown that not only the defendant, but also witnesses and spectators in the public gallery have to rely on the Cantonese interpretation of the English utterances produced by counsel and judges for their participation in the proceedings. It has been demonstrated that judicial intervention poses a problem to the interpreter and often results in an inadequate or even omission of interpretation thus excluding the participation of non-English speaking court actors, including the defendant, who is then placed on an unequal footing with those who speak the language of the court. The defendant's constitutional right to an interpreter means that s/he has the right not just to be heard, but to *hear*. It is important for the defendant to

hear everything uttered in court to ensure his/her full participation in the trial. Denying the defendant's access to the interactions between counsel and the judge necessarily means that justice is seen but not *heard* to be done. In a jury trial, it is of utmost importance that jurors as the ultimate addressees (Cotterill, 2003) and the factfinders (Damaska, 1975) have full access to the interactions taking place during the evidential phase of a trial for justice to be done.

With Goffman's notion of "speaker" and Bell's notion of audience design in mind, the next chapter will examine how court interpreters represent the voice of the speaker in the interpreted talk and the implications for the participant role of the court interpreter. It will compare findings and conclusions made in other relevant studies and offer a new perspective on the issue with special reference to the Hong Kong courtroom.

CHAPTER 9
WHO IS SPEAKING? STRATEGIES FOR INTERPRETING THE VOICE OF THE SPEAKER

The previous chapter illustrated judges as powerful participants, who took the liberty to interrupt counsel or witnesses during the evidential phase of a trial, thus changing their role from *auditor* to *speaker* and taking away some of the counsel's power. It explored the implications of this judicial intervention for the interpreter, for the participation status of individual court actors and ultimately for the administration of justice.

Building on the notion of Goffman's "speaker" in his participation framework and the premise of power asymmetry between legal professionals and lay participants, this chapter explores how interpreters represent the voice of judges and counsel versus that of lay participants in the interpreted talk. Combining quantitative and qualitative approaches, this chapter focuses on interpreters' treatment of legal professionals' first-person reference and its Chinese counterpart used by non-English-speaking witnesses or defendants and it compares the interpreting styles adopted by court interpreters. As noted in Chapter 6, a review of my research data shows that there is an overt attempt on the part of the interpreter to avoid representing legal professionals' first person reference in the Chinese interpretation, where such reference is either represented in the third person or ellipted/omitted altogether. While results from previous studies which will be discussed later in Section 9.2 in this chapter show variations in interpreters' choices between first and third-person interpreting, findings from the present study manifest no such variations, and the theories proposed in existing literature do not seem to be able to adequately explain the interpreting phenomenon in the Hong Kong courtroom. This chapter is therefore devoted to a close examination of this phenomenon and seeks to add a new dimension to the issue, drawing not only on the findings of the recorded court proceedings of the nine trials, but also on results of a questionnaire conducted with serving and retired court interpreters. It explores how the complicated notion of audience in the bilingual Hong Kong courtroom may have a bearing on the interpreter's strategies in representing the voice of the speaker.

9.1 First-person interpreting as the norm and the interpreter's invisibility

As discussed in Chapter 2 (Section 2.6), a generally established principle among professional interpreters holds that they should always interpret in the first person, using direct speech "as if the interpreter does not exist." (cf. e.g. ITIA, 2009). There is also a general agreement among researchers on the use of direct speech in interpreting (Colin & Morris, 1996; Gentile, Ozolins, & Vasilakakos, 1996; Harris, 1990; Wadensjö, 1998).

Again as noted in Chapter 2, there is a myth among linguistically naive court actors, including legal professionals, about the role of the court interpreter as a mere *conduit* or a translation machine and that the use of direct speech helps obscure the interpreter's presence and

creates the illusion of direct and dyadic communication between the interlocutors as if the interpreter were invisible; whereas the use of indirect speech inevitably highlights the presence of the interpreter and brings in his/her voice, which may give rise to the problem of hearsay evidence. For this reason, emphasis is always laid on the need for interpreters working in the courtroom in particular to abide by the principle of first-person interpreting, as was noted in Chapter 2.

9.2 Third-person interpreting as a deviation from the norm

Despite the prescription of first-person interpreting known to the profession, empirical studies over the past two decades demonstrate that interpreters, working in both legal or non-legal settings, trained or untrained, depart from this norm and from time to time lapse into the use of third-person interpreting intentionally or unwittingly (e.g. Angermeyer, 2009; Berk-Seligson, 1990; Bot, 2005; Dubslaff & Martinsen, 2005; Kolb & Pöchhacker, 2008; Leung & Gibbons, 2008; Wadensjö, 1998; Cheung 2012).

In a study of the US courtroom, Berk-Seligson (1990) finds that many interpreters avoid the subject pronouns "I" and "you", particularly when the judge is declaring a sentence, by changing active to passive voice, thus doing away with the subject pronoun, by adding "the judge" after the first-person pronoun "I" ("I, the judge"), or by simply referring to the judge in the third person. Berk-Seligson (ibid.) sees the interpreter's switch from first-person to third-person reference as a self-protective device against the wrath of the defendant, who might conclude that the interpreter is speaking for him/herself. Berk-Seligson (ibid.), however, does not elaborate on the interpreter's treatment of the pronoun "you", nor does she explain why this can be a problem for the interpreter if the judge is addressing the non-English-speaking defendant directly, using personal pronouns "I" and "you", even if the interpreting is conducted in *chuchotage*. The pronoun "you" is likely to cause confusion for the non-English speaking defendant when the utterance is not addressed to the defendant, but to other English-speaking participants like counsel, rendering the defendant an overhearer rather than an addressee. If the interpretation is conducted in *chuchotage*, the interpreter often has to change the pronoun "you" by specifying who "you" is, (cf. also Angermeyer, 2005) or else the defendant might take the "you" to refer to him/her.

In her study of interpreter-mediated psychotherapeutic dialogue between patients and therapists, Bot (2005) finds that the three interpreters, all professionals who had received official training in interpreting and passed the examinations to be included in the Dutch Interpreter and Translation Centre's roster of interpreters, frequently deviate from the "direct translation" style prescribed by the Centre, by either introducing a reporting verb at the beginning of a rendition, or changing the personal pronoun "I" to "he" or "she". While the study shows variations in the interpreters' choices between "direct translation" ("I went to school"), "indirect translation"("he went to school"), "direct representation" ("he says I went to school") and "indirect representation" ("he says he went to school"), the most frequent form used by the interpreters is "direct

representation", which is "nearly always used for renditions of therapists' turns" (p. 250) and the next most frequent form adopted is "direct translation", predominantly used for the renditions of patients' turns. Bot suggests that interpreters' deviation from direct translation style may originate from the fact that "they may feel the need to distance themselves from the words they translate and may have doubts regarding the primary speakers' understanding of their role" (p. 244).

Kolb & Pöchhacker's study (2008) of asylum appeal hearings illustrates that interpreters at times use the first-person plural ("we") to refer to the adjudicator, thus positioning themselves in the institutional team, and at other times refer to the adjudicator in his official capacity. In fact, the vast majority of the interpreters in their study opt for what Bot (2005) refers to as "indirect translation".

While the subjects of Bot's study are all professional interpreters with formal training in interpreting, the four subjects in Dubslaff and Martinsen's study (2005) on interpreters' use of direct versus indirect speech in simulated interpreter-mediated medical interviews are all untrained interpreters. Like Bot, Dubslaff and Martinsen's study also indicates that the interpreters shift from first to third-person reference either to distance themselves from the source speaker or to disclaim responsibility for the source speaker's utterance when there is an interactional problem.

Leung and Gibbons (2008) go further to suggest that the interpreter's shift from first to third-person reference has to do with his/her personal belief and ideology. They observe from a rape case in Hong Kong that when counsel expresses something which the interpreter does not agree with or finds offensive, she is observed to interpret in the third person by specifying who the *principal* is, drawing on Goffman's (1981) participation framework. It might not be easy for their claim about ideology to be substantiated though, difficult as it is for any observer to tell if one's deed is a direct result of one's belief or ideology. What can be inferred from Leung and Gibbon's argument nonetheless is that the content of an utterance has a direct bearing on the interpreting style adopted, and that when the speaker expresses something perceived to be offensive, the interpreter would use reported speech to make it clear to the audience that she is simply the *animator*, not the *principal*, of the source speaker's words. This can also be viewed as an attempt on the part of the interpreter to disclaim responsibility for and thus to distance her/himself from the utterances made by the source speaker.

In a study of interpreter-mediated court proceedings in three Small Claims Courts in New York City to investigate how interpreters represent the voices of the source speakers, Angermeyer (2009) observes that all fifteen interpreters, mostly full-time professionals employed by the court system having passed an official proficiency examination, use third person from time to time to refer to the source speakers, though the frequencies of this third-person interpreting vary from interpreter to interpreter. A quantitative analysis of the data shows that interpreters overall use third-person reference more frequently when it is the voice of an English-speaking litigant or arbitrator that they are interpreting than when the source speaker is a speaker of the LOTE

(language other than English). In terms of the direction of interpreting, interpreting from the LOTE into English is "nearly invariantly" (2009, p. 11) done in the first person, whereas interpreting from English into the LOTE is mostly done in the third person.

One of the reasons suggested by Angermeyer is that the use of first-person interpreting illustrates that interpreters "are less likely to explicitly indicate non-involvement with their fellow native LOTE speakers than with other participants who speak English or another language" (ibid.) because most interpreters are themselves immigrants and non-native speakers of English. This view is shared by Dubslaff and Martinsen (2005), who suggest that interpreters' preference for direct address with speakers of their mother tongue may reflect their sympathy with their compatriots, in line with Anderson's view (2002) that interpreters in general are more likely to identify with speakers of their dominant language or mother tongue than with speakers of their other language, i.e. non-native language. This necessarily means that by representing the voice of an English speaker (litigant or arbitrator in this case) in the third person, the interpreter is emphasising his/her non-involvement in the utterances of the speaker – a widely adopted view of third-person reference as a distancing tactic in the interpreting studies mentioned above.

Another reason suggested by Angermeyer to account for interpreters adopting different interpreting styles is that interpreters, when interpreting into English, are mindful of the professional norm that prescribes first-person interpreting. If interpreting is done in the third person, arbitrators, other interpreters or anyone concerned with upholding the institutional norms can notice their "non-normative behaviour" (2009, p. 11); whereas when interpreting from English into the LOTE, the LOTE-speaking litigant is the exclusive audience, and such litigants may have no knowledge about the institutional norms and are thus less likely to object to the use of third-person reference. Angermeyer (2009, p. 19) views these deictic shifts as a form of accommodation, citing Giles, Coupland & Coupland (1991), and as addressee design following Bell's model of audience design (Bell, 1984).

Other shifts, observes Angermeyer (2009), are made for pragmatic reasons. For example, where there are multiple English-speaking participants speaking at the same time, the interpreter finds it necessary to specify who the speaker is by using a reporting verb at the beginning of a direct translation, using what Bot (2005, p. 246) terms "direct representation". For an interaction between the arbitrator and the English-speaking litigant, where the LOTE speaking litigant is an overhearer, rather than the addressee, pronoun shifts are deemed necessary to avoid confusion. Angermeyer finds these "addressee-related deictic shifts" relatively common in his data even with interpreters who generally adhere to the first-person rule (2009, p. 17). The use of reported speech in *chuchotage* in court should thus be regarded as an exception to the rule. For the purpose of my study, analyses are focused on interpretation in the consecutive mode. In line with Angermeyer's (2009) study, Cheung's (2012) recent study of court interpreters' use of reported speech when interpreting from English to Cantonese in Hong Kong suggests that the use of reported speech has

a function of minimising potential confusion "by identifying the interpreter, the different source-language speakers and multiple voices in an interpreted utterance" (p. 83).

9.3 Data and quantitative results

This study draws on all the nine recorded trials of my data, with sample transcripts taken from each trial for analysis, from which the following quantitative results have been generated.

Table 9.1 First-person reference uttered by judges and counsel in English and rendition in Chinese

Case No. and data examined	Judge	Counsel	Reproduced in Chinese	Omitted in Chinese	Replaced with 3rd person reference in TL (法官/律師/法庭 judge/lawyer/court)	No. of interpreters involved
1. Plea; Ex of PWs 1 & 2; Verdict	24	18	0 (0%)	18 (42.9%)	24 (57.1%)	2
2. Ex of PW1		21	**11 (52.4%)**	5 (23.8%)	5 (23.8%)	2
3. Ex of PW1		12	0 (0%)	11 (91.7%)	1 (8.3%)	1
4. Verdict	6		0 (0%)	2 (33.3%)	4 (66.7%)	1
5. Ex of PW1		36	0 (0%)	9 (25%)	27 (75%)	1
6. Verdict	16	0 (0%)	0 (0%)	0 (0%)	16 (100)%	1
7. Ex of PW1		10	0 (0%)	5(50%)	5 (50%)	1
8. Ex of PW1		58	0 (0%)	38 (65.5%)	20 (34.5%)	1
9. Ex of D		8	0 (0%)	7 (87.5%)	1 (12.5%)	1

Table 9.1 shows the occurrences of first-person reference (i.e. I, me, my) identified in judges' and counsel's utterances (columns 2 & 3) and their renditions in Chinese (columns 4, 5, 6 & 7). Column 1 shows the cases and the part of the trial talk (e.g. plea-taking, verdict delivery or examination of witnesses) extracted for analysis. Since the data as a whole reveal that first-person reference in the Chinese utterances is always retained and reproduced in the English interpretation by all the interpreters, it is deemed unnecessary to quantify its occurrences, though examples will be drawn from the transcripts to illustrate this direct style of interpreting. Column 8 indicates the number of interpreters involved in this study.

With the exception of Cases 1 and 2, which involve two interpreters, the trial talk extracted from the other seven cases for this study each involve one interpreter at work. The data of Case 1 involves two interpreters, one for the plea-taking day, and the other for the trial day. The two

interpreters in Case 2 are one trainee interpreter and a more experienced interpreter, who acts as supervisor and is found to provide suggested interpretation or to correct the trainee interpreter in a whisper from time to time.

As has been pointed out above, this chapter focuses on interpreters' rendition of legal professionals' first-person reference into Chinese in the consecutive mode. WI is thus not included in the analysis, as the use of reported speech is inevitable out of a pragmatic consideration, as rightly noted by Angermeyer (2009). Language-wise, with the exception of the interpreter in Case 8 (who works from Mandarin into English and *vice versa*), the other interpreters in the data speak Cantonese and English, and a total of 11 interpreters are included in this analysis.

Occurrences of first-person reference identified in judges'/counsel's utterances immediately followed by interpreters' turns were counted. If first-person references were addressed to legal professionals (e.g. counsel addressing the judge or vice versa) rather than to a witness/defendant, and if they were not interpreted in open court, they were ignored. Interrupted utterances containing such first-person references were also ignored, as they could not be paired up with a corresponding interpreter turn. Interrupted utterances occur mostly in the trial in Case 5, the implications of which for the participation status of court actors and hence the administration of justice were explored in detail in the previous chapter. Repetitions containing the same first-person reference (e.g. "I…I…I put it to you…") were also ignored and counted as one occurrence, as the reproduction of SL repetitions has more to do with the interpreter's treatment of the speech style of the SL speaker rather than with the reproduction of the first-person reference per se.

