

PRAGMATICS MEANING INTERPRETATION AND VERBATIM RENDERING IN ADVERSARIAL LEGAL SYSTEMS IN COURT INTERPRETING

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ABSTRACT

As a result of global movement, either by voluntary migration or forced displacement, interpreter-mediated court proceedings are becoming increasingly common. Most courts established interpreter's codes of conduct, preferring verbatim rendering of litigants' utterances, in anticipation of potential cultural bias and partiality. However, this code of conduct seems to fail to accommodate complicated legal and language realities in intercultural court proceedings. In adversarial legal systems, the presentation of evidences highly relies on the skillful language manipulation by the lawyers. In terms of refugee status determination, the ability to retell traumatic experience determined asylum seekers' credibility. Communication breakdowns and failure to provide cultural context are amongst the downside of verbatim rendering, since speakers have to breakdown their confession into short sentences to be fully translated. On other hand, in offering context and preserving intention, interpreter might be tempted alter speakers' original voice/style, including eliminating repetitions, hesitations and inexplicitness. Considering this, it is suggested that pragmatic meaning interpretation is utilized by taking more caution to preserving speakers' original style. In doing so, sufficient training for interpreters and sufficient number of interpreters must be provided.

KEYWORDS: *Adversarial Legal Systems, Court Interpreting, Pragmatics Meaning Interpretation, Verbatim Rendering.*

INTRODUCTION

The rapid movement of people across borders has caused a significant increase in court proceedings in which interaction is mostly interpreter-mediated. In 2016, the population of world refugees stood at approximately 17.2 million, witnessing almost twice as much increase as the 2005 refugee population (United Nations High Commissioner for Refugees [UNHCR], 2017). The conflict in Syria and Iraq has caused enormous displacement with refugees, some of whom had to flee to European and



American countries in fear of persecution in their home countries. Upon arrival in the host countries, the asylum seekers have to undergo the Refugee Status Determination legal proceedings to seek international protection. On the other hand, the number of international migrants has grown from 173 million in 2000 to 258 million in 2017 (United Nations, Department of Economic and Social Affairs, Population Division, 2017). In 2017, the United States of America hosted the largest amount of international immigrants at 50 million people, followed by Saudi Arabia, Germany, Russian Federation, and the United Kingdom, ranging from 9 million to 12 million people (United Nations, Department of Economic and Social Affairs, Population Division, 2017). Occasionally, some of these immigrants violate laws often relating to false documents, illegal entrance, violence, and drug possession (Ackermann, 2010; Aliverti, 2016; Katz, 2008) and have to defend themselves in court hearings. Due to the fact that these refugees and immigrants speak a different language and have a different culture to the host countries, the interpreter-mediated court has become substantial elements during the intercultural communication of judicial proceedings.

Intercultural communication occurs when people from different cultural backgrounds engage in communication during which cultural differences might hinder communication effectiveness and might lead to misinterpretation (Chi, 2016). To avoid this potential adverse effect, some courts establish interpreters' code of conduct prescribing the use of verbatim rendering. However, this might lead to problems in legal systems in the United States, United Kingdom, and Australia, namely adversarial legal system which relies heavily on the use of language. Incomplete message transfer might be subjected to unreliability leading to deportation for refugees and imprisonment for the immigrants.

Despite the prescribed use of verbatim rendering in the courtroom, interpreters are more likely to better ensure accurate and meaningful interpretation by using the pragmatics meaning approach. This paper attempted to focus on the role of interpreters in intercultural legal proceedings and analyzed the approach used by interpreters to ensure an accurate rendition of speakers' statements.

LITERATURE REVIEW

LANGUAGE BARRIER AND ADVERSARIAL LEGAL SYSTEMS


Legal proceedings in the host countries often result in confusion for the refugees and immigrants. To acquire the status of "refugee", the asylum seekers have to apply for Refugee Status Determination which entails initial interviews to assess whether they are eligible for refugee status based on The United Nations 1951 Convention (UNHCR, n.d.). During this interview, the applicant needs to provide reasons of a well-founded fear of

persecution in their home country. After that, the Customs Border Protection officer will assess the applicant's credibility before either granting asylum or rejecting the application. The rejected applicant is given chances to submit the appeal hearings in court proceedings (UNHCR, n.d.). On the other hand, Ackermann (2010) asserts that the September 11 attacks have escalated the criminalization of immigrant that governmental policy allowed immigrant imprisonment before being deported. To make it worse, Donald Trump ordered to detain immigration violators and treated them as high-security risk. Surprisingly, it has been revealed that 110,000 immigrants were detained during the first year of his leadership (Pierce et al., 2018), making it the highest rate of immigrant detention in American history. Due to limited familiarity with the legal systems in the host countries, the refugees or immigrants might not understand the criminal charges against them, what is expected from them, and unable to defend themselves. For example, Sudanese refugees' asylum applications were rejected either in United Kingdom and Greece because of entering the country's borders illegally. Although refugees and immigrants are more likely to win their case with the help of lawyers, access to high profile lawyers are limited and expensive which most of applicant could not afford. As a result, refugees and immigrants will unlikely have qualified representation for their judicial proceedings and are more likely to be deported or imprisoned.

Another most difficult challenge faced by refugees and immigrants is the language barriers that inhibit them to receive justice in court proceedings. Birzu (2016) asserts that the presence of an interpreter is one of the key elements in order to assure the fairness of the legal proceedings. For this reason, it is imperative that the asylum applicant and immigrant be accompanied by interpreters during the judicial proceedings.

There are two approaches to interpretation that can be used by the interpreters in providing interpreting services for refugees and immigrants. While verbatim rendering provides a word for word rendering of the source language, a pragmatic one takes a more meaning-based interpretation focusing on the underlying meaning of utterance (Archer et al., 2012). Some adversarial courts establish a particular code of conduct for interpreters that clearly states the required use of verbatim rendering. In verbatim rendering, the communication sometimes is not meaningful which may lead to problems in adversarial legal systems.

Since the adversarial law system relies heavily on the use of languages and interaction between parties involved in the courtroom, the role of the interpreter significantly influences intercultural communication in the legal proceedings. In the adversarial legal systems, judges are not involved in the pre-trial investigation and their judgements are



based on the evidence presented by lawyers through questioning process and skillful manipulation of language (Ainsworth, 2015; Gibb & Good, 2014). For this reason