

# TEACHING AND RESEARCH ON LEGAL INTERPRETING: A HONG KONG PERSPECTIVE

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## Abstract

Court interpreters have long been a fixture in the bilingual Hong Kong courtroom, where English was once the only official court language and remains dominant to this day especially in the High Court, although litigants appearing in court as witnesses and defendants mostly speak Cantonese. The installation of the Digital Audio Recording and Transcription System (DARTS) in the courts from the mid-1990's gave birth to a bilingual reporting system, which provides not only verification ensuring a better administration of justice, but also a valuable source of data for the teaching and research of legal interpreting. Based on the recorded court proceedings of nine interpreter-mediated trials in the Hong Kong courtroom, this paper discusses the benefits of using audio courtroom data for pedagogical and scholarly purposes. While the use of real courtroom data as training material helps enhance students' learning experience, research findings of this data-driven study further shed light on the training needs for interpreter education in the legal setting. This paper investigates the Hong Kong courtroom as an atypical bilingual setting and in the light of the findings makes recommendations for best practice in the courtroom and for institutional and administrative practice.

## Résumé

Les interprètes judiciaires sont depuis longtemps des acteurs incontournables dans les salles d'audience bilingues de Hong Kong. L'anglais, autrefois la seule langue officielle du tribunal, reste à ce jour la langue dominante du tribunal, notamment dans la Haute Cour de Justice, et ce alors même que les plaideurs, témoins ou accusés qui comparaissent devant le tribunal, parlent principalement le cantonais. L'installation d'un système d'enregistrement –Digital Audio Recording and Transcription System (DARTS)– dans les tribunaux à partir du milieu des années 1990 a donné naissance à

un système d'information bilingue. Celui-ci ne fournit pas seulement un dispositif de vérification pour assurer une meilleure justice, il constitue aussi une source précieuse de données pour la recherche sur l'interprétation judiciaire et son enseignement. En s'appuyant sur des données judiciaires de neuf procès médiés par des interprètes au sein des salles d'audience de Hong Kong, cet article montre les avantages d'utiliser ces données pour la recherche sur l'interprétariat judiciaire et son enseignement. En montrant que l'utilisation des données authentiques pour l'enseignement améliore l'expérience d'apprentissage des étudiants, cette étude contribue à préciser les besoins de formation dans l'éducation de l'interprétariat judiciaire. L'étude détaille le contexte bilingue atypique dans lequel se déroulent les audiences et en souligne la spécificité. Cet article conclut par des recommandations pour une meilleure pratique de l'interprétariat tant au sein de la salle d'audience qu'aux niveaux institutionnels et administratifs.

**Key words:** Atypical bilingual courtroom. Non-English speaking court actors. Court interpreter. Participant role. Participation status.

**Mots clés:** Salle d'audience bilingue atypique. Non-anglophones du tribunal. Interprète judiciaire. Le rôle de participant. Participation.

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## 1. Introduction: The atypical bilingual Hong Kong courtroom

### 1.1. Ubiquity of court interpreters

For well over a century in Hong Kong, English was the only official language in which laws were enacted and trials conducted despite the predominantly Cantonese<sup>1</sup>-speaking population in the territory. Court interpreters, known as “the mouth and ears of the court” (Sin & Djung 1994: 138), have thus long played an indispensable role in bridging the communication gap between English-speaking (ES) legal professionals and the Cantonese-speaking lay participants who appear in court as witnesses or defendants. Due to the ubiquitous presence of interpreters in the Hong Kong courtroom, the common law system of Hong Kong, inherited from Britain, is described as “one of the most ‘interpreted’ legal systems in the world” (Ng 2009: 120). The change-over of Hong Kong’s sovereignty in 1997 has resulted in an increasing use of Chinese (Cantonese) as the trial language in the lower courts. In the High Court, however, a relatively large percentage of criminal cases are still heard in English on a daily basis due to the presence of expatriate judges and/or counsel. Due to the wide use of interpreting in the courts of Hong Kong, all the court interpreters working between Cantonese and English are full-time interpreters appointed by the Court Language Section of the Judiciary of Hong Kong and are civil servants, similar to the resident interpreters in Malaysia (Ibrahim 2007) or staff interpreters in some of the US Federal courts (Berk-Seligson 1990, 2002). In the past decade, the Court Interpreter Grade of the Court Language Section has maintained a strength of around 150 full-time court interpreters at four different ranks (namely, Court Interpreter II, Court Interpreter I, Senior Court Interpreter and Chief Court Interpreter) deployed to different levels of courts (Ng 2013a).

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1. A dialect spoken by about 90% of the local population in Hong Kong.