9.4 Findings and analysis

The quantitative results as shown in Table 9.1 reveal that in all cases, with the exception of Case 2 (which will be examined in more detail later in this section), first-person references uttered by judges and counsel are not reproduced in the Chinese interpretation. The first-person reference is either changed into third-person reference to the SL speaker's official capacity or omitted altogether in the Chinese interpretation. On the other hand, the Chinese first-person pronoun is always rendered into English in the first person, as is evidenced by the examples below. This, from my observations of the data and from my own experience of interpreting in court, has become a norm for court interpreters in Hong Kong.

9.4.1 Substitution of judges' and counsel's first-person reference with third-person reference in Chinese interpretation

Example 9.1 below is extracted from Case 1, in which the defendant, a primary school teacher charged with shoplifting, is appearing in court in person for the first time. The magistrate is advising her to retain the services of the Duty Lawyer Scheme.

Example 9.1 Plea-taking, Case 1

Turn	Speaker	SL utterances/ interpretation	English gloss
1.	J	Er well, you are eligible for the Duty Lawyer Scheme. And **I** would as you are pleading not guilty, er **I** would uh advise you uh to retain the services for the trial.	
2.	I	其實你呢係有資格可以用當值律師嘅服務㗎，既然你宣家不認罪吓，**法官**就話你最好都係呢，係審訊嘅時候，聘請當值律師代表你。	*In fact, you are eligible for the duty lawyer service. Since you have pleaded not guilty,* ***the judge*** *said it's better for you to hire a duty lawyer to represent you at the trial.*
3.	D	Er **我**自己搵律師。	*Uh* ***I****'ll get a lawyer myself.*
4.	I	**I**'ll get a lawyer myself.	
5.	J	You you can you've got the financial (.) means to do that?	
6.	I	你自己::有錢可以請倒私人律師，係咪呀？	*You yoursel::f have the money to retain a private lawyer, is that right?*
7.	D	(2)**我**自己諗辦法。	(2)***I****'ll work it out myself.*
8.	I	**I**'ll think of a way to do it.	
9.	J	Well, **I** said the other option is em duty lawyer scheme, which will cost you—	
10.	I	Um—	
11.	J	Er:: a maximum four hundred dollars.	
12.	I	正如呢**法官**所講啦，其實你仲有另一個選擇嘅，就係去搵當值律師。當值律師呢最多都係要俾四百蚊㗎啫。	*As* ***the judge*** *said, as a matter of fact, you have another choice, that is, to seek help from a duty lawyer. A duty lawyer will cost you a maximum of only four hundred dollars.*
13.	D	Er **我**自己諗辦法	*Uh* ***I****'ll work it out myself.*
14.	I	**I**'ll think of the way myself	

Note that the interpreter has rendered the first-person pronoun "I" uttered by the magistrate in turns 1 and 9 in the third person, referring to him in his official capacity, *faat3gun1*(法官 – the judge) in turns 2 and 12, whereas the first-person pronouns *ngo5* (我 – I) in turns 3, 7 and 13 has all been rendered into English as "I" in turns 4, 8 and 14. Similarly, the judges' first-person "I" in the verdict delivery in both Examples 9.2 and 9.3 below has been rendered as "the judge" (法官) in the Chinese interpretation.

Example 9.2 Delivery of verdict, Case 4

Turn	Speaker	SL utterances/ interpretation	English gloss
1.	J	(2) **I** do take into account, however, this is the defendant's first criminal offence, and it will be his first time in prison.	
2.	I	咁但係呢**法官**都會考慮到呢，今次係被告第一次犯事，同埋呢將會係第一次呢入獄架	But **the judge** will take into account that this is the first time the defendant has committed an offence and will be his first time in prison.

Example 9.3 Delivery of verdict, Case 6

Turn	Speaker	SL utterances/ interpretation	English gloss
1.	J	**I** turn now to the (.) admissibility of the confessions in question	
2.	I	宜家呢，**法官**呢，就會講番呢，係 er.....er 你嗰個嘅招認嘅可採納性嗰方面	Now, **the judge** will turn to er…er the admissibility of your confession.

Examples 9.4, 9.5, 9.6 and 9.7 cited from Cases 5, 8, 7 and 9, respectively, serve to illustrate how the interpreters represent counsel's voices in the Chinese interpretation. In the first three examples, the self-reference "I" uttered by both counsel has been rendered in the third person as "the defence counsel" and "the counsel/lawyer" in the Chinese (Mandarin in Case 8 and Cantonese in the other cases) interpretation, whereas the witnesses' first-person pronoun *ngo5* (I) has all been rendered as "I" in the English interpretation. In Example 9.7, the prosecution counsel's "I" becomes an impersonalised reference – "the prosecution" (控方).

Example 9.4 Cross-examination of PW1, Case 5

Turn	Speaker	SL utterances/ interpretation	English gloss
1	DC	So **I** was right when **I** put to you that he was present in the premises of the defendant?	
2	I	嗱，咁就**辯方大律師**頭先指出話呢個名偵緝警長呢當時呢就係個 er 單位裡面有在場，向你指出呢個事情嘅時候，咁**辯方大律師**講法咪啱囉？	*So when **the defence counsel** put to you just now that this detective sergeant was at the premises at that time, so in pointing this fact out to you, **the defence counsel** was right, wasn't he?*
3	W	**我**唔明個意思。	***I** don't understand the meaning.*
4	I	**I** don't understand what you mean.	

Example 9.5 Cross-examination of PW1, Case 8

Turn	Speaker	**SL utterances/ interpretation**	**English gloss**
1.	DC	**I** suggest you are prepared to tell lies to this court until you are forced to admit the truth	
2.	I	**律師**向你指出，看你同意還是不同 er 不同意的，就是說，你隨時都願意在法庭上說謊，對嗎？	***The lawyer*** *is suggesting to you, see if you agree or dis uh disagree, that is, you are prepared to tell lies in court anytime, is that right?*
3.	W	說(.)什麼？	*Tell (.) what?*
4.	I	說謊，**他**說你(.)在說謊	*Tell lies,* ***he*** *said you (.) are telling lies.*
5.	W	說謊?	*Telling lies?*
6.	I	嗯	*Mm*
7.	W	**我**沒有說謊呀。	***I'****m not telling lies.*
8.	I	No, **I** am not lying.	

Example 9.6 Cross-examination of D, Case 9

Turn	Speaker	**SL utterances/ interpretation**	**English gloss**
1.	PC	(3) Alright. Now, you are...**I** put it to you that you are making up (.) this story about Miss M inviting you up to the bed	
2.	I	律師向你指出呢，根本你講話呢，阿 M 小姐呢，係邀請你上佢張床呢，你根本喺度作緊大 er...古仔嚟講，同唔同意呀？	***The lawyer*** *puts it to you that what you said about Miss M inviting you to her bed is a story made up by you. Do you agree?*
3.	D	唔同意	*Disagree.*

Example 9.7 Examination-in-chief of PW1, Case 7

Turn	**Speaker**	**SL utterances/ interpretation**	**English gloss**
1.	PC	Right. Now, **I** would like you to er < throat-clearing sound of Interpreter> (2) cast your mind back (.) to a (2) to the er (.) 5th day of April, 2004.	
2.	I	咁宜家**控方**呢，就想你記番呢，喺零四年四月五號嗰日發生嘅一啲事嘅	*Now* ***the prosecution*** *wants you to recall the events that happened on the 5th of April 2004.*

9.4.2 Ellipsis/Omission of judges'/counsel's first-person reference in Chinese interpretation

Another common strategy as observed from the data is for the interpreter to ellipt or omit the first-person reference included in judges' or counsel's utterances in the Chinese interpretation. For differentiation purposes, "ellipsis" means that in "a SENTENCE (original emphases) where, for reasons of economy, emphasis or style, a part of the STRUCUTURE has been omitted, which is recoverable from a scrutiny of the CONTEXT" (Crystal, 2003, p. 159); whereas "to omit" means "to leave out or leave unmentioned" (Omit, Merriam-Webster Online Dictionary, 2012) It can thus be concluded that information ellipted is usually recoverable from the context while an omission

usually results in a loss of information, and may produce contextual ambiguity.

In both Examples 9.8 and 9.9 below, the interpreters are observed to have ellipted/omitted the prosecution counsel's first-person pronoun "I" in the Cantonese interpretation to avoid the need to put in a first-person pronoun (or third-person as is general practice), leaving the subject in both cases unmentioned.

Example 9.8 Cross-examination of D, Case 8

Turn	Speaker	SL utterances/ interpretation	English gloss
1.	PC	Sir, **I** just asked you if it was accurate, and you said "yes"	
2.	I	咁頭先咪就係問你嗰幅圖嗰幅草圖呢，係咪正 uh 準確，你又話係嘅	*Just now ϕ asked you if the sketch was cor uh accurate, didn't you say it was?*

Example 9.9 Examination-in-chief of PW1, Case 3

Turn	Speaker	SL utterances/ interpretation	English gloss
3.	PC	Before eleven twenty five, (.) did the defendant (.) make any phone call, according to your knowledge?	
4.	I	十點...十一點廿五分之前呀，被告有冇打過電話呢？嗱如果你知嘅，講知，唔知就話唔知吓	<Cantonese interpretation>
5.	W	當時**我**唔喺間房度，[所以唔係好清楚	*At that time **I** was not in the room, and so I had no idea.*
6.	I	[**I** was not (.) in the room, so **I** (.) did not know. I don't know	
7.	PC	**I** will ask the other officer then	
8.	I	係，咁問第二啲人啦	*Yes, in that case, ϕ ask other people.*

At other times the interpreter is found to omit the entire clause that contains the SL speaker's first-person reference altogether as in Example 9.10, thus dispensing the need to deal with it in the Chinese interpretation.

Example 9.10 Cross-examination of PW1, Case 8

Turn	Speaker	SL utterances/ interpretation	English gloss
1.	DC	Well, <throat-clearing sound>, **what I suggest is that** er you had had a a number of verbal scolding and arguments with the tenant, is that right?	
2.	I	其實你跟這個租客互相大家口角，互相對罵，對嗎？	*ϕ In fact you and this tenant had a verbal argument and scolded each other, is that right?*

9.4.3 A shift from first-person to third person interpreting

The above examples show that interpreters in general adopt two distinct interpreting styles when interpreting the first-person reference of witnesses/defendants and that of legal professionals: while the Chinese first-person pronoun "*ngo5*" uttered by witnesses/defendants is invariably rendered into English as "I", the English first-person pronoun "I" produced by legal professionals is hardly ever rendered into "*ngo5"* in the Chinese interpretation, but is either substituted with a third person reference (i.e. by using reported speech) or ellipted/omitted altogether in the Chinese interpretation. Instances of the use of first-person interpreting for the legal professionals' utterances as shown in Table 9.1 are found only in Case 2. The following is an example extracted from the cross-examination of PW1.

Example 9.11 Cross-examination of PW1, Case 2

Turn	Speaker	SL utterances/ interpretation	English gloss
1.	DC	Well, **I** suggest that, at some point, the defendant was alone in the interview room	
2.	IB	咁**我**就話俾係聽，喺一啲時間裏面，哩個咁嘅被告其實係被獨自留咗喺會見室裏面	*Now **I** tell you this: for some time, the defendant was left alone in the interview room*
3.	W	**我**唔同意	***I** disagree*
4.	I	**I** Disagree	
5.	DC	And **I** further suggest that, you had entered the interview room to speak with her	
6.	IA	<in a whisper> **律師**向你指出呢你有入過會議室同佢傾偈 =	***The lawyer** suggests to you that you had entered the meeting room to talk to her=*
7.	IB	=好喇，咁**律師**亦都向你指出呀，你係有入過去哩個會見室呢，去同佢(.)傾計㗎，係咪?	*=OK. So **the lawyer** also suggests to you that you had entered the interview room to talk to her. Is that right?*
8.	W	Er **我**入過去會見室向佢宣讀佢嘅權利	Er **I** did enter the interview room to read out her rights to her.
9.	IB	**I** get <sic.> inside the interview room, and declare <sic.> (.) her rights.	
10.	DC	O, **I** suggest that, you DID NOT declare to her her rights	
11.	IB	**律師**向你指出，你並冇宣讀佢嘅權利	**The lawyer** puts it to you that you didn't read out her rights.

As noted above, Case 2 involves two interpreters at work, a trainee interpreter and his supervisor (represented as IB and IA in the transcript respectively). In the above example, IB, a fresh graduate who has probably had instilled into him the principle of interpreting "in the same grammatical person" as the speaker by using the same pronouns and verbs (NAJIT, 2004), starts

off by adopting a normative first-person interpreting style not just for the witness, but also for the examining counsel. After some turns however, IA decides to step in to whisper her suggested interpretation as a result of which the defence counsel's first-person reference "I" becomes a third-person reference as "the lawyer" (turn 6). From this point IB shifts to represent DC's voice in the third person. This finding seems to suggest that a third-person interpreting style for legal professional's utterances is an "inherited" practice in the Hong Kong courtroom.

9.5 Findings and "disassociation" theory

As shown in the above examples, the shifts from first-person interpreting to third-person interpreting seem to be uniform, in the sense that they occur only in one direction – a phenomenon which is not adequately explained by theories advanced in existing literature. For example, the majority of the research on the use of reported speech in interpreting suggests its use as the interpreter's distancing strategy to disclaim responsibility for what is said by the speaker, especially remarks that may offend the addressee – what I call the "disassociation" theory. However, the above-cited examples show little correlation between the content of the utterances and the court interpreter's style of interpreting. In Example 9.1, for instance, the magistrate is not delivering a verdict or passing a sentence, but is merely advising the defendant on her right to legal representation, so it does not make much sense to presume that the interpreter particularly wants to be disassociated from the magistrate's utterances by opting for third-person interpreting. What the magistrate is saying is certainly not something offensive or face-threatening to the defendant. On the other hand, the defendant appears to be rather insistent in her refusal of the magistrate's suggestion. Following my disassociation theory, one would expect to see the interpreter adopting a first-person interpreting style for utterances made by the magistrate and a third-person interpreting style for utterances of the defendant but this does not happen here.

In Example 9.4, the disassociation theory may explain why the interpreter chooses to interpret counsel's turn in the third person, i.e. to disclaim responsibility for his suggestion, with which the addressee is likely to disagree. On the other hand, one may argue and wonder why the interpreter does not wish to disclaim responsibility for the witness's failure to understand counsel's question as she chooses to assume the witness's voice by interpreting her response in the first person. Thus the disassociation theory can only explain the interpreter's behaviour in part, not in full.

9.6 Power asymmetry in the adversarial courtroom and hypotheses

My findings show that the style of interpreting has little to do with *what* is said by the speaker, but more to do with *who* the speaker is. I thus argue that the strategies adopted by interpreters in representing the voice of the speaker have to do with the power asymmetry in the courtroom and hence the interpreter's response to it as audience design (Bell, 1984).

In the adversarial common law courtroom, the imbalance of power between legal professionals and lay-participants is palpable, as discussed in Chapter 7 (Section 7.1). It is my hypothesis that there is a sense of uneasiness on the part of interpreters in assuming the voice of powerful participants as reflected in their overt effort to avoid representing their voices in the first person, and that interpreters' uneasiness may have stemmed from their consciousness of this power asymmetry in the courtroom.

9.7 Questionnaire results and analysis

In order to test my hypothesis, an online questionnaire was administered with both serving and retired full-time court interpreters. The questionnaire consists of 15 multiple-choice questions. The answers to some of the questions also include "Other (Please specify)" as an open option which allows respondents to provide their own answers in a text box (see Appendix 11). The link was sent to 53 full-time court interpreters, including two retired interpreters, who were at the grade of Senior Court Interpreter before their retirement. A total of 25 questionnaires were filled and collected at the conclusion of a two-month surveying period. All the respondents have over 3 years of court interpreting experience and over 80% of them have more than 10 years of experience in court interpreting.

9.7.1 Different interpreting styles for different speakers

The results of the survey as a whole confirm the general practice of two distinct interpreting styles adopted for lay participants and legal professionals, respectively, in the courts of Hong Kong, which conforms to the findings arising from the court data. The majority (84%) of the respondents admitted that they would adopt first-person interpreting for witnesses/defendants but not for the legal professionals, regardless of their years of experience in court interpreting and whether or not they have had any training in first-person interpreting.

9.7.2 Content of utterances and interpreting styles

When asked if their choice between first-person and third-person interpreting had anything to do with the content of the utterance (Question 13), eight (32%) out of the 25 subjects chose "Yes" while 17 (68%) chose "No" as their answers. Those who had responded affirmatively to this question were asked to explain in a text box how the content of the utterances would affect their interpreting styles. Of the eight explanations provided, half of them were however irrelevant or non-responsive in that the respondents merely reiterated what they did like "when I interpret witnesses' testimony, I always use 'I' but when I interpret counsel's questions, I always use 'counsel put to you that...'" without explaining why they did that. These explanations seem to confirm the two different interpreting styles for lay participants and legal professionals and my suggestion that the interpreting styles adopted have more to do with *who* the speaker is, not *what* the speaker has said. These respondents should probably have picked "No" as their answer. Of the

other four who gave relevant explanations, three did however suggest the use of third-person interpreting as a self-protective device against the anger of the defendant or witness when counsel are putting questions to witnesses or judges are delivering their verdicts, which may embarrass, offend or "provoke the message recipients and evoke negative feelings". It could be argued, however, that the generally held view of the use of reported speech as a protective device based on what has been said by the SL speaker is supported only by a minority of the respondents and that the majority of them refuted the correlation between the content of an utterance and the interpreting style adopted.

9.7.3 Rationale behind the styles of interpreting

Subjects who had confirmed the adoption of different interpreting styles for legal professionals and for lay participants were asked in Question 15 below to state their reasons by choosing from four answers suggested in the light of the findings based on my court data and conclusions from previous studies, and/or by providing their own reasons in the open option. Multiple answers were allowed.

Q.15: If your answer to Question 14 is "Yes", please state the reason(s) why (You may choose more than one answer).

- I feel uneasy assuming the voice of counsel or judges because they are on a higher hierarchical level.
- I don't want to give the impression to all those in court that I am pretending to be the counsel and the judge by assuming their voice.
- I don't want the witnesses/defendants to conclude that I am speaking for myself if the interpretation is done in the first person.
- I just follow what other colleagues (e.g. the interpreter I understudied) are doing.
- Other (Please specify)

Responses to the question seem to suggest that the subjects' choice of interpreting style is affected by a mixture of factors, some of which are however not supported by the court data.

9.7.3.1 Psychological factor

As noted above, it is my hypothesis that the adoption of a third-person interpreting style for utterances produced by legal professionals stems from interpreters' reluctance or unease in assuming the voice of the powerful participants in court. Options A and B accentuate the hierarchical power enjoyed by the legal professionals, the subjects' consciousness of this power asymmetry in the courtroom and thus their uneasiness in assuming the voice of the powerful participants, for fear that those unaware of the professional norm of first-person interpreting may

regard them as pretending to be the powerful participants. Together these two options were chosen by 15 subjects, representing 60% of the total number of respondents. This suggests that there does exist a psychological element in the subjects' choice of interpreting styles, though there is no knowing whether this percentage represents a true picture of the rationale of all the respondents behind their choice of interpreting styles, in that the subjects might find it hard to bring themselves to admit a deviation from their ethical code for psychological reasons.

The interpreter's uneasiness in assuming the voice of the powerful participants has to be understood in the special context of the Hong Kong courtroom. As noted in Chapter 4 and throughout this thesis, in Hong Kong, unlike in many other jurisdictions, the defendant and witnesses requiring interpreting services are *not* the exclusive audience of the Cantonese interpretation, which is also accessible to the majority of the participants in the courtroom, including Cantonese monolinguals such as audience in the public gallery and English/Cantonese bilinguals like bilingual legal professionals. In the course of interpreting, the interpreter is conscious of the presence of these third-person audience roles as "auditors" or "overhearers". In other words, interpreters' shift from a first-person to a third-person interpreting style can be regarded as their response to these audience roles, as they may consider it impertinent to assume the voice of the legal professionals, while wishing to show their respect in order to win approval of the third-person audience roles (Bell, 1984) by referring to these powerful participants in their official capacities, just as speakers do when they accommodate their speech style to their audience (Bell, 1984; Giles & Smith, 1979).

9.7.3.2 Pragmatic consideration

If Options A and B are understood as interpreters' accommodation of interpreting styles to the third-person audience roles (i.e. auditors and overhearers) in the courtroom, Option C, which suggests a pragmatic consideration on the part of the respondents, can be regarded as interpreters' response to the second-person audience role – the "addressee" – in that it takes into account the lay-participants' lack of understanding of the role of the interpreter or of the professional norm of first-person interpreting. This option was chosen by 17 respondents, representing 68% of the total number of respondents.

9.7.3.3 Inherited practice

Option D does not represent an informed decision on the part of the interpreter, but a passive or inherited one, in that the interpreter just follows what other interpreters are doing in court. Six respondents marked this option, representing 24% of the total number of subjects. This is supported by the court data as evidenced by the trainee interpreter's shift from the normative first-person interpreting style for all speakers to a deviant third-person interpreting style for utterances produced by the legal professionals (at the suggestion of his supervisor) as illustrated in

Example 9.11. The supervising interpreter's "correction" of the trainee interpreter's style of interpreting may have stemmed from her perception of the power differentials between lay and professional participants in the judicial proceedings: arguably, the trainee interpreter, being new and thus less sensitive to the courtroom hierarchy of power relations, is more ready to assume the voice of all the speakers by using direct speech, which the supervising interpreter must have deemed improper and demonstrating a want of respect for the powerful participants.

9.7.3.4 A self-protective device

Option E allows respondents to provide their own answers in a text box. Three subjects suggest in this option that the use of reported speech for interpreting counsel's/judges' utterances is to disclaim responsibility for offensive remarks–the disassociation theory. For example, one respondent stated, "I do that for self-protection. I take care to distance myself from contents like '律師向你指出 (*counsel suggests/puts to you*)…...' and '法官裁定 (the judge finds)', which may provoke the message recipients and evoke negative feelings". For a detailed analysis of the survey results, see Ng (2011). This discriminatory (content-based) use of interpreting styles is however not supported by the court data, which demonstrate a consistent use of reported speech for counsel/judges whether they are challenging the witness/defendant or are simply giving them procedural advice. In other words, as noted above, the court data show the interpreting styles adopted depend on *who* the speaker is (or the audience are), not *what* is said.

Sections 9.8 and 9.9 below will evaluate the impact of this third-person interpreting style and the ellipsis/omission strategy on the role of the interpreter and on the communicative act itself.

9.8 Impact of third-person interpreting

9.8.1 Impact on the participant role, invisibility and neutrality of the interpreter

Angermeyer (2009) suggests that when interpreting in the first person, the interpreter speaks *as* the person whose speech s/he is interpreting, and *about* him/her when reported speech is adopted. With reference to Goffman's participation framework, Angermeyer suggests that by interpreting in the first person, the interpreter assumes the role as animator of the interpreted utterance, rather than as author or principal (2009, p. 5). However, he points out at the same time that other participants may not always recognise this interpreter role and may hold the interpreter responsible for the interpreted talk. He argues that the use of reported speech may therefore be seen as an implicit stance taken by the interpreter to avoid alignment with the SL speaker (ibid.). Wadensjö (1998) too suggests that the use of reported speech has the effect of distinguishing the voice of the interpreter from the SL speaker's voice, or what she refers to as the "currently speaking self and the meaning other" (p. 273). In a similar fashion, Leung and Gibbons (2008, p.179) argue that the use of reported speech by the interpreter is to emphasise that s/he is not the *principal* of the interpreted utterance.

As discussed in Chapter 2, interpreting in the third person by using reported speech brings in the interpreter's own voice, making him/her a participant in his/her own right. As suggested by Wadensjö (1998), by referring to the speaker in the third person, the interpreter reserves the first-person pronoun "I" for him/herself. It could thus be argued that the use of reported speech would highlight the presence of the interpreter, though the invisibility of the court interpreter has been challenged and proved more of a myth than a reality by empirical studies, even without the use of reported speech, and as Jacobsen puts it, "the pretence of the court interpreter's invisibility cannot be sustained anyway" (2002, p. 32). However, the variation in interpreting style might problematise the interpreter's neutrality and impartiality. As suggested by Angermeyer (2009), interpreting the SL speech in the third person may be seen as an attempt on the part of the interpreter to avoid alignment with the SL speaker. It could thus be argued that by interpreting lay participants' speech in the first person and utterances produced by legal professionals in the third person, the interpreter seems to align him/herself with the powerless participants but to distance or alienate from the powerful participants, inevitably compromising the interpreter's neutrality.

9.8.2 Impact on illocutionary force of the speech act

It is generally agreed that interpreting in the third-person has a distancing effect (cf. Mason, 1999, p. 152; Morris, 1995, p. 35). In the courtroom, this distancing effect inevitably impacts on a speech act. Cheung (2012, p. 76-77) argues, following Clayman (2007, pp. 242-243), that reported speech could be used by court interpreters as a strategic device to neutralize and legitimize aggressive and challenging questions in the adversarial courtroom. At the same time, he suggests that the use of reported speech by court interpreters has the pragmatic function of enhancing the illocutionary force of the interpreted utterances by "alerting listeners to the gravity of what is to come" (Cheung, 2012, p. 86). One may thus argue that the use of reported speech has an impact on the illocutionary force of the speech act, by either reinforcing or neutralizing it. In Examples 9.5 and 9.6 above, the defence and the prosecution counsel are respectively accusing the witness and the defendant of lying. It could be argued that the interpreters' use of reported speech on the one hand indicates to the addressees that the accusations come from a party with authority and thus deserve their serious attention; on the other hand it has arguably the function of "neutralizing" the accusation and making it less confrontational or face-threatening.

9.8.3 Ambiguity associated with the omission of first-person reference in Chinese interpretation

As noted above, findings of the court data reveal that in order to shun legal professionals' first-person reference in the Chinese interpretation, the interpreters, in addition to interpreting legal professionals' utterances in the third person by using reported speech, are at other times found to omit judges' or counsel's first-person reference in the Chinese interpretation. This is done

by omitting either the SL speaker's first-person reference such as "I" in the Chinese interpretation, leaving the subject "I" unmentioned as in Examples 9.8 and 9.9 or the entire clause containing such a reference as in Example 9.10.

It must be noted that ellipsis is a common linguistic device in Chinese where contextually understood information in a construction can be ellipted. In Example 9.8, since it is understood from the preceding context that it is the prosecution counsel who performed the act of "asking" about the sketch earlier on, the ellipsis of the subject "I" in the Cantonese interpretation presumably has little impact on the listeners' comprehension of the message.

In Example 9.9, however, the omission of the first-person subject "I" in the Cantonese interpretation may give rise to the problem of ambiguity; this is because in the interpretation in turn 8, the SL speaker's first-person subject "I" as the agent of "asking" is omitted, and this may be taken as an imperative for the addressee to perform the action of "asking".

In Example 9.10, the omission of the entire clause "what I suggest" has effectively turned a suggestion or hypothesis into a declarative statement.

9.9 Conclusion

In this chapter, the court data have demonstrated that interpreting *from* English in the third person and *into* English in the first person is a practice commonly adopted by interpreters in the Hong Kong courtroom. The results of the survey conducted with court interpreters largely corroborate this finding and lend support to my hypothesis that the practice has little to do with the content of the SL utterance. The use of reported speech by replacing the SL speaker's first-person reference such as "I" with his/her official capacity as "counsel" or "judge" or the ellipsis/omission of it in the Chinese interpretation demonstrates an effort on the part of the interpreter to shun the voices of the powerful participants. As the use of reported speech is generally regarded as unprofessional and a deviation from the norm of first-person interpreting, the ellipsis/omission strategy can be seen as an effort on the part of the interpreter to compromise the need to comply with the norm and to avoid assuming the voice of the SL speaker. In the case of an ellipsis, where the omitted first-person reference can be recovered from the context and there is no possibility of ambiguity, this strategy may be regarded as the interpreter's happy medium, which will render her/him beyond criticism. However, where an omission of the first-person reference is likely to result in ambiguity or a loss of information as in Example 9.9, caution must be exercised in adopting this strategy.

The results of the survey suggest a sense of unease on the part of the interpreter in assuming the voice of legal professionals as powerful participants, but not so that of witnesses and defendants as powerless participants. It can thus be argued that the deviant third-person interpreting style is the interpreter's response to the power asymmetry in the courtroom. The results of the survey also suggest the shift in the interpreting style as the interpreters'

accommodation to their audience; lay participants are less informed about institutional norms and may mistakenly imagine the interpreter to be speaking for him/herself. As suggested by Angermeyer, court interpreters working from and into English "find themselves in a situation where they have to translate for two very different audiences and negotiate two different sets of expectations of their behavior and language use" (2009, p. 19). In the case of the Hong Kong courtroom, as noted above, lay participants are often not the exclusive audience of interpretation *out of* English, i.e. Cantonese, which is accessible also to the majority of the spectators in the public gallery as well as bilingual court personnel. The interpreter thus has a much more varied audience for the Cantonese interpretation. This may explain the interpreter's unease in assuming the voice of the powerful participants. In other words, in shunning the voice of legal professionals by resorting to the use of reported speech or by omitting their first-person reference in the Chinese interpretation, the interpreter is not merely accommodating to his/her addressee (witness/defendant), but also to third person audience roles. Bell (1984) notes that "all third persons, whether absent referees or present auditors and overhearers, influence a speaker's style design which in a way echoes the effect they would have as second person addressees" (p. 161).

The efforts to shun the voice of legal professionals are however not without a cost. First of all, the use of reported speech in interpreting, apart from being regarded as a deviation from the norm, would compromise the interpreter's invisibility and neutrality and might mitigate the force of a speech act. Secondly, the omission of the SL speaker's first-person reference could produce ambiguity due to a loss of information in the Chinese interpretation.