### 1.2. *Interpreting for the linguistic majority*

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 (NES) litigants in the Hong Kong courtroom are mostly the Cantonese-speaking linguistic majority. This accounts for the widespread use of interpreting services in court as most of the lay participants in court proceedings are not able to testify in English or access trial talk in English without the mediation of the court interpreter. It must be pointed out, however, that trials in the Hong Kong courts from time to time also involve litigants speaking other Chinese dialects or foreign languages other than English, giving rise to the need for minority language interpreting. This paper focuses on interpreting between Cantonese and English, which is provided in court on a day-to-day basis since the interpreting service in a trial heard in English in Hong Kong is a *sine qua non* for reasons explained above.

### 1.3. *Modes of interpretation used in court*

In most jurisdictions where interpretation is provided for the benefit of a minority language speaker such as the defendant, interpretation is conducted for much of the trial in the simultaneous *chuchotage* mode, without the speaker having to pause at regular intervals to allow his/her utterance to be interpreted. This mode of interpreting enables the interpreter to remain less visible throughout the trial, but it makes ascertaining the quality of the interpretation difficult if not impossible. When a defendant or witness who does not speak the language of the court takes the stand and is examined by counsel and consecutive interpretation (CI) is provided, the interpreter is brought into the foreground, and ostensibly assumes a participant role in the interaction. In a 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, the judge's delivery of the 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 simply an auditor, interpretation is usually provided to him/her in the *chuchotage* mode with the interpreter standing/sitting next to him/her. With the interpreter working in the background in a relatively unobtrusive mode, the trial is conducted in very much the same way as one without the assistance of an interpreter.

In a trial heard in English in the Hong Kong courtroom, however, due to the linguistic dichotomy between ES legal professionals and NES lay participants, legal-lay interactions are interpreted most of the time in the consecutive mode. This mode of interpreting enables both the defendant and the

testifying witness (and all the other NES court actors) to access the utterances made in English. This is probably why the interpreter in the Hong Kong courtroom has a designated seat next to the witness box (see Appendix 1 for a High Court courtroom layout in Hong Kong). If by any chance a witness should choose to testify in English, 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 or instructions to the jury, interpretation is also provided in *chuchotage* for the Cantonese-speaking defendant only. *Chuchotage* in Hong Kong is also known as dockside interpreting, as it is performed with the interpreter standing or sitting by the side of the dock in which the defendant sits.

#### *1.4. The court interpreter as one of the bilinguals in court*

In the early colonial days of Hong Kong, the court interpreter was usually the only person speaking both the language of the lay participants and that of the court. Any interpreting mistakes, which might have subsequently led to a miscarriage of justice, would have simply gone unnoticed because few would have been able to challenge the accuracy of the interpretation (Eitel 1877). Today, while interpreters continue to play their part in trials conducted in English, they are no longer the only bilingual individuals in the courts, which are often dominated by legal professionals proficient in both English and Cantonese. The presence of these other bilinguals inevitably puts pressure on interpreters and can be presumed to have an impact on the dynamics of interaction in court. For instance, it is not uncommon for bilingual counsel or judges to criticise an interpreter's rendition. On one occasion, a magistrate fluent in both Cantonese and English said in open court that his interpreter's poor interpretation "could rob the defendant of a fair trial". The magistrate's remarks reduced the court interpreter to tears and as a result the magistrate had to order a five-minute break for the interpreter to "collect herself", but she was too upset to continue and had to be replaced (Chow & Chin 1997). 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.

#### *1.5. The introduction of the bilingual 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 of witnesses' testimony appeared in the court record. What was said by the witnesses/defendants in Cantonese and the Cantonese 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 (or any other language used by the witness). 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: 144).<sup>2</sup> 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 research of legal interpreting.

## 2. The study

### 2.1. Access to data

As a former court interpreter, I have long lamented the lack of pre-service training for court interpreters; the Judiciary of Hong Kong has adopted a learning-by-doing approach for new recruits. The recruits do not need to have any previous experience in interpreting or hold a degree in Translation or Interpreting. All they have to do for an appointment is to pass a written translation and an oral interpretation test (Lee 1994; Ng 2013a). As I later started teaching Interpretation at university level, I tried to introduce court interpreting into the interpreting syllabus and felt an acute need for legal interpreting to become an independent academic subject in order to prepare aspiring students for the challenge of the job. In view of a lack of legal interpreting courses in local tertiary institutes, I offered to teach a new course in legal interpreting and hoped to be able to use some of the recorded court proceedings as the teaching material. Subsequent to the approval of my new course, I

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2. The appeal of a murder case between the Hong Kong Special Administrative Region (HKSAR) and Ng Pak Lun (CACCI53/2010) is an example of DARTS serving as evidence of misinterpretation by the interpreter. In this appeal, the utterance "some really serious bodily harm" had been mistakenly rendered as "a degree of bodily harm". A review of the transcript necessitated by an appeal against the guilty verdict by the defence uncovered the mistake and eventually led to a retrial of the case.

applied to the High Court Registrar to be allowed to access the recorded court proceedings for academic purposes. Permission was subsequently granted by the High Court Registrar for me to use the recordings of the nine criminal trials I had requested, including a murder and a rape case, on condition that I undertook to use the data only for teaching and research purposes and to guarantee anonymity of the personal information in the data.