In the concluding chapter that follows, I will revisit the research questions set out in Chapter 1, summarise the findings and discuss their pedagogical implications. I will also make recommendations for best practice for working with interpreters in the courtroom, as well as for further research in the domain of court interpreting.

CHAPTER 10
CONCLUSIONS

This concluding chapter aims to:

1) revisit the research questions of the current study and present a summary of the findings,
2) discuss the contribution of this study to existing literature on court interpreting,
3) comment on the strengths and limitations of the study,
4) discuss the pedagogical implications of the findings,
5) make recommendations for best practice,
6) make recommendations for future research directions in the field.

10.1 Aims and research questions revisited

It has been the aim of the current study to investigate how the interactional dynamics of the communication process in the atypical bilingual Hong Kong courtroom differ from those in the other settings, monolingual or bilingual, and what implications this has for the administration of justice. To answer that question, it set out to answer the following research questions:

1) How are the participant roles, reception roles in particular, made more complex in the bilingual Hong Kong courtroom, and what are the implications for a court actor's power and control over the communicative act?
2) What impact does the presence of other bilinguals in the courtroom have on the interactional dynamics of the courtroom and on the power of the interpreter? What are the implications for the participant roles of these other bilinguals?
3) What impact does a change in the participant role of a court actor have on the communicative act and on the participation status of other court actors?
4) How does the interpreter represent the voice of the speaker and how does it relate to the notions of power asymmetry and audience design in the courtroom?

10.2 Summary of Findings

This study has described the bilingual Hong Kong courtroom and shown it to be a special context in which the majority of the lay-participants in an English-medium trial do not speak the language of the court, unlike many other bilingual settings where those who do not speak the language of the court belong to the linguistic minority. The data comprising nine criminal trials conducted in English in Hong Kong courts and a questionnaire administered to court interpreters have yielded the following findings.

10.2.1 The complexity of recipientship/audience in the bilingual Hong Kong courtroom

Using Goffman's (1981) participation roles and the audience roles as elaborated in Bell's (1984)

model of audience design, this study has illustrated how the notion of recipientship is complicated due to the presence of other bilingual court actors in the Hong Kong courtroom. In a courtroom where the interpreter is the only bilingual, s/he has two distinct audiences, one to do with interpretation *into* the court language, and the other *out of* it. In the Hong Kong courtroom nonetheless, the lay-participants requiring Cantonese interpretation *out of* the court language (i.e. English) are usually *not* the exclusive audience of the Cantonese interpretation, which is accessible also to the majority of the court actors, including Cantonese monolinguals such as spectators in the public gallery and bilingual counsel and judges, who may take on additional audience roles as overhearers. In a similar fashion, interpretation from Cantonese into English might not be exclusive to English-speaking court personnel, but also accessible to Cantonese-speaking lay-participants who are bilingual in varying degrees.

10.2.2 Power of court actors realised in their participant roles

This study has illustrated how the presence of other bilingual court actors in the Hong Kong courtroom impacts on the interactional dynamics and thus the participation status of individual court actors, and how the participation status of the court actors including that of the interpreter affects their power and control in the courtroom. It has been found that the power of a court actor is realised in his/her participant role and those of the other co-present court actors in interpreter-mediated court proceedings. By comparing and exemplifying the power and control of the court interpreter working with monolingual court actors and with bilingual court actors (Chapter 7), this study has found that the interpreter working with monolingual court actors tends have more control over the discourse whereas the interpreter working with bilingual court actors sees her power and control over the communicative act very much restrained and reduced. It is argued that the interpreters' deviation from their ethical code when working with monolingual court actors and their relatively close adherence to it in the presence of other bilinguals is a response to the audience in court.

On the other hand, while monolingual participants lose their power to the bilingual interpreter, bilingual participants, who have the advantage of listening to the same speech twice in both its SL and TL versions, enjoy more power and control in the triadic communication. It is thus concluded that the more participant roles one takes on or is capable of playing, the more power and control s/he has over the communicative act.

10.2.3 Different interpreting styles for different speakers

This study has also demonstrated a uniform and consistent shift from the use of direct speech when interpreting lay-participants' speech to the use of reported speech (or the ellipsis/omission strategy as exemplified in Section 9.4.2, Chapter 9) for interpreting utterances produced by legal professionals, and it indicates that the interpreting style depends on *who* the SL speaker is, rather

than *what* is said by the SL speaker, contrary to what has been widely suggested in other studies. Findings from the court data seem to suggest a tendency for interpreters to shun the voice of legal professionals and results of the survey indicate a sense of unease on the part of the interpreter in assuming the voice of legal professionals as the powerful participants in the court proceedings. It is thus argued that the adoption of a third-person interpreting style for legal professionals' utterances may have stemmed from the interpreter's consciousness of the power asymmetry in the courtroom and is thus a response to it.

Following Bell's audience design, it could also be argued that interpreters' shift from the normative first-person interpreting style to a third-person interpreting style is a result of their accommodation to the audience, not merely to the addressee (who might otherwise take them to be speaking in their own voice) but also to other audience roles as auditors, or overhearers to seek their approval. As has been illustrated throughout this study, unlike in the typical bilingual setting, witnesses and defendants in the Hong Kong courtroom are not the exclusive audience of the interpretation *out of* English; the Cantonese interpretation is accessible also to monolingual Cantonese-speaking spectators in the public gallery as well as the bilingual legal personnel. Results of the survey suggest that interpreters do have these audience roles in mind as they showed a reluctance to assume the voice of the legal professionals.

10.2.4 A change in the participant role of a court actor has an impact on the participation status of other court actors and potentially on the administration of justice

When interpreters initiate clarifications with witnesses and thus cease to be the voice of the SL speaker, court actors not speaking the language of the witness are excluded from the verbal exchange. This is illustrated in Chapter 7 Case 8, where the interpreter is engaged in extensive clarifications with the Mandarin-speaking witness, thus excluding non-Mandarin-speaking court actors from full participation.

Chapter 8 reveals that when the judge changes his/her participant role from *auditor* to *speaker* in the evidential phase of a trial, non-English speaking court actors, including not only the defendant but also the testifying witness and spectators in the public gallery, are often excluded from participating in the verbal encounter between the judge and counsel. Judicial intervention, which is transparent in a monolingual trial and accessible to the linguistic majority in court in the typical bilingual setting, has proved more problematic in the bilingual Hong Kong courtroom. It is found that judicial intervention often results in inaccuracy and omission in interpretation and thus denies the defendant and all the other non-English speaking court actors access to the trial talk in its entirety. For these people, whose participation in the trial is disadvantaged, justice is seen but not *heard* to be done.

10.2.5 The use of *chuchotage* compromises the participation status of court actors who do not speak the language of the court

Chuchotage is commonly adopted in the bilingual courtroom where interpretation is provided for the linguistic minority, usually for the defendant/witness. *Chuchotage* inevitably compromises the participation status of the linguistic majority in the Hong Kong courtroom, thus denying them full access to the trial talk. As illustrated throughout this study, monolingual interactions in English are not interpreted consecutively but in *chuchotage*, audible only to the defendant (or sometimes the testifying witness as in judicial intervention in Chapter 8). This necessarily excludes the participation of other non-English speaking court actors, including some jury members who may have a problem following the talk in English as evidenced in Example 6.7, Chapter 6. Where a witness chooses to testify in English as in Example 6.17, his evidence is interpreted in *chuchotage* for the benefit of the Cantonese-speaking defendant, as is the practice in the typical bilingual setting. In the Hong Kong courtroom however, this mode of interpretation inevitably excludes the participation of many other court actors, including jurors as noted above.

10.2.6 Interpreting process in the Hong Kong courtroom is more transparent with the provision of CI and installation of DARTS in courts

On the other hand, this study reveals that the interpreting process in the Hong Kong courtroom is more transparent than in the typical bilingual courtroom as most witnesses have to testify through an interpreter in a trial conducted in English and the legal-lay talk thus has to be interpreted consecutively in open court for public scrutiny. Besides, the implementation of DARTS has further crystallised the entire process, making it easier to track the record for any misinterpretation allegation as evidenced in the appeal case between HKSAR and Ng Pak Lun cited in Chapter 3. This inevitably subjects court interpreters to greater external pressure.

10.2.7 On-the-job training for new recruits

The examples cited in Chapter 6 (Examples 6.21 and 6.22) show that practice of on-the-job training practice for new recruits inherited from the early colonial days is still evident in the present-day Hong Kong courtroom, and that there is no requirement for these recruits to have pre-service training or experience in interpreting.

10.3 Contributions of the present study

10.3.1 Contribution to existing literature on court interpreting

While research on court interpreting has focused on conventional bilingual settings where those not speaking the language of the court and thus requiring interpreting services are the linguistic minority and where the interpreter is usually the only bilingual in the encounter, this study has examined a legal setting in which the majority of the lay-participants – defendants, witnesses and

spectators in the public gallery – have to rely on the interpretation out of English for their participation in the proceedings and interpreters therein often have to work with other court actors who share their bilingual knowledge of the SL and TL. It is the first study to compare how the interactional dynamics and participation status of court actors in an interpreter-mediated trial in the Hong Kong courtroom are different from those in the typical bilingual courtroom. The analysis of the participant roles and power of court actors not only helps explain interpreting phenomena in the Hong Kong courtroom, but can also be used to account for those observed in other bilingual legal settings, including common law courts in other former British colonies such as Malaysia (Ibrahim, 2007; Powell, 2008), Brunei and Sri Lanka (Powell, 2008). This authentic data-based study of interpreter-mediated trials in the bilingual Hong Kong courtroom is a significant contribution to the existing literature on court interpreting as such.

10.3.2 Contribution to translation and interpreting and sociolinguistic studies

This study best illustrates the dynamic nature of interpreting, which is not only a linguistic but also a social phenomenon. Nida (1976), who has since 1964 (Nida, 1964) called for the study of translation (which in a broader sense includes also interpreting) as an act of communication, suggests that since translating "always involves the communication within the context of interpersonal relations, the model for such activity must be a communication model, and the principles must be primarily sociolinguistic in the broader sense of the term" (p. 78). Nida notes that "[t]he fact that translating seems to be a very complex operation should not be surprising. Language itself is complex, but the factors involved in human discourse are even more complex" (1976, p. 79). Roy (2000, p. 23) suggests that the reason why Nida advocates sociolinguistic theory for translation is that the process of translation needs to account for "a myriad of factors" ranging from interpersonal relations, linguistic and extralinguistic features, cultural and social variants, which would influence the way in which a message is formed and perceived. Interpreting, the speech-based communication, with the inclusion of the interpreter in the middle is much more complex than the text-based activity of translation as it involves more variants. The process of interpreting thus has to account for even more factors such as the power relations of the interlocutors and the participant roles taken on by them. This study accentuates the dynamic nature of the process of interpreting in the courtroom and that accuracy in interpreting depends not only on the interpreter's competence in preserving the semantic and pragmatic meaning of an utterance, but is also decided by "who does what and to whom" in the communicative process. For this reason, this study contributes not only to the field of translation and interpreting, but to the study of sociolinguistics as it explores the default power asymmetry in the hierarchical courtroom and how it might have a bearing on the interpreter's interpreting styles. It also demonstrates the correlation between power and participant roles taken on by court actors in the courtroom.

10.3.3 Contributions to the study of forensic linguistics and social benefits of the study

The study of courtroom interactions, monolingual or bilingual, and their implications for the administration of justice is one of the major areas of study of forensic linguistics. This study contributes to the study of forensic linguistics in that it explores how the interactional dynamics as observed in the atypical bilingual courtroom may impact on the participation status of individual court actors and potentially on the administration of justice. The findings of this study shed light on better practice of court interpreting and hence administration of justice. It will benefit not only interpreters, but also those working with them, in that they are made more conscious of the impact of their actions, with the court actors' participation status in mind. The findings will also facilitate court administrators to make better policies relating to the provision of interpreting services in court.

10.4 Limitations of the present study

As was mentioned in Chapter 4, with the exception of Case 9 (the rape trial), the analysis of the other eight trials is based purely on the recordings of the court proceedings. An examination of the audio recordings supplemented with onsite observations (and thus visual cues) would probably have yielded more in-depth findings. Besides, due to the time constraints, the bulk of the data could not be transcribed in full, but had to be done selectively, though the recordings of all the nine trials have been listened to multiple times and are also available in full for reference. Further, efforts have been made to ensure that every single trial in the data has at least part of its recordings transcribed for analysis so as to minimise bias and subjectivity.

While ethnographic research would have enabled a more detailed analysis of the data, a non-ethnographic approach without the researcher being physically present has arguably yielded more objective findings as the presence of the researcher might have had an impact on the behaviour of the interpreter, who might then have become more conscious of the need to abide by the ethical codes. The reason why an ethnographic approach was not adopted in the first place is that many serving interpreters, especially those working in the District Court and the High Court, are my ex-colleagues and know my background well. My presence in the courtroom might have put them on the alert, which might have rendered the authentic data less "natural".

In the light of the findings, recommendations for best practice are made in the following sections (10.5, 10.6 and 10.7). Some of these recommendations (most of those laid out in Section 10.6 for example) are generic and applicable to bilingual courtroom settings in general, while others specifically address the uniqueness of the Hong Kong courtroom and the interpreting phenomena therein.

10.5 Recommendations for best practice in interpreter training (pedagogical implications)

Given the distinctiveness of the bilingual Hong Kong courtroom, in addition to sensitising interpreters to linguistic and pragmatic aspects as suggested in other studies (e.g. Berk-Seligson, 1990; Hale, 2004), interpreter training in Hong Kong should address the specifics of the bilingual Hong Kong courtroom and should sensitise students to:

10.5.1 The possibility of being challenged by bilingual counsel/judges and ways of coping with the situation

As has been demonstrated throughout this study, interpreting in the Hong Kong courtroom is made doubly demanding due to the presence of other bilinguals, who have access to both the original utterances and the interpreter's rendition in the TL. These bilinguals can then take on additional audience roles as overhearers to check the accuracy of the interpretation. This on the one hand implies that justice is better safeguarded, and on the other hand will inevitably add to the pressure on court interpreters, whose performance is constantly scrutinised by these bilinguals. They may at times, as was illustrated in the rape case (Case 9) in Chapter 7, exploit their accessibility to both the SL and the TL versions of the testimony and challenge the interpreter by proposing an alternative interpretation that works to their advantage. While it is important that interpreters should not try to cover up or defend their mistake to save face or avoid embarrassment, it is equally important that interpreters are taught how to defend an informed decision and not to meekly submit to the authority as the interpreter in Case 9 did, or else their professionalism may be called into question.

10.5.2 DARTS as the referee of their performance

With the installation of DARTS in all court levels in Hong Kong, interpreters must be sensitised to the bilingual reporting system, which serves as a final line of defence against any interpreting mistakes. With this in mind, interpreters should do their utmost to ensure that their rendition attains the highest level of accuracy and to adhere to the ethical code and professional practices as closely as possible. It is also important for them to correct any mistakes as promptly as practicable.