## *2.2. Funding and data transcription*

To turn the courtroom audio data into usable research data and material for classroom teaching, transcription of the data amounting to over 100 hours of recording time was deemed necessary. The transcription of the data was funded by two grants from my university<sup>3</sup> which enabled me to hire research assistants (RAs) to help with the transcription and to develop a glossary of bilingual terms from the transcripts produced. The recordings have been transcribed verbatim, using transcription symbols and conventions typical of conversation analysis (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. It includes such non-verbal elements as pauses, emphases and overlapping speech. We were however concerned about the readability of the transcripts as too many details and information could make 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 a list of transcription keys and abbreviations used in this paper in Appendix 2). The recordings and the resulting transcripts have become the primary source of data for my teaching and research on legal interpreting.

## **3. Use of the data for teaching purposes**

The use of authentic audio data as the teaching and practice material in the classroom aims primarily to enhance students' learning experience by allowing them to tackle real court cases in the classroom. Students listen to utterances made by judges, counsel, witnesses and defendants and practise interpreting before they listen to the interpreter's rendition, which is used as a counter reference and a resource for discussion. This effectively turns the classroom

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3. I am indebted to the Leung Kau Kui Research and Teaching Endowment Fund and the Teaching and Development Grants, The University of Hong Kong, for funding my projects "Teaching Legal Interpreting with Authentic Court Data" and "Legal Interpreting – from Courtroom to Classroom" in 2009 and 2014 respectively.

into a virtual courtroom. The transcripts developed from the audio data make it easier for the teacher to play the recordings, to explain and exemplify the intricacies of the legal language used by judges and counsel and the rhetorical linguistic devices adopted in courtroom advocacy. Additionally, they serve as a yardstick against which comments on the rendition of the interpreter and on that of the students in the classroom can be made. To connect what students are learning in the classroom with real world experience, I take the students out of the classroom to the law courts to observe court interpreters at work and to see for themselves what court interpreting is. This is followed by a mock trial in a moot court where students take turns to play the role of the judge, of counsel, of the witness and of the interpreter by using the scripts developed from the recorded proceedings.

#### 4. Objectives of data-driven research

Another use of the data, as was stated in my letter to the High Court Registrar, is for conducting research on court interpreting. While the past two decades have witnessed a significant increase in the literature on court interpreting, research has largely focused on a courtroom setting where interpretation is provided for the linguistic minority; an atypical bilingual courtroom setting like that of Hong Kong remains hitherto unexplored. This study aims to fill this gap in the literature on court interpreting. My investigation into the Hong Kong courtroom was motivated firstly by my background as a former full-time court interpreter and now a researcher and interpreter trainer, and by my conviction that this special courtroom setting merits a full-scale data-driven study.<sup>4</sup> It is my hope that the findings will shed light on the training needs for court interpreters and on the best way to work with them. The recommendations to be made will apply not only to the Hong Kong courtroom, but also to other courtroom settings that share similar features.

#### 5. Research findings

##### 5.1. *The complexity of recipientship in the bilingual Hong Kong courtroom*

As was noted in Section 1.4, one of the special features of the Hong Kong courtroom is that interpreters nowadays often have to work with participants who are also bilinguals. Research findings of the data show that the notion of recipientship or audienceship is complicated due to the presence of other

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4. This paper reports some of the findings of my PhD research project – *The Atypical Bilingual Courtroom: An Explanatory Study of the Interactional Dynamics* (see Ng 2013a).



bilingual court actors in the Hong Kong courtroom. An interpreter working in a courtroom as the only bilingual has two different audiences who do not speak each other's language. One audience, usually the linguistic majority in court, would be listening only to the interpreter's rendition into the court language. The interpreter's other audience, often the minority language speaker(s), listen only to his/her rendition into the minority language. In the Hong Kong courtroom, however, Cantonese-speaking litigants are not the exclusive audience of the interpreter's Cantonese rendition of utterances produced in English. The Cantonese rendition is also accessible to bilingual counsel and judges, who, if monolingual, would be listening only to the interpreter's English rendition of utterances made in Cantonese. These bilinguals also have access to witnesses' testimony given in Cantonese. For the purpose of this study, I have borrowed the notion of audience roles from Bell's (1984) model of audience design, which has a taxonomy of four audience members, namely addressee, auditor, overhearer and eavesdropper. According to Bell, an addressee is a listener who is known, ratified and directly addressed and an auditor is also a known and ratified listener but not directly addressed. Bell (1984) differentiates overhearers from eavesdroppers depending on whether or not these non-ratified listeners' presence is known to the speaker.