10.5.3 The fundamental lexico-grammatical differences between English and Chinese and the difficulty in translating implicit information from Chinese into English

Chinese is a context-dependent language. For example, verbs do not conjugate to agree with the subject or to reflect the tense or aspect, and nouns do not have singular or plural markers. It is important that interpreters recognise the fundamental lexico-grammatical differences between English and Chinese and know how to interpret implicit information from Chinese into English. Where ambiguity exists and clarification with the speaker is required, permission from the court

must first be sought. Where possible, interpreters should strive to reproduce the ambiguity in the TL and leave the burden of clarification to the court, and should avoid committing themselves by resorting to guesswork. As shown in Chapter 7, the interpreter's decision to opt for one meaning of the ambiguous Cantonese word *saam1* ends up being challenged by the bilingual prosecution counsel, who decides that the other interpretation would work better for the prosecution's case.

10.5.4 The need to inform the court of the problem of audibility with overlapping speech in times of judicial intervention and legal arguments and the practical difficulty in providing WI for both the witness and the defendant.

As demonstrated in Chapter 8, a legal debate between counsel and the judge resulting from judicial intervention with the examination of a witness creates an acoustic problem for the interpreter, making it difficult to effectuate a *chuchotage,* which in any case cannot be provided for *both* the defendant *and* the testifying witness. It is thus important for the interpreter to inform the court of such practical difficulties, or else the defendant and/or witness will be denied access to the verbal exchange between counsel and the judge.

10.5.5 The need to be consistent in their interpreting style for both lay participants and legal professionals

As demonstrated in Chapter 9, interpreters in the Hong Kong courtroom are found to adopt two interpreting styles for representing the voice of legal professionals and that of lay participants. It is important for interpreters to be trained to interpret in the first person regardless of who the speaker is and what is said by the speaker. This is to maintain interpreters' neutrality and professional detachment, or else interpreters might be seen as aligning themselves with lay participants and distancing themselves from legal professionals.

10.6 Recommendations for best practice in the courtroom

To ensure those who do not speak the language will be put on a comparable footing in an interpreted trial as those who do, efforts must also be made to facilitate the work of the interpreter. As Hale (2010) notes, interpreters cannot always be blamed for interpretation which is not fully accurate as there are often obstacles that are beyond their control, adequate interpretation being heavily reliant upon the physical working conditions and the behaviour of the co-present participants in the interaction. The recommendations I am going to make aim to improve working conditions in the courtroom and the behaviour of other court actors so as to facilitate the work of the interpreter in the courtroom. Some of these recommendations are generic and apply to bilingual legal settings in general while others specifically address the interpreting phenomena present in the Hong Kong courtroom.

10.6.1 Team interpreting and the use of SI equipment

As has been pointed out in the previous chapters, utterances produced by the legal personnel in an English-medium trial in the Hong Kong courtroom have to be interpreted from English to Cantonese not only for the defendant, but also for witnesses and the majority of the spectators in the public gallery to enable them to participate in the proceedings. The participation of these non-English speaking court actors in the evidential phase of a trial is made possible only through the provision of interpretation in the consecutive mode in open court. Nonetheless, the findings of this study show that where a judge interrupts the evidential process, as illustrated in Chapter 8, the interpreter either interprets the verbal exchanges between counsel and the judge in *chuchotage* for the defendant/witness, as is the standard practice (see Chapter 6), or simply remains silent, unless the judge's question is addressed to the witness/defendant. This finding is consistent with the observation by Hale (2004, p. 208) in her study of English-Spanish interpretation provided in the Local Court in Australia. In the context of the Hong Kong courtroom, the impact of such non-interpretation or WI is more far-reaching than in the Australian courtroom, where presumably the Spanish speaking witness/defendant is the linguistic minority. It is also found that judicial intervention occurring during the examination of a witness is more problematic than that which takes place during the examination of the defendant, as WI cannot be provided for both the witness in the witness box and the defendant in the dock.

With the use of two interpreters in the same trial, it would be possible for one interpreter to provide WI to the defendant in the dock and the other to the witness in the witness box in cases where judicial intervention occurs during the examination of a witness, rather than that of a defendant. This practice, however, would still prejudice other non-English speaking court actors like spectators in the public gallery. Besides, SI without the use of equipment would create acoustic difficulty for *both* the interpreter working by the witness box as his/her voice would have to compete with or "drown out" that of the SL speakers (De Jongh, 1992, p. 50), *and* the interpreter providing dockside whispering as s/he often has to work behind the SL speaker's back, typically when counsel is addressing the judge (see Fowler et al., 2012). Adelo, a retired veteran Federal and State certified court interpreter notes that "one of the best kept courtroom secrets may be that court interpreters frequently cannot hear courtroom discourse", pointing out that the place where the interpreter sits when providing WI to the defendant and the fact that the interpreter's voice overlaps with the SL speaker's make it difficult for him/her to hear adequately what is being said (Adelo, 2007, p. 1)

The best solution would be to have one interpreter providing SI of English utterances produced by legal professionals but not interpreted consecutively in open court to all those requiring such services, with the use of SI equipment[50], and the other interpreter concentrating on

[50] For SI equipment used by interpreters working in the US Federal Courts, see Kolm (1999).

the provision of consecutive interpretation of the legal-lay interactions. The use of SI equipment allows the simultaneous interpreter to be physically removed from the SL speakers (as well as the listeners including the defendant). The positioning of the simultaneous interpreter away from the defendant, as De Jongh (1992) rightly notes, would also help underscore the neutral role of the interpreter as it would discourage "unnecessary communication on the part of the defendant with the interpreter" (De Jongh, 1992, p. 51; see also Fowler, et al., 2012).

The use of team interpreting also has the benefit of reducing interpreter fatigue, as mental fatigue might understandably lead to a decrease in the quality of interpretation (see Fowler, et al., 2012; Moser-Mercer, Künzli, & Korac, 1998). In the case of Hong Kong, the interpreter working solo has to interpret everything uttered in court, in two directions (to and from English) and in two modes besides. As has been pointed out in Chapter 6, interpretation at different stages of a trial involves the use of different modes and directions. Jury instructions and counsel's opening speeches, for example, require whispered SI from English to Chinese, while the evidential phase requires dual directional interpretation in the consecutive mode. The use of two interpreters would thus enable division or specialisation of work as some interpreters may work better in the simultaneous mode while others work with more ease in the consecutive mode. Team interpreting as a way of reducing interpreter fatigue and to ensure the quality of interpretation in the courtroom is recommended by scholars, practitioners and professional organisations (e.g. De Jongh, 1992; Hale, 2010; Kristy, 2009; NAJIT, 2007). Nevertheless, in a world where cost-effectiveness is considered paramount as is evidenced for example by the outsourcing of interpreter services in the United Kingdom with the aim to cut the costs of interpretation and translation (Hussein, 2011), team interpreting in the courtroom seems to be an ideal rather than a reality. In Hong Kong, a second interpreter is used only in a trial which involves a witness/defendant speaking a third language other than the two usual languages (i.e. Cantonese and English). When that happens, the two interpreters will be working in different language combinations and thus cannot provide any relief to each other's workload.

10.6.2 Training for court personnel

The introduction of the interpreter into the courtroom necessarily alters the interactional dynamics. The need to train the court personnel on how to work effectively with the interpreter has been accentuated in many studies in court interpreting (e.g. Colin & Morris, 1996; Fowler, et al., 2012; Hussein, 2011; Mikkelson, 1999) and can never be emphasised enough. The following recommendations for the best way to work with interpreters in court apply not only to the Hong Kong courtroom, but also to other bilingual legal settings in general. It is important that court personnel:

10.6.2.1 Recognise the interpreter as a team member and allow him/her time to prepare for the trial

Court personnel must first of all recognise the interpreter as part of their team who, like them, needs to prepare for the trial to get his/her job done properly. As Gamal (2006, p. 65) points out, it is "unrealistic to expect an interpreter to walk into a courtroom without any knowledge of the topic, terminology or chronology of the case and still be able to perform efficiently". He suggests that court interpreters, like conference interpreters, should be briefed beforehand about the material and topics to be dealt with in court. Therefore the interpreter's access to background information relating to the case to be tried is essential. As aptly noted by González et al (1991, p. 175), attorneys do not appear in court without first reviewing their clients' cases and preparing for their cases in court. It is undoubtedly unfair to expect the interpreter to get everything right in "one-take" while counsel have days, if not weeks, to rehearse the presentation of their cases. Lack of prior preparation and hence unfamiliarity with the case at trial would inevitably result in interpreters' frequent clarifications with the witness as happened in the murder trial (Case 8) in Chapter 7, or otherwise to resort to guesswork. The performance of the trainee interpreter as illustrated in Chapter 6 demonstrates among other things his unfamiliarity with the case at trial and the relevant terminology. Gamal (2006) argues that while the judicial view that the interpreter's prior knowledge of the case might affect his/her impartiality is, to a certain extent, understandable, court interpreters, like other professionals, are bound by their professional ethics, which inter alia emphasise the principles of impartiality and confidentiality. There is therefore no need to deny interpreters' access to information on the nature of the case for reasons of impartiality and confidentiality. In the case of Hong Kong, since full-time court interpreters are regular court staff, there would be no technical difficulty in providing them with the relevant information prior to the day of the trial.

10.6.2.2 Pause at regular intervals for consecutive interpretation

Since interpretation for legal-lay interactions in the Hong Kong courtroom is in the main provided in the consecutive mode to ensure accuracy in interpretation, SL speakers must pause at regular intervals to permit a consecutive interpretation of their utterances. It would be helpful for witnesses to be informed by the court, before taking the stand, of the need for them to pause for the interpreter while testifying. In this regard, police officers in Hong Kong are usually better witnesses for the interpreter, as testifying through an interpreter is part of their training as police officers.

10.6.2.3 Avoid interruptions, rapid and overlapping speech

Judges should avoid interrupting the witness examination, except to clarify ambiguity in counsel's question or a witness's answer. As was illustrated in Chapter 8, when the judge interrupts the

proceedings, the natural consequence is that counsel is unable to finish their question and the interpreter to render it into Cantonese. In the case where the judicial intervention meets with resistance from counsel and matters develop into a heated debate, the rapidity and overlapping speech typical of an argument create immense difficulty for the interpreter, the result of which is an incomplete rendition or, worse still, non-interpretation of the verbal encounter. This subsequently excludes some court actors from participating in the proceedings. Judges and counsel should make the effort to speak clearly and audibly and to avoid overlapping voices (Kristy, 2009). Many of them, however, seem to be unaware of the problems caused by lack of audibility and speaking too quickly and how this might impact on the interpreter since they are never informed of such problems by interpreters themselves (Mikkelson, 1999). Mikkelson suggests that the reason why interpreters do not inform the court of such problems is that they "are so intimidated by the black robe and high bench that they don't dare interrupt the proceedings to make any special requests" (1999, p. 3).

Where a judicial intervention is unavoidable, efforts should be made on the part of the judge to allow counsel to finish his/her turn and the interpreter to complete the rendition of counsel's question before interrupting the proceedings. In the case where counsel's question is interrupted, the judge should ask counsel to repeat it at a later stage as a repair strategy as in Example 8.5 in Chapter 8.

10.6.2.4 Understand the role of the court interpreter

Understanding the role of the court interpreter by the court personnel is equally important in maintaining the impartiality of the interpreter and in the better administration of justice. As noted in Chapter 2, a review of the literature in court interpreting manifests divergent expectations of the role of the court interpreter and practices of court personnel in dealing with court interpreters. The role of the court interpreter in Malaysia as described in Ibrahim's study (2007) for example is tantamount to advocacy. Similarly, Example 6.16 cited in Chapter 6 in which the magistrate told the interpreter to explain to the unrepresented defendant issues relating to bail conditions and legal representation without himself uttering those words best illustrates malpractice on the part of the magistrate or the notion of interpreting as advocacy. The practice, commonly adopted in the plea courts of magistracies, where a large volume of cases are disposed of on a daily basis, inevitably undermines the impartial role of the interpreter in the eyes of the other court actors.

10.7 Institutional and administrative recommendations

An improvement in the working conditions and in the practice and behaviour of the co-present court actors alone as noted by Hale (2010) does not guarantee a quality interpreting service, which can only be provided by competent interpreters with the right specialised training. To ensure

quality in interpreting, the following institutional and administrative recommendations must also be implemented.

10.7.1 The need to raise the entry requirements

As was illustrated in Chapter 3, court interpreting in Hong Kong was necessitated in a time when bilingual competence in English and Cantonese was a rare skill and the interpreting quality in those days was described as "deplorably bad" (Jarman, 1996, p. 629), yet little could be done to improve the situation due to the shortage of competent bilinguals back then. Court interpreting is a highly complex task, which, as Hale suggests (2010), requires native or native-like level of competence in the two languages concerned in a variety of genres and registers. With the popularisation of education and with translation and interpreting being developed into an academic discipline and offered in many universities nowadays, it is time to raise the requirements for the interpreter's level of bilingual competence and to make a first degree and post-graduate qualifications in Translation/Interpretation prerequisites for the job.

10.7.2 The need to raise the remuneration and career prospects for court interpreters

Higher entry requirements must also come with an improvement in the remuneration and career prospects. Poor remuneration and career prospects have made it difficult to attract talented interpreters to enter or stay in the field as was pointed out in Chapter 3 (see Section 3.5 for the description of court interpreters' remuneration and career prospects). A deplorable reality in Australia as observed by Hale (2010) is that many best interpreting graduates do not practise interpreting for very long, but choose to retrain for other more profitable and less demanding professions. Hale suggests that it is important to provide competent bilinguals, which are however limited in supply, with "the necessary incentives to pursue a career as highly specialised interpreters" (2010, p. 443). In the case of Hong Kong, the entry requirements and remuneration for court interpreters should be made comparable with those for the Simultaneous Interpreter grade (see Appendix 5).

10.7.3 The need to make pre-service training mandatory

Mandatory pre-service training as Hale (2010) suggests does not guarantee error-free interpretation, but it will nonetheless guarantee a minimum standard and professional status for interpreters. In many countries where court interpreters mostly work as freelancers, pre-service training usually refers to training undertaken for example in a university course in legal interpreting prior to the provision of interpreting service in court. In the case of full-time staff interpreters like those in the Hong Kong courtroom, pre-service training may take the form of in-house training which takes place after an interpreter has passed the translation and interpretation tests and is subsequently offered employment but before s/he is deployed to a court to provide interpreting services. The current practice of on-the-job training as described in Chapter

3 should be replaced with *pre*-service training. The need to work with other bilinguals and the introduction of DARTS in courts make interpreting in the Hong Kong courtroom a much more demanding job than it was in the early colonial days and in many other jurisdictions. Examples 6.21 and 6.22 in Chapter 6 underscore the undesirability of the century-old learning-by-doing training method. Putting an interpreter in the courtroom before s/he is ready for the test will not only compromise the administration of justice, but also do much harm to the professional image of the court interpreter. How would the interpreter earn the respect of the other court actors or be regarded as a professional when s/he is frequently criticised or even scolded by the bilingual judge for various interpreting problems, as illustrated in Chapter 3, or has to rely on the prompting of his supervisor when he gets stuck in open court as demonstrated in Example 6.22 in Chapter 6?

To enhance the image and professional status of the court interpreter, a lengthier and more rigorous training programme should be provided for new recruits before they are considered fit to make their first appearance in court as interpreters, well-trained and prepared for the challenge. The DARTS recordings of court proceedings provide the best authentic training materials with which mock trials can be conducted. The in-house training programme should preferably last for a period of at least six months[51], during which arrangements should be made for the new recruits to visit the courts to see experienced interpreters at work and to familiarise them with the trial procedures and terminology pertaining to court proceedings (see 10.5 above for the recommendations for best practice in interpreter training).

10.7.4 The need to restructure the Court Interpreter grade in Hong Kong

With the increasing use of Chinese in court, the need for interpretation has considerably decreased in recent years, though the Court Interpreter grade still maintains an establishment of 167 full-time court interpreters as of 1 August 2012 (M. Tse, personal communication, August 28, 2012). The daily routine of many of these court interpreters consists of translating and certifying translated court documents rather than interpreting in court, especially for those deployed to magistracies and various tribunals, where only courts presided over by monolingual English-speaking expatriates have court interpreters assigned to them. Courts presided over by bilingual local judges do not have an interpreter assigned to them as trials in these courts are conducted in Cantonese, unless the defendant in a trial is represented by a monolingual English speaking counsel and/or when counsel for the prosecution speaks only English. Then the trial will have to be conducted in English and the services of an interpreter will be required.

In the light of the fundamental change in the trial language and thus in the duties of court interpreters as described in Chapter 3, the need to restructure the Grade by splitting it into two grades as Court Interpreter and Court Translator becomes apparent. Given the pressurised nature

[51] New recruits of the Court Prosecutor grade undergo an intensive pre-service training programme of 9 months before they appear in court as court prosecutors (Allcock, 2007)

and complexities of court interpreting, the entry requirements and remuneration of the Court Interpreter grade should be raised to those of the SI grade (see Appendix 5 for the entry requirements for the SI grade), and the Court Translator grade should be made comparable with the OLO grade in terms of entry requirements and remuneration as they both deal with written translation (see Appendices 4 and 9).

With the division of the existing Court Interpreter grade into two grades and the entry requirements raised for the new Court Interpreter grade, the new grade can be retrenched in such a way that only highly capable and professionally trained bilinguals would be hired or retained in the grade, while those who are not should be advised to opt for the translation stream and to join the Court Translator grade. The restructuring of the existing grade would make it possible to fully utilise the interpreters for the court service. As has been pointed out above, many interpreters in the lower courts do not provide interpreting service on a regular basis nowadays because of the increasing use of Chinese in trials conducted in these courts. Expatriate monolingual English-speaking judges usually have newly recruited interpreters assigned to them so as to enable these novice interpreters to gain more interpreting experience. As a result, there is not much chance for more senior court interpreters to render interpreting services in court. It is likely that they will become de-skilled by the time their services *are* required in court. The restructuring of the Court Interpreter grade thus has the advantage of keeping the interpreters' skills intact and sharp.

10.8 Recommendations for further research

This study of the interactional dynamics and communication processes in the bilingual Hong Kong courtroom represents only an initial move from which further research can be conducted to examine this under-explored legal setting. The following are two possible areas which warrant further exploration.

10.8.1 Participation status of jurors in an interpreter-mediated trial in the Hong Kong courtroom

The participation status of jurors as silent observers – yet ultimate decision makers – in the special context of the Hong Kong courtroom is an area which warrants further exploration. As noted in the previous chapters, jurors in trials conducted in English are predominantly bilingual locals. It would be interesting to explore questions such as "to what extent do these *bilingual* jurors understand legal talk, when jury instructions are interpreted in *chuchotage* which is only audible to the defendant?" and "do these bilingual jurors base their verdict on the original Cantonese testimony or the interpreted English version of the testimony in an English-language trial?". Berk-Seligson (1990) observes that in the US courts, jurors bilingual in both English and Spanish are constantly reminded by the judge to ignore witnesses' original testimony in Spanish and to pay

attention only to the English interpreted version, which is treated as the authentic and official record of the trial. In the present-day Hong Kong bilingual courtroom, however, both English and Cantonese have been accorded equal authority and jurors are free to listen to either version or both of them.

10.8.2 Contrastive study of the discourse of the witnesses' testimony in a monolingual Cantonese trial with that in a bilingual English trial

Ng's ethnographic study (2009) of the Hong Kong courtroom concludes that despite the stipulation of the law that English and Chinese (or Cantonese in the oral context) enjoy equal status under the bilingual common law system, trials conducted in English differ from Cantonese trials in many ways and that English trials are described by bilingual barristers as "solemn, respectful and dignified" whereas Cantonese trials are in their words "noisy, mundane, and belittling" (2009, p. 6). He argues that it is because the use of language is a social practice, which is "embodied, intuitive and habitual", and that is not about language per se but about the social practices that language embodies (2009, p. 6). Ng argues that English and Cantonese are of two distinct linguistic habituses in Hong Kong: for about a century and a half, English has been the language of law, business, politics and other serious public activities; Cantonese is "the language of the family, the mass media and the street" (2009, p. 9). Ng's argument that Cantonese is devoid of formalism may appear controversial as it is far more archaic in nature than Mandarin, the official language in Mainland China, and is functioning effectively in the Legislative Council in Hong Kong as the language of politics and law nowadays. Ng's study however serves as a point of departure from which further study on the Hong Kong courtroom can be embarked upon. As was pointed out throughout this study, in an English trial (as in a Cantonese trial), witnesses mostly testify in Cantonese, assisted by an interpreter. Therefore the fact that witnesses behave differently in an English trial and in a Cantonese trial necessarily suggests that participants who do not speak the language of the court, albeit with the assistance of an interpreter, are not on an equal footing as those who do. For one thing, participants who are familiar with the language of the court presumably feel more at ease and less intimidated than those who are not. Secondly, the need for them to pause during the process of testifying to permit a consecutive interpretation of their utterances means that they have little control over the discourse of their speech. It would therefore be interesting to compare the discourse of the witnesses' testimony in a monolingual Cantonese trial with that in a bilingual English trial.

10.9 Concluding remarks

It has been demonstrated throughout this thesis that the participation status of some court actors in an interpreter-mediated trial in the Hong Kong courtroom is inevitably compromised in one way or another. For the court actors to access an interpreter-mediated trial in its totality as their

counterparts in a monolingual trial do, efforts must be made by all parties concerned. As Ozolins & Hale (2009) observe, quality in interpreting is a shared responsibility among all parties involved in the interpreted encounter, not the sole responsibility of the interpreter: speakers have to assume responsibility for what they say and how they say it; employers have to assume responsibility for providing suitable working conditions and remuneration for interpreters; educational institutions have the responsibility of providing adequate resources and support; researchers have the responsibility of making their research relevant, applicable and accessible to practitioners, while interpreters must assume the responsibility for their own professional development and professionalism. When the parties concerned assume their fair share of the responsibility for communication, quality in court interpreting can be guaranteed and those who do not speak the language of the court can be put on an equal footing with those who do.

REFERENCES

Adelo, A. S. (2007). When the court interpreter cannot hear, due process stops. *Bar Bulletin, 46*(1), 1

Allcock, B. (2007). Court Prosecutors and Government Lawyers. *Articles by Law Officers*. Retrieved from http://www.doj.gov.hk/eng/public/pdf/lo20070110e.pdf

Anderson, R. B. (2002). Perspectives on the role of interpreter. In F. Pöchhacker & M. Shlesinger (Eds.), *The Interpreting Studies Reader* (pp. 208–217). London; New York: Routledge.

Angelelli, C. (2004). *Revisiting the Interpreter's Role: A Study of Conference, Court, and Medical Interpreters in Canada, Mexico, and the United States*. Amsterdam ; Philadelphia: John Benjamins Pub. Co.

Angermeyer, P. S. (2005). Who is 'you'? Polite forms of address and ambiguous participant roles in court interpreting. *Target*, 17(2), 203–226.

Angermeyer, P. S. (2009). Translation style and participant roles in court interpreting. *Journal of Sociolinguistics,* 13(1), 3–28.

Atkinson, J. M., & Drew, P. (1979). *Order in Court: The Organisation of Verbal Interaction in Judicial Settings*. Atlantic Highlands, N.J.: Humanities Press.

Barsky, R. F. (1994). *Constructing a Productive Other: Discourse Theory and the Convention Refugee Hearing*. Amsterdam: John Benjamins Pub. Co.

Barsky, R. F. (1996). The interpreter as intercultural agent in convention refugee hearings". *The Translator,* 2(1), 45–63.

Barsky, R. F. (2000). *Arguing and Justifying: Assessing the Convention Refugees' Choice of Moment, Motive and Host Country*. Aldershot, Hampshire: Ashgate.

Bell, A. (1984). Language style as audience design. *Language in Society, 13*(2), 145–204.

Bell, A. (1990). Audience and referee design in New Zealand media language. In A. Bell & J. Holmes (Eds.), *New Zealand Ways of Speaking English* (pp. 165–194). Clevedon [England]: Multilingual Matters.

Bell, A. (1997). Language style as audience design. In N. Coupland & A. Jaworski (Eds.), *Sociolinguistics: A Reader and Coursebook* (pp. 240–250). Basingstoke: Macmillan.

Benmaman, V. (1992). Legal interpreting: an emerging profession. *The Modern Language Journal,* 76(4), 445–454.

Bennett, W. L., & Feldman, M. S. (1981). *Reconstructing Reality in the Courtroom*. London: Tavistock.

Berk-Seligson, S. (1990). *The Bilingual Courtroom: Court Interpreters in the Judicial Process*. Chicago: University of Chicago Press.

Berk-Seligson, S. (1999). The impact of court interpreting on the coerciveness of leading questions. *Forensic Linguistics,* 6(1), 30–56.

Berk-Seligson, S. (2002). *The Bilingual Courtroom: Court Interpreters in the Judicial Process : with a New Chapter*. Chicago: University of Chicago Press.

Berk-Seligson, S. (2006). Court interpreting. In K. Brown (Ed.), *Encyclopedia of Language & Linguistics* (pp. 262–269). Oxford: Elsevier.

Bickley, G. (2001). The student-interpreters' scheme and the Chinese teacher's allowance: translator education in nineteen-century Hong Kong. In S. W. Chan (Ed.), *Translation in Hong Kong: Past, Present and Future* (pp. 9–19). Hong Kong: The Chinese University Press.

Bot, H. (2005). Dialogue interpreting as a specific case of reported speech. *Interpreting: International Journal of Research & Practice in Interpreting,* 7(2), 237–261.

Carr, A. P. (1983). *Criminal Procedure in Magistrates' Courts*. London: Butterworths.

Cheung, A. K. F. (2012). The use of reported speech by court interpreters in Hong Kong. *Interpreting: International Journal of Research & Practice in Interpreting, 14*(1), 73–91.

Chow, M., & Chin, M. (1997, 30 May). Bad translation could undermine justice, magistrate tells weeping interpreter. *South China Morning Post,* p. 3.

Civil Service Bureau (2012). *Simultaneous Interpreter (Civil Service Vacancy)*. Retrieved from Civil Service Bureau website: http://www.csb.gov.hk/english/grade/ol/files/2012_SI_Advertisement_Eng.pdf.

Clark, H. H. (1996). *Using Language*. Cambridge [England: Cambridge University Press.
Clayman, S. 2007. Speaking on behalf of the public in broadcast news interviews". In E. Holt and R. Clift (Eds.), *Reporting Talk*. (pp. 221–243. Cambridge: CUP.
Colin, J., & Morris, R. (1996). *Interpreters and the Legal Process*. Winchester: Waterside Press.
Cotterill, J. (2003). *Language and Power in Court*. New York: Palgrave Macmillan.
Crystal, D. (2003). *A Dictionary of Linguistics and Phonetics*. Malden, Mass.: Blackwell Pub.
Damaska, M. R. (1975). Presentation of evidence and factfinding precision. *Faculty Scholarship Series, Paper 1589*.
Danet, B., & Bogoch, B. (1980). Fixed fight or free-for-all? An empirical study of combativeness and the adversary system of justice. *British Journal of Law and Society,* 7(1), 36–60.
De Jongh, E. M. (1992). *An Introduction to Court Interpreting: Theory & Practice*. Lanham, Md.: University Press of America.
De Jongh, E. M. (2008). Court interpreting: linguistic presence v. linguistic absence. *Florida Bar Journal,* 82(7), 21–32.
Drew, P. (1992). Contested evidence in courtroom cross-examination: the case of a trial for rape. In P. Drew & J. Herritage (Eds.), *Talk at Work* (pp. 470–520). Cambridge: Cambridge University Press.
Dubslaff, F., & Martinsen, B. (2005). Exploring untrained interpreters' use of direct versus indirect speech. *Interpreting: International Journal of Research & Practice in Interpreting,* 7(2), 211–236.
Eades, D. (1995). Cross examination of Aboriginal children: the Pinkenba case. *Aboriginal Law Bulltin,* 3(75), 10–11.
Eades, D. (2000). I don't think it's an answer to the question: silencing Aboriginal witnesses in court. *Language in Society,* 29(2), 161–195
Eitel, E. J. (1877). Chinese studies and official interpretation in the colony of Hongkong. *The China Review, or Notes & Queries on the Far East,* 6(1), 1–13.
Endacott, G. B. (1962). *A Biographical Sketch-book of Early Hong Kong*. Singapore: Eastern Universities Press.
Fairclough, N. (1989). *Language and Power*. London: Longman.
Fenton, S. (1997). The role of the interpreter in the adversarial courtroom. In S. E. Carr, R. P. Roberts, A. Dufour & D. Steyn (Eds.), *The Critical Link: Interpreters in the Community* (pp. 29–34). Amsterdam: John Benjamins Pub. Co.
Fenton, S. (2004). Expressing a well-founded fear: interpreting in convention refugee hearings. In Gile, Daniel, Hansen, Gyde, Malmkjæ r, Kirsten (Eds.), *Claims, Changes and Challenges in Translation Studies: Selected Contributions from the EST Congress, Copenhagen 2001* (pp.263 –269). Amsterdam; Philadelphia: John Benjamins Pub. Co.
Fowler, Y. (1997). The courtroom interpreter: paragon and intruder? In S. E. Carr, R. P. Roberts, A. Dufour & D. Steyn (Eds.), *The Critical Link: Interpreters in the Community* (pp.191–200). Amsterdam; Philadelphia: John Benjamins Pub. Co.
Fowler, Y., Ng, E., & Coulthard, M. (2012). Legal Interpreting. In C. Milan-Varela & F. Bartrina (Eds.), *The Routledge Handbook of Translation Studies* (pp. 417–430). London and New York: Routledge.
Gamal, M. (2006). Court Interpreting. In M. Baker (Ed.), *Routledge Encyclopaedia of Translation Studies* (pp. 63–67). London; New York: Routledge.
Gentile, A., Ozolins, U., & Vasilakakos, M. (1996). *Liaison Interpreting: A Handbook*. Carlton South, Vic., Australia: Melbourne University Press.
Gibbons, J. (1999). Language and the law. *Annual Review of Applied Linguistics,* 19, 156–173.
Gibbons, J. (2008). Questioning in common law criminal courts. In J. Gibbons & M. T. Turell (Eds.), *Dimensions of Forensic Linguistics* (pp. 115–130). Amsterdam; Philadelphia, PA: John Benjamins Pub. Co.
Giles, H., & Powesland, P. F. (1975). *Speech Style and Social Evaluation*. London: Academic Press.
Giles, H., & Smith, P. (1979). Accommodation theory: optimal levels of convergence. . In H. Giles & R. N. S. Clair (Eds.), *Language and Social Psychology* (pp. 45–65). Oxford: Blackwell.
Giles, H., Coupland, N., & Coupland, J. (1991). Accommodation theory: communication, context,

and consequence. In H. Giles, J. Coupland & N. Coupland (Eds.), *Contexts of Accommodation: Developments in Applied Sociolinguistics* (pp.1–68). Cambridge: Cambridge University Press.
Goffman, E. (1961). *Encounters: Two Studies in the Sociology of Interaction*. Indianapolis: Bobbs-Merrill.
Goffman, E. (1981). *Forms of Talk*. Oxford: Blackwell.
Gonzalez, R. D., Vasquez, V. F., & Mikkelson, H. (1991). *Fundamentals of Court Interpretation: Theory, Policy, and Practice*. Durham, N.C.: Carolina Academic Press.
Hale, S. (1999). Interpreters' treatment of discourse markers in courtroom questions. *Forensic Linguistics,* 6(1), 57–82
Hale, S. (2001, May 22–26). "Excuse me, the interpreter wants to speak"–Interpreter interruptions in the courtroom: why do interpreters interrupt and what are the consequences? Paper presented at the *Critical Link 3, Interpreting in the Community: The Complexity of the Profession*, Montreal, Canada.
Hale, S. (2002). How faithfully do court interpreters render the style of non-English speaking witnesses' testimonies? A data-based study of Spanish-English bilingual proceedings. *Discourse Studies,* 4(1), 25–47.
Hale, S. (2004). *The Discourse of Court Interpreting: Discourse Practices of the Law, the Witness, and the Interpreter*. Amsterdam; Philadelphia: John Benjamins Pub Co.
Hale, S. (2006). Themes and methodological issues in court interpreting research. In E. Hertog & B. v. d. Veer (Eds.), *Taking Stock: Research and Methodology in Community Interpreting* (pp. 205–228). Antwerp: Hoger Instituut Voor Vertalers & Tolken.
Hale, S. (2010). The need to raise the bar: court interpreters as specialized experts. In M. Coulthard & A. Johnson (Eds.), *Routledge Handbook of Forensic Linguistics* (pp. 440–454). Abingdon; New York: Routledge.
Hale, S., & Gibbons, J. (1999). Varying realities: patterned changes in the interpreter's representation of courtroom and external realities. *Applied Linguistics, 20*(2), 203–220.
Harris, B. (1990). Norms in interpretation. *Target, 2*(1), 115–119.
Harris, S. (1984). Questions as a mode of control in magistrates' courts. *International Journal of the Sociology of Language,* 49, 5–27.
Haworth, K. (2013). Audience design in the police interview: the interactional and judicial consequences of audience orientation. *Language in society*, *42*(1), (In Press)
Heffer, C. (2005). *The Language of Jury Trial: A Corpus-Aided Linguistic Analysis of Legal-Lay Discourse*. Houndmills, Basingstoke, Hampshire: Palgrave Macmillan
Heilbronn, G. N. (1998). *Criminal Procedure in Hong Kong*. Hong Kong: Addison Wesley Longman China.
Hewitt, W. E. (1995). *Court Interpretation: Model Guides for Policy and Practice in the State Courts*. Williamsburg, VA: National Center for State Courts.
Hong Kong. (1982). *Annual Statistics of the Judiciary Provided by the Registrar, Supreme Court. Hong Kong*. Hong Kong: J.R. Lee, Govt. Printer
Hong Kong. (2001). *Hong Kong Judiciary annual report*. Hong Kong: Judiciary
Hong Kong. (2006). *Hong Kong Judiciary annual report*. Hong Kong: Judiciary.
Hong Kong. (2010, 7 April). Government Vacancies Enquiry System. *Court Interpreter II* (Civil Service Vacancy – Job number 19593).
Hong Kong. (2012, 8 February). LCQ9: Court interpretation service. *Hong Kong SAR Government Press Release*.
Hussein, N. M. A. (2011). *Legal Interpreting in the Criminal System: An Exploratory Study* (PhD thesis). Retrieved from https://www.dora.dmu.ac.uk/xmlui/bitstream/handle/2086/4990/Nadia%27s%20Thesis%20%28Revised%29.pdf?sequence=1
Ibrahim, Z. (2007). The interpreter as advocate: Malaysian court interpreting as a case in point. In C. Wadensjö, B. Englund Dimitrova & A.-L. Nilsson (Eds.), *The Critical Link 4: Professionalisation of Interpreting in the Community: Selected Papers from the 4th International Conference on Interpreting in Legal, Health and Social Service Settings, Stockholm, Sweden, 20–23 May 2004* (pp. 205–213). Amsterdam; Philadelphia: John

Benjamins Pub. Co.
ITIA. (2009). *ITIA Code of Ethics for Community Interpreters*. Irish Translators' and Interpreters' Association. Retrieved from http://www.translatorsassociation.ie/component/option,com_docman/task,cat_view/gid,21/Itemid,61/.
Jacobsen, B. (2002). *Pragmatic Meaning in Court Interpreting: an Empirical Study of Additions in Consecutively Interpreted Question-Answer Dialogues.* Unpublished doctoral thesis. The Arrhus School of Business, Denmark.
Jacobsen, B. (2008a). Court Interpreting and face: an analysis of a court interpreter's strategies for conveying threats to own face. In D. Russell & S. Hale (Eds.), *Interpreting in Legal Settings* (pp. 51–71). Washington: Gallaudet University Press.
Jacobsen, B. (2008b). Interactional pragmatics and court Interpreting: an analysis of face. *Interpreting: International Journal of Research & Practice in Interpreting, 10*(1), 128–158.
Jarman, R. L. (Ed.). (1996). *Hong Kong Annual Administration Reports, 1841-1941*. [Farnham Common]: Archive Editions.
Judiciary. (2003). *Basic Guidelines for Part-time Court Interpreters*. Hong Kong: Hong Kong Government.
Judiciary. (2008). Guide to Court Services: Jury. In Judiciary (Ed.). Hong Kong: Government Printer.
Kelly, A. M. (2000). Cultural parameters for interpreters in the courtroom. In R. P. Roberts, S. E. Carr, D. Abraham & A. Dufour (Eds.), *The Critical Link 2: Interpreters in the Community* (pp. 131–148). Amsterdam; Philadelphia: John Benjamins Pub. Co.
Kolb, W., & Pöchhacker, F. (2008). Interpreting in asylum appeal hearings: roles and norms revisited. In D. Russell & S. Hale (Eds.), *Interpreting in Legal Settings* (pp. 26–50). Washington, DC: Gallaudet University Press.
Kolm, D. (1999). Taking the Interpreter's Oath to Heart: An Introduction to the Requirements for Interpreting in Federal Courts. Washington D. C.: Federal Judicial Television Network (FJTN).
Koo, A. (2009). Truth through court interpreters. *International Journal of Evidence and Proof, 13,* 212–224.
Kristy, J. K. (2009). Language and Litigation: what judges and attorneys need to know about interpreters in the legal process. *Proteus Newsletter, XVIII*(4), 3–4.
Kwan, U. S. P. (2011). 翻譯與殖民管治：早期香港史上的雙面譯者高和爾(1816－1875) Translation and Colonial Rule: Daniel Richard Caldwell (1816-1875), the Duplicitous Translator in Early Hong Kong History. *現代中文文學學報 Journal of Modern Literature in Chinese, 10*(2), 170–190.
Laster, K., & Taylor, V. L. (1994). *Interpreters and the Legal System*. Sydney: Federation Press.
Lee, J. (2009a). Conflicting views on court interpreting examined through surveys of legal professionals and court interpreters. *Interpreting: International Journal of Research & Practice in Interpreting,* 11(1), 35–56.
Lee, J. (2009b). Interpreting inexplicit language during courtroom examination. *Applied Linguistics,* 30(1), 93–114.
Lee, J. (2011). Translatability of speech style in court interpreting. *The International Journal of Speech, Language and the Law,* 18(1), 1–33.
Lee, Y. M. (1994). *The Training of Court Interpreters in Hong Kong.* Unpublished M.A., City Polytechnic of Hong Kong, Hong Kong.
Legge, J. (1872). The colony of Hong Kong. *Journal of the Hong Kong Branch of the Royal Asiatic Society,* 11(1971), 172–193.
Lethbridge, H. J. (1970). Hong Kong Cadets, 1862–1941. *Journal of the Hong Kong Branch of the Royal Asiatic Society,* 10(1970), 36-56.
Leung, E. (2003). Rights to be heard and the rights to be interpreted. *Babel, 49*(4), 289–301.
Leung, E. (2008). Interpreting for the minority, interpreting for the power. In J. Gibbons & M. T. Turell (Eds.), *Dimensions of Forensic Linguistics* (pp. 197–214). Amsterdam/Philadelphia,

PA: John Benjamins Pub. Co.
Leung, E., & Gibbons, J. (2008). Who is responsible? Participant roles in legal interpreting cases. *Multilingua*, 27(3), 177–191.
Leung, E., & Gibbons, J. (2009). Interpreting Cantonese utterance-final particles in bilingual courtroom discourse. *Interpreting: International Journal of Research & Practice in Interpreting*, 11(2), 190–215.
Levinson, S. C. (1988). Putting linguistics on a proper footing: Explorations in Goffman's participation framework. In P. Drew & A. Wootton (Eds.), *Erving Goffman: Exploring the Interaction Order* (pp. 161–227). Oxford: Polity Press.
Li, K. (2008). *香港的法庭翻譯─一個衰而不敗的次級行業 Perspectives on court interpreters in Hong Kong*. Paper presented at the XVIIIth FIT World Congress – Translation and Cultural Diversity
Liu, B. (Ed.) (1993) *New Chinese Dictionary* (Zhonghua Xin Cidian 中華新詞典). Hong Kong: Chung Hwa Book Co.
MacLeod, N. J. (2010). Police interviews with women reporting rape: a critical discourse analysis. (PhD thesis). Retrieved from http://eprints.aston.ac.uk/15206/1/NJMacLeodPhD.pdf
Maley, Y., & Fahey, R. (1991). Presenting the evidence: constructions of reality in court. *International Journal for the Semiotics of Law*, 4(10), 3–17.
Mason, I. (1999). Introduction. *The Translator, 5*, 147–160.
Mikkelson, H. (1998). Towards a redefinition of the role of the court interpreter. *Interpreting: International Journal of Research and Practice in Interpreting* 3(1), 21–45.
Mikkelson, H. (1999). Training judges and other court personnel. *The Polyglot*, 29(1).
Mikkelson, H. (2000). *Introduction to Court Interpreting*. Manchester, UK ; Northampton, MA: St. Jerome.
Mikkelson, H. (2008). Evolving views on the court interpreter's role: Between Scylla and Charybdis. In C. V. Garcés & A. Martin (Eds.), *Crossing Borders in Community Interpreting: Definitions and Dilemmas* (pp. 81–97). Amsterdam/Philadelphia: John Benjamins Pub. Co.
Ming Pao. (2011, 23 November). 傳譯漏一字 謀殺犯重審 上訴庭斥浪費公帑 *Ming Pao*.
Morris, R. (1989). *The Impact of Court Interpretation on Legal Proceedings.* M.A. Unpublished M. A. thesis, Hebrew University of Jerusalem, Isreal.
Morris, R. (1995). The moral dilemmas of court interpreting. *The Translator,* 1(1), 25–46.
Morris, R. (1999). The gum syndrome: predicaments in court interpreting. *Forensic Linguistics,* 6(1), 6–29.
Morris, R. (2010). Images of the court interpreter. *Translation and Interpreting Studies,* 5(1), 20–40.
Moser-Mercer, B., Künzli, A., & Korac, M. (1998). Prolonged turns in interpreting: effects on quality, physiological and psychological stress. *Interpreting: International Journal of Research & Practice in Interpreting*, 3(5), 47–65.
NAJIT. (2004). NAJIT Position Paper – Direct Speech in Legal Settings. Retrieved 12 June, 2010, from http://www.najit.org/publications/DirectSpeech200609.pdf
NAJIT. (2007). NAJIT Position Paper: team interpreting in the courtroom. Retrieved 20 June, 2012, from http://www.najit.org/publications/Team%20Interpreting_052007.pdf
NAJIT (2010, June). Code of Ethics and Professional Responsibilities. Retrieved 11 June, 2010, from http://www.najit.org/about/NAJITCodeofEthicsFINAL.pdf
Ng, E. (1997). *The Role of the Court Interpreter.* Unpublished M.A., University of Birmingham, Birmingham.
Ng, E. (2009). The tension between adequacy and acceptability in legal interpreting and translation. In S. Hale, U. Ozolins & L. Stern (Eds.), *The Critical Link 5: Quality Interpreting – A Shared Responsibility* (pp. 37–54). Amsterdam: John Benjamins Pub. Co.
Ng, E. (2011). A survey of court interpreters' use of direct versus reported speech in the Hong Kong courts. *International Journal of Law, Language & Discourse*, 1(3), 27–57.
Ng, E. (2012). Garment, or upper-garment? A matter of interpretation? *Proceedings of the International Association of Forensic Linguists' Tenth Biennial Conference*. Retrieved