With Bell's model of audience roles as a point of reference, I have redefined some of the roles with special reference to participants in the courtroom. An addressee is one who is being addressed, with or without the mediation of the interpreter (as long as the speaker is addressing him/her directly, not the interpreter). For example, in a witness examination, the examining counsel and the witness are, by default, each other's addressee; the defendant, the judge and the jury (as close followers of the talk) have the role of auditors; those in the public gallery can be categorised as overhearers as they may or may not be following the talk closely and do not normally assume a speaker role at any stage of the trial, unlike other court actors. In the Hong Kong courtroom, if the examination of a witness is mediated by an interpreter, a bilingual counsel does not listen only to the interpreter's rendition into English, but can also overhear the interpreter's rendition of counsel's question into Cantonese. S/he may also react to a witness's Cantonese utterance without waiting for the interpreter to render it into English, or comment on the interpreter's rendition into and out of Cantonese. The bilingual counsel can thus be described to have taken on also the role of overhearer of the Cantonese version of the talk, which is not intended for him/her as an English speaker in court, but for the Cantonese-speaking participants. Likewise, a bilingual judge can also overhear the witness's testimony in Cantonese and the interpreter's Cantonese

rendition of counsel's question, thus assuming also the role of overhearer in addition to his/her default role as auditor of the English version of the talk. Since a trial takes place in a closed courtroom and the presence of all the participants in court is noticeable to the speaker, there is no category of eavesdroppers in a courtroom trial.

The following is an example of a bilingual defence counsel (DC) taking on an overhearer role as he corrects an interpreter (I) during the cross-examination of a witness (W).

#### Example (1) Cross-examination of W, Rape, High Court

Turn	Speaker	SL utterances/ interpretation	English gloss
1.	DC	Alright. Now, when you...after the sexual intercourse, you must feel very <b>aggrieved</b>	
2.	I	噃，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？	<i>Now, so after the sexual intercourse, you must have felt very hard/bad. Is that right?</i>
3.	W	係	Yes
4.	I	Yes	
5.	DC	No, "aggrieved", "aggrieved"	

In this example, the Cantonese/English bilingual defence counsel, having (over)heard the Cantonese interpretation of his question and dissatisfied with the interpreter's output, repeats it twice for the interpreter in an attempt to correct her. Example (2) below is yet another instance where the prosecution counsel (PC) in the same case, again bilingual in Cantonese and English, informs the monolingual judge (J) of a perceived discrepancy between the defendant's testimony in Cantonese and the interpreted version.

#### Example (2) PC addressing J, Rape, High Court

Turn	Speaker	SL utterances
1.	PC	<i>Saam1</i> , the Chinese used by the accused himself was <i>saam1</i> , 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".

The argument concerns an ambiguous Cantonese word *saam1*<sup>5</sup>, which can be taken to mean either “garment” (clothing in general) or “upper garment” (a top/a piece of clothing worn on the upper part of the body) depending on the context.

It is the prosecution’s case that the defendant had sex with the witness against her will. 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 the 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. He claimed that the witness invited him to go up to bed by pulling his *saam1*, which was then rendered by the interpreter as “garment”, most probably to conform to what had been established in evidence that the defendant was not wearing any “upper garment” at the material time. When the prosecution counsel points out this discrepancy in the defendant’s testimony, he is obviously not referring to the interpreted version of the evidence, but to the defendant’s testimony in Cantonese. He is informing the court of a misinterpretation and arguing for a rendition of the word *saam1* as “upper garment”. A rendition of *saam1* as “upper garment” would contradict the defendant’s earlier evidence and presumably would render him an untruthful witness. On the other hand, an interpretation of the word as “garment” fails to show the inconsistency in the defendant’s testimony that the prosecution seeks to adduce. In other words, the interpreter’s rendition of the Cantonese word *saam1* as “garment” has eliminated such inconsistency. It could thus be argued that in times of semantic ambiguity, the aim of the interpreter to seek conformity to the preceding context necessarily runs counter to that of the cross-examiner whose primary goal is to identify inconsistencies or contradictions in the witness’s (in this case the defendant’s) testimony in order to discredit him (for details of this case, see Ng 2013a, 2013b).

### 5.2. Participant roles and power of court actors

Another focus of my study is to examine how the presence of other bilingual court actors in the Hong Kong courtroom may impact on the interactional dynamics and thus the participation status of individual court actors, and how the participation status of the court actors affects their power and control

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5. 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.

in the courtroom. The above two examples show that bilingual counsel take on an extra participant role as overhearer of the Cantonese version of the trial talk in addition to their official role as addressee or auditor of the talk. As illustrated in Example 2, the multiple audience roles the bilingual prosecutor assumes empower him to act as an adjudicator or assessor of the accuracy of the interpreter's output. This suggests a more advantageous participation status for himself as a result of his bilingualism when compared with the monolingual judge, who has no access to the defendant's evidence in the Source Language (SL) and thus little linguistic power and control over the evidential phase of the trial.

The interpreter working with bilingual court actors too sees her power and control over the communicative act constrained and her monopolistic power as the only bilingual disappear in line with Anderson (2002: 214). Example (3) below illustrates the interpreter's reduced linguistic control when she submits to the suggestion of the prosecution counsel by agreeing to change her rendition of *saam1* from "garment" to "upper garment".

Example (3) Interaction between J and I, Rape, High Court

Turn	Speaker	SL utterances
1.	J	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 uh 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.

An allegation of misinterpretation inevitably places the interpreter in a dilemma: adopting the suggestion of the prosecutor is tantamount to admission of an interpretation error, whereas insisting on her earlier rendition 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 is an easy way out for the interpreter. 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 (3). 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. There seems to be also a tone of resignation in the judge’s utterance (turn 5), which may reflect his diminished power due to his disadvantaged participation status in an interpreted encounter where the other interlocutors are bilingual.

### 5.3. Judges’ interruptions in interpreter-mediated trials

Another salient finding of my study is that intervention by judges in the evidential phase of a trial proves more problematic in the Hong Kong courtroom than in a typical bilingual setting where interpreting is provided for the benefit of linguistic minorities. As was noted in Section 1.2, in a trial conducted in English in the Hong Kong courtroom, lay participants appearing in court as defendants, witnesses and even spectators in the public gallery have to rely on the Cantonese interpretation in open court for their understanding of utterances made in English. When a judge interrupts to clarify with a witness or counsel or engages in a verbal exchange with counsel during the witness examination, the result is that all the NES lay participants including the testifying witness, the defendant and spectators in the public gallery will be temporarily excluded from participating in the trial. Example (4) below shows a judge interrupting counsel to clarify with a witness.

#### Example (4) Examination-in-chief of W, Theft, Magistrates’ Court

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

In the above example, the judge’s interruption renders the prosecution counsel unable to finish her question resulting in the omission in interpretation of her question (though not of the judge’s question, which is addressed to the witness and thus has to be interpreted in the consecutive mode in open court). A question or comment targeted at counsel will prove even more problematic as will be illustrated in Example (5) below.

Example (5) Examination-in-chief of W, Trafficking in Dangerous Drugs,  
District Court

Turn	Speaker	SL utterance/interpretation	English gloss/remarks
	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 >
	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 >
	PC	<b>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.</b> (2) Were you given any instructions, whilst this interview was being conducted, Officer, whilst you were inside the room?	<PC's response to J's comment (in boldface) not interpreted>
	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? <CI of PC's question for W>
	J	There's no such allegation	<No interpretation >
	PC	I'm not... it's nothing to do with allegation, Your Honour. I'm just asking this question [if I may.	
	J	[Why?	
	PC	<sigh> Because this is what happened during the (.) the proceedings, Your Honour.	
	J	(4) Was there an interruption?	
	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 <chuchotage of DC's comment for W in the witness box>
	J	I see. Sorry. Yes.	<no interpretation>

In this example, the prosecution counsel is asking the witness how he conducted the video recorded interview (VRI) with the defendant as the prosecution has sought to tender the video of the interview as an exhibit in court, 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 the witness 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 prosecutor and the judge as the prosecutor 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.

To start with, as in Example (4), the judge's interruption in turn 2 has resulted in an omission in interpretation of counsel's question for the witness in turn 1. Moreover, since the judge's question is addressed to counsel, not the witness, and the judge and counsel can interact with each other without the mediation of the interpreter, both the judge's question and counsel's response to her question in turn 3 (as well as the subsequent interaction) are not interpreted in open court, unlike the case with legal-lay interaction. Note that the judge's interruption in turn 5 has also deprived the witness of the chance to answer counsel's question, which has been interpreted for him. Access to the uninterpreted interaction between counsel and the judge has been effectively denied to the witness in the witness box, the defendant in the dock as well as the spectators in the public gallery. As noted in Section 1.3, *chuchotage* is usually provided for the defendant for counsel/judge/jury interactions. Note that the interruptions take place during the testimony of the witness rather than that of the defendant, who, like the witness and other NES court actors, has to rely on the Cantonese interpretation provided in the consecutive mode in open court for access to utterances made in English. In a typical bilingual setting, where the defendant is the only person requiring interpreting services, *chuchotage* can be provided to enable his/her access to the encounter whether s/he is testifying in the witness box or is listening to the trial talk in the dock as an auditor. In this case, since the interpreter, at her designated seat by the witness box, is providing CI for the witness, *chuchotage* cannot be provided for the defendant, who is physically removed from the interpreter (see Appendix 1). The *chuchotage* provided in turn 10 is for the witness, not for the defendant. The interpreter must have made a decision about whether

or not and for whom to provide the *chuchotage* before she started interpreting in turn 10.