from http://www.forensiclinguistics.net/iafl-10-proceedings.pdf.
Ng, E. (2013) Garment, or upper-garment? A matter of *interpretation*? *International Journal for the Semiotics of Law - Revue internationale de Sémiotique juridique*, 26(3), 597–613. DOI: 10.1007/s11196-012-9290-9
Ng, K. H. (2009). *The Common Law in Two Voices: Language, Law, and the Postcolonial Dilemma in Hong Kong*. Stanford, Calif.: Stanford University Press.
Nida, E. (1964). *Towards a Science of Translating*. Leiden, the Netherlands: Brill.
Nida, E. (1976). A framework for the analysis and evaluation of theories of translation. In R. Brislin (Ed.), *Translation: Applications and Research* (pp. 47–91). New York: Cardner.
Norton-Kyshe, J. W. (1971a). *The History of the Laws and Courts of Hong Kong from the Earliest Period to 1898, Volume I*. Hong Kong: Vetch and Lee, Reissue of the 1898 Hong Kong Edition.
Norton-Kyshe, J. W. (1971b). *The History of the Laws and Courts of Hong Kong from the Earliest Period to 1898, Volume II*. Hong Kong: Vetch and Lee, Reissue of the 1898 Hong Kong Edition.
O'Barr, W. M. (1982). *Linguistic Evidence: Language, Power, and Strategy in the Courtroom*. New York: Academic Press.
Omit [Def. 1]. (2012). In *Merriam-Webster Online*. Retrieved October 2, 2012, from http://www.merriam-webster.com/dictionary/omit.
Ozolins, U. & Hale, S. (2009). Quality in interpreting: A shared responsibility. In S. Hale, U. Ozolins & L. Stern (Eds.), *The Critical Link 5: Quality Interpreting – A Shared Responsibility* (pp. 1–10). Amsterdam: John Benjamins Pub. Co.
Peoples, E. E. (2000). *Basic Criminal Procedures*. Upper Saddle River, NJ: Prentice Hall
Pöllabauer, S. (2004). Interpreting in asylum hearings. *Interpreting: International Journal of Research & Practice in Interpreting*, 6(2), 143–180.
Pomerantz-Zhang, L. (1992). *Wu Tingfang (1842-1922): Reform and modernization in modern Chinese history*. Hong Kong: Hong Kong University Press.
Powell, R. (2008). Bilingual courtrooms: In the interests of justice? In J. Gibbons & M. T. Turell (Eds.), *Dimensions of Forensic Linguistics* (pp. 131–159). Amsterdam; Philadelphia, PA: John Benjamins Pub. Co.
Rigney, A. C. (1999). Questioning in interpreted testimony. *Forensic Linguistics*, 6(1), 83–108.
Roy, C. B. (2000). *Interpreting as a Discourse Process* New York: Oxford University Press.
Silverman, D. (2006). *Interpreting Qualitative Data: Methods for Analyzing Talk, Text, and Interaction* (3rd ed.). London: SAGE Publications.
Sin, K. K., & Djung, J. S. H. (1994). The Court Interpreters' Office. In M. S. Gaylord & H. Traver (Eds.), *Introduction to the Hong Kong Criminal Justice System* (pp. 137–144). Hong Kong: Hong Kong University Press.
Smith, C. T. (1975). English-educated Chinese elites in Nineteenth-century Hong Kong. In M. Topley (Ed.), *Hong Kong : the Interaction of Traditions and Life in the Towns* (pp. 65–96). Hong Kong: Hong Kong Branch of the Royal Asiatic Society.
Tiersma, P. M. (1999). *Legal Language*. Chicago: University of Chicago Press.
Wadensjö, C. (1993). The double role of a dialogue interpreter. In F. Pöchhacker & M. Shlesinger (Eds.), *The Interpreting Studies Reader* (pp. 354–370). London: Routledge.
Wadensjö, C. (1995). Dialogue interpreting and the distribution of responsibility. *Hermes, Journal of Linguistics*, 14, 111–129.
Wadensjö, C. (1998). *Interpreting as Interaction*. London; New York: Longman.
Walker, A. G. (1987). Linguistic manipulation, power and the legal setting. In L. Kedar (Ed.), *Power Through Discourse* (pp. 57–80). Norwood, N.J.: Ablex Pub. Corp.
Wesley-Smith, P. (1972). James William Norton-Kyshe. *Hong Kong Law Journal*, 2, 278–293.
Wong, V. (1990, 1 April). Cantonese in courts scheme postphoned. *South China Morning Post*.
Woodbury, H. (1984). The strategic use of questions in court. *Semiotica*, 48(3-4), 197–228.

LIST OF APPENDICES

Appendix 1: Languages spoken by the proportion of population aged 5 and over in Hong Kong in 2001, 2006 and 2011

The following table shows the languages spoken by the proportion of population aged 5 and over in 2001, 2006 and 2011 (Last revision date: 21 February 2012).

Source: 2011 Population Census Office, Census and Statistics Department, Hong Kong Special Administrative Region <http://www.census2011.gov.hk/en/main-table/A111.html>

Appendix 2: Use of Chinese in Courts

The following table shows the dates when Chinese was first allowed to be used in various courts in Hong Kong.

Source: Information Paper, Provisional Legislative Council Panel on Administration of Justice and Legal Services Meeting on 13 October 1997 <http://www.legco.gov.hk/yr97-98/english/panels/ajls/papers/aj13104a.htm>

Appendix 3: Percentage of criminal cases conducted in Chinese

The following table shows the percentage of criminal cases conducted in Chinese in various courts from 1997 to 2011

Source: Department of Justice, The Hong Kong Special Administrative Region <http://www.doj.gov.hk/eng/about/stat.html>

Appendix 4: Recruitment for Court Interpreter II

The following is a recruitment advertisement for Court Interpreter II posted at the Government Vacancies Enquiry System in 2010, with 16 April 2010 as the closing date for application.

Appendix 5 Recruitment for Simultaneous Interpreter

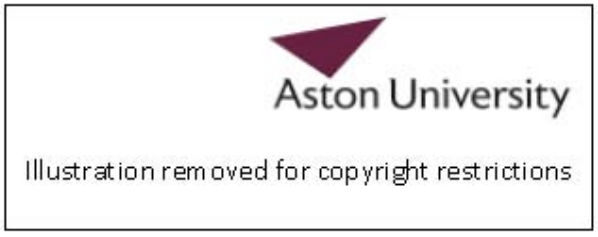
The following is a recruitment advertisement for Simultaneous Interpreters posted at the website of the Civil Service Bureau of the Hong Kong Special Administrative Region (http://www.csb.gov.hk/english/grade/ol/files/2012_SI_Advertisement_Eng.pdf), with 12 July 2012 as the closing date for application.


Aston University
Illustration removed for copyright restrictions

Appendix 6: Basic Guidelines for Part-time interpreters

The following are Basic Guidelines for Part-time interpreters issued by Part-time Interpreters Unit of the Court Language Section[52]. A Chinese version is available for Chinese dialect interpreters who do not have English as their working language.


Aston University
Illustration removed for copyright restrictions


Aston University
Illustration removed for copyright restrictions


Aston University
Illustration removed for copyright restrictions


Aston University
Illustration removed for copyright restrictions


Aston University
Illustration removed for copyright restrictions

Appendix 7: Master Pay Scale for Civil Servants and scale points for Court Interpreter and Simultaneous Interpreter

The following table shows the Master Pay Scale for Civil Servants with effect from 1 April 2011. The scale points for the various ranks of Court Interpreter and of Simultaneous Interpreter are indicated in columns three and four respectively for comparative purposes.

(When dollars are quoted in this homepage, they are Hong Kong dollars. About HK$7.8 = US$1.)
Source: Civil Service Bureau of the Hong Kong Special Administrative Region
http://www.csb.gov.hk/print/english/admin/pay/42.html (Retrieved: 11 July 2012)

Appendix 8: Establishments of the grades of Simultaneous Interpreter, Official Languages Officer and Court Interpreter

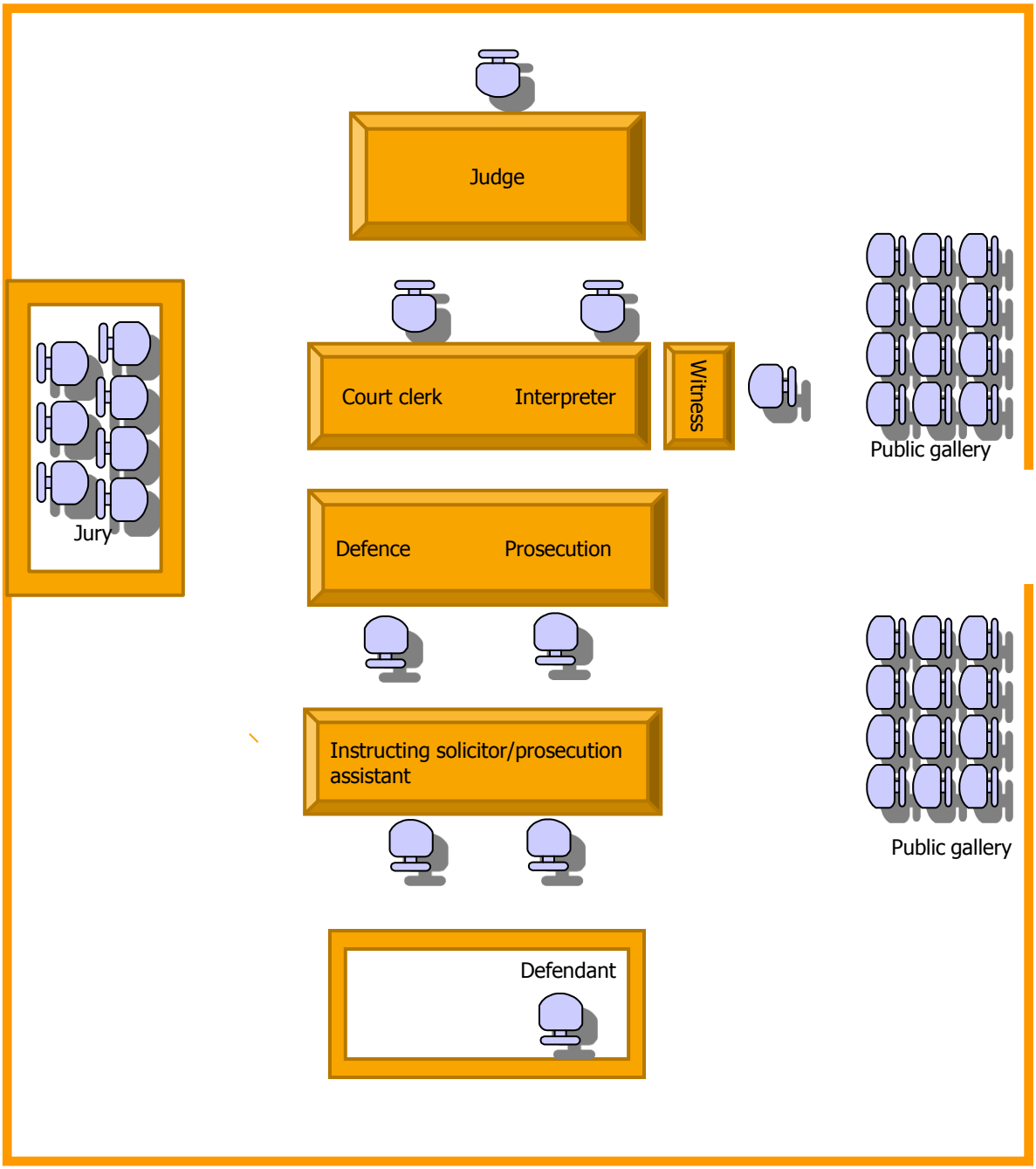
The following tables compare the establishments of the three grades and their various ranks. Information relating to the Simultaneous Interpreter grade and the Chinese Language Officer grade has been retrieved from the website of the Civil Service Bureau of the Hong Kong Special Administrative Region, while information relating to the Court Interpreter grade has been obtained through my personal communication with the Judiciary Administrator (Tse 2012).

Appendix 9 Recruitment Advertisement for Official Languages Officer II

The following is a recruitment advertisement for Official Languages Officer II posted at the website of the Civil Service Bureau of the Hong Kong Special Administrative Region in December 2011 <http://www.csb.gov.hk/english/whatsnew/files/OLO_recruitment2011_eng.pdf>, retrieved 10 December 2011.


Aston University
Illustration removed for copyright restrictions

Appendix 10: Courtroom Layout in the High Court of Hong Kong



Appendix 11: **Questionnaire on "The use of direct or reported speech in court interpreting"**

The following is the online questionnaire conducted with court interpreters, using a free online survey tool – Kwik Surveys (http://www.kwiksurveys.com). A brief description of the survey and my contact and affiliation are provided for the respondents' reference.

The use of direct or reported speech in court interpreting

This questionnaire is designed to survey the use of direct speech and reported speech in court interpreting and to find out the rationale behind the interpreter's choice between first person (using direct speech) and third-person interpreting (using reported speech). The results of this survey will form part of my ongoing research project on court interpreting. All the responses will be anonymous and untracked (with the respondent's name and email address remaining unidentified). The survey will take only about 5 minutes to complete and your help will be very much appreciated.

Eva Ng
The University of Hong Kong
email: nsng@hku.hk

1 How many years of court interpreting experience do you have?
- ❍ Less than 1 year
- ❍ 1 to 3 years
- ❍ to 5 years
- ❍ 5 to 10 years
- ❍ More than 10 years

2 What are your working languages?
- ❍ Cantonese & English
- ❍ Cantonese, English & Mandarin
- ❍ Other (Please specify)

_____

3 What is your native language?
- ❍ Cantonese
- ❍ English
- ❍ Mandarin
- ❍ Other (Please specify)

_____

4 What is your highest level of education?
- ❍ Matriculation
- ❍ Bachelor's degree
- ❍ Master's degree
- ❍ PhD
- ❍ Other (Please specify)

_____

5 What is your job title?
- ❍ Court Interpreter II
- ❍ Court Interpreter I
- ❍ Senior Court Interpreter
- ❍ Chief Court Interpreter
- ❍ Other (Please specify)

_____

6 Did you receive any formal training in interpreting before you started your interpreting career in court?
- ❍ No (Please go to Question 8)
- ❍ Yes (Please indicate what kind of training and any qualifications you received in relation to interpreting)

_____

7 Were you trained to provide consecutive interpreting in the first person, using direct speech?

- ❍ Yes
- ❍ No

8 In consecutive interpreting, how often do you render the Chinese first-person pronoun “我” produced by witnesses/defendants as “I” in English?

- ❍ Always
- ❍ Sometimes
- ❍ Rarely
- ❍ Never

9 In consecutive interpreting, how often do you render the English first-person pronoun “I” produced by counsel/judge into “我” in Chinese (e.g.我/本席裁定.....;我想問你.....;我向你指出.....etc.)?

- ❍ Always
- ❍ Sometimes
- ❍ Rarely
- ❍ Never

10. In consecutive interpreting, how often do you render the English first-person pronoun “I” produced by counsel/judge into a third-person reference, using reported speech and referring to the speaker in his/her official capacity (e.g. 法官裁定.....;主控官想問你.....;律師向你指出.....etc.)

- ❍ Always
- ❍ Sometimes
- ❍ Rarely
- ❍ Never

11. Do you try, where possible, to avoid the need to render the English first-person pronoun “I” into “我” in the Chinese interpretation by changing active to passive voice? (e.g. rendering “I find you guilty as charged” into “你被裁定罪名成立”)

- ❍ Always
- ❍ Sometimes
- ❍ Rarely
- ❍ Never

12. Do you try, where possible, to avoid the need to render the English first-person pronoun “I” into “我” in the Chinese interpretation by omitting the subject pronoun? (e.g. rendering “I put it to you” into “向你指出”)?

- ❍ Always
- ❍ Sometimes
- ❍ Rarely
- ❍ Never

13. Does your choice between first-person and third-person interpreting have anything to do with the content of the utterances?

- ❍ No
- ❍ Yes (Please specify)

_____

14. On the whole, do you agree that you <u>usually</u> render the Chinese first-person “我” by witnesses or defendants into “I” in English but <u>rarely</u> render “I” by counsel/judges into “我” in Chinese?

- ❍ Yes
- ❍ No

15. If your answer to Question 14 is “Yes”, please state the reason(s) why (You may choose more than one answer).

- ❍ I feel uneasy assuming the voice of counsel or judges because they are on a higher hierarchical level.
- ❍ I don’t want to give the impression to all those in court that I am pretending to be the counsel and the judge by assuming their voice.
- ❍ I don’t want the witnesses/defendants to conclude that I am speaking for myself if the

interpretation is done in the first person.

- ❍ I just follow what other colleagues (e.g. the interpreter I understudied) are doing.
- ❍ Other (Please specify) _____