When a judicial intervention occurs during the examination of the defendant, the interpreter does not need to choose whether to provide *chuchotage* for the defendant or the witness as the defendant is testifying in the witness box right beside her. However, *chuchotage* by the witness box, whether for the defendant or for the witness, is not easy to perform. The proximity of the interpreter to the SL speakers and the overlapping voices of the interpreter and of the SL speaker would confuse the witness/defendant, and the unavailability of simultaneous interpretation (SI) equipment rules out an accurate rendition.

Obviously, judicial intervention in a witness examination, which is transparent in a monolingual trial and accessible to the linguistic majority in court in a 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 denying the defendant and all the other NES court actors access to the trial talk in its entirety. For these people, justice is seen but not *heard* to be done.

#### 5.4. *The use of chuchotage and court actors' participation status*

It is found that *chuchotage*, a mode of interpreting commonly adopted in a typical bilingual setting where interpretation is provided for the linguistic minority (as was pointed out in Section 1.3) inevitably denies NES court actors' full access to the trial talk in the Hong Kong courtroom. As illustrated in Example (5), interactions between counsel and the judge in English are not interpreted in the consecutive mode in open court but in *chuchotage* (if any) audible only to the defendant (or the testifying witness). This necessarily excludes the participation of other NES court actors, such as the spectators in the public gallery, where one would expect to find friends and family members of the defendant or of the victim. As was noted also in Section 1.3, monologues such as counsel's speeches and judges' summings-up and jury instructions are all interpreted in *chuchotage*, audible only to the defendant.

An even more worrying problem associated with the provision of *chuchotage* in the Hong Kong courtroom is the participation status of the jury. In the old days when court cases were heard only in English, not many people were qualified for jury service, and those who could serve as jurors had to be well-educated with a high proficiency in English. Given that Chinese is now used as the other court language, Section 4(c) of the Jury Ordinance (1999) states that a juror must have "a sufficient knowledge of the language



in which the proceedings are to be conducted to be able to understand the proceedings". It follows that in a trial heard in English, a juror is expected to have a *sufficient* knowledge of English. Given the predominantly-Cantonese speaking local population, however, there is no knowing to what extent those jurors who are selected are able to follow the legal language used in court, 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: 26) and that "members of the public have long expressed frustration with legal language" (Tiersma 1999: 199). It would presumably prove even more problematic for people not native in the language. In the Rape case, one of the jurors whose name had been drawn from the ballot box told the court through the interpreter that she wished to be exempted as she expressed worries about her ability to follow the trial in English. She was however talked into accepting jury duty by the judge, who reassured her that the trial would be bilingual with the assistance of an interpreter. The judge is right as far as testimony interpreted in the consecutive mode is concerned. However, interactions between the court personnel throughout the trial including the summing-up and jury instructions are interpreted in *chuchotage* and audible only to the defendant as was noted above. That means that 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. Besides, not all the testimony is interpreted in the consecutive mode in open court as occasionally a witness (usually an expert witness like a medical doctor or a forensic pathologist in a murder case) may choose to testify in English, without the mediation of the interpreter. This is another instance when *chuchotage* in lieu of CI would be provided for the Cantonese-speaking defendant. Again there is no knowing whether jurors will have a problem following English testimony such as technical, medical or forensic evidence without the assistance of the interpreter. Those in the public gallery are also likely to be excluded.

While some jurors ask to be exempted citing their poor standard of English as the reason for exemption, others may find this admission too embarrassing in open court, especially people whose professions require high English proficiency. This would inevitably compromise not only their participation status, but possibly the administration of justice, an issue that merits further exploration.

## 6. 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 (Berk-Seligson 1990, 2002; Hale 2004), interpreter training in Hong Kong should address the specifics of the bilingual Hong Kong courtroom and should sensitise students to the possibility of being challenged by bilingual participants in court proceedings and ways to cope with these challenges. As has been demonstrated above, interpreting in the Hong Kong courtroom is made doubly demanding due to the presence of other bilinguals, who have access to both the SL 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 interpreter's output. 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. These other bilinguals may at times, as was illustrated in the Rape case, 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 meekly submit to authority and have their competence called into question. This crucial strategic professional behaviour, including the court interpreter's code of ethics and courtroom protocol, must be made known to the court interpreters by the Judiciary of Hong Kong in their Induction Programme for new recruits (see Lee 1994; Ng 2013a); and should be included in the syllabus of any training programme preparing aspiring interpreters for the challenge of court interpreting.

Interpreters should also be sensitised to the potential problems arising from the interpretation of semantic ambiguity. Where possible, interpreters should strive to reproduce ambiguity in the TL and leave the burden of clarification to the court, and should avoid resorting to guesswork. As shown in the Rape case, the interpreter's decision to opt for one meaning of the ambiguous Cantonese word *saam1* ends up being challenged by the bilingual prosecutor, who decides that the other interpretation would work better for the prosecution's case.

As was demonstrated in Example (5) and noted above, 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 perform *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.

## 7. Recommendations for best practice in the courtroom

In an interpreter-mediated trial, whilst ensuring that those who do not speak the language of the court will be on a comparable footing with 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 below aim to improve the 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.

### 7.1. Team interpreting and the use of SI equipment

As has been pointed out earlier, 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 NES court actors in the evidential phase of a trial is made possible only through the provision of CI in open court. Nonetheless, the findings of this study show that where a judge interrupts the evidential process, the interpreter either interprets the verbal exchanges between counsel and the judge in *chuchotage* for the defendant/witness in the witness box, as is the standard practice, or simply remains silent, unless the judge's question is addressed to the witness/defendant. This finding is consistent with Hale's observation in her study of English-Spanish interpretation provided in the Local Court in Australia (2004: 208). In the context of the Hong Kong courtroom, the impact of such non-interpretation or *chuchotage* 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 interventions during the examination of the defendant, as *chuchotage* cannot be provided for both the witness in the witness box and the defendant in the dock.

The findings of this study thus point to the need for team interpreting. With the use of two interpreters in the same trial, it would be possible for one interpreter to provide *chuchotage* 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 NES court actors such as spectators in the public gallery. Besides, *chuchotage* would create acoustic difficulty for *both* the interpreter working by the witness box *and* the interpreter providing dockside *chuchotage*. The interpreter providing *chuchotage* for the witness would have to compete with or “drown out” the voice of the SL speakers (De Jongh 1992: 50); the interpreter providing dockside interpreting often has to work behind the SL speaker’s back, typically when counsel is addressing the judge or the jury (Fowler, Ng & Coulthard 2012).

The best solution would be to have one interpreter providing SI of English utterances produced by legal professionals but not interpreted in the consecutive mode in open court to all those requiring such services (including possibly jurors) with the use of SI equipment,<sup>6</sup> with the other interpreter concentrating on the provision of CI of the legal-lay interactions. The use of SI equipment allows the simultaneous interpreter to be physically removed from the SL speakers and the defendant (as well as other listeners requiring such services). The positioning of the simultaneous interpreter away from the defendant, as De Jongh (1992: 51) 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” (Fowler et al. 2012). With SI provided for all those who require interpreting services in the courtroom, exemption from jury service could not then be claimed on the grounds of insufficient proficiency in English.<sup>7</sup>

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 (Moser-Mercer, Künzli & Korac 1998). In Hong Kong,

6. For SI equipment used by interpreters working in the US Federal Courts, see Kolm (1999).

7. At the time of writing, a high-profile corruption case (HCCC98/2013) involving a former high-ranking government official was being tried in the High Court. The court had tremendous difficulty in forming a jury of 9 members, as many of those selected asked to be exempted for various reasons, including a lack of proficiency in English.

the court interpreter has to interpret everything uttered in court, in two directions (to and from English) and in two modes besides. As was noted in Section 1.3, interpretation at different stages of a trial involves the use of different modes and directions. Jury instructions and counsel's opening/closing speeches, for example, require *chuchotage* 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 to reduce 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, 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 involving 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 for each other's workload.

### *7.2. 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 heavily emphasised in many studies on court interpreting (Colin & Morris 1996; Mikkelsen 1999; Hussein 2011; Fowler et al. 2012). The following recommendations for the best way to work with interpreters in court apply not only to the Hong Kong courtroom, but may also be applicable to other bilingual legal settings in general.

First of all, it is important that court personnel 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: 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". Therefore the interpreter's access to background information relating to the case to be tried is essential. As aptly noted by González, Vásquez & Mikkelsen (1991: 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 preparation and hence unfamiliarity with the case at trial may result in the need for the interpreter to clarify items with the speaker or otherwise to resort to guesswork. Gamal (2006) argues that while there is an understandable judicial view that the interpreter's prior knowledge of the case might affect his/her impartiality, 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.

Secondly, since interpretation for legal-lay interactions in the Hong Kong courtroom is in the main provided in the consecutive mode as noted in Section 1.3, SL speakers must pause at regular intervals to permit a CI 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. This is the reason why police officers in Hong Kong usually make better witnesses for the interpreter, as testifying through an interpreter is part of their training.

Judges should also avoid interrupting the witness examination, except to clarify ambiguity in counsel's question or a witness's answer. As was illustrated in Examples (4) and (5), when the judge interrupts the proceedings, the natural consequence is that counsel is unable to finish a question so that the interpreter might 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, omission in 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). 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.

## 8. Conclusions

This paper has demonstrated the benefits of the use of authentic courtroom data for both pedagogical and scholarly purposes. While the use of real courtroom data as training material helps enhance students' learning experience,

the findings generated from the study of the data further shed light on the training needs for court interpreters and the best practice in court. It is evident from this data-driven study that the participation status of NES 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 do their counterparts in a monolingual trial, 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, and is not the sole responsibility of the interpreter. Only when this responsibility is shared can quality in court interpreting be guaranteed so that those who do not speak the language of the court are on an equal footing with those who do.

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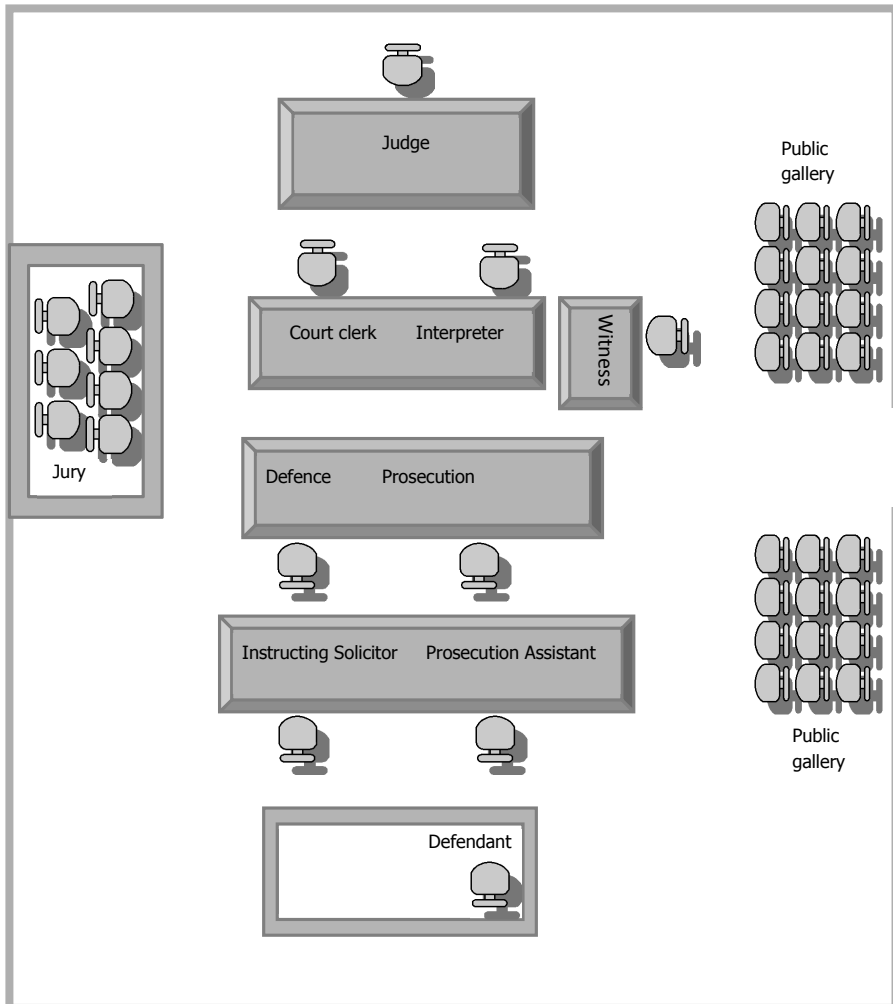
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## Appendix 1: Courtroom Layout in the High Court of Hong Kong



## Appendix 2: Transcription Keys and Abbreviations

### 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-dashmarks a sudden cut-off of the current sound	<i>I said to him. I said—</i>
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?
<b>boldface</b>	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 (.) <b>garment</b> at my eh waist area.  Er佢用佢嘅左手拉我er腰度，啱係腰部份嘅 <b>件衫</b> 。
: 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	Descriptions
CI	Consecutive Interpretation/Interpreting
D	Defendant
DARTS	Digital Audio Recording and Transcription System
DC	Defence Counsel
ES	English-speaking
I	Interpreter
J	Judge/Magistrate
NES	Non-English-speaking
PC	Prosecution Counsel/Prosecutor
SI	Simultaneous Interpretation/Interpreting
SL	Source Language
TL	Target Language
VRI	Video Recorded Interview
W	Witness

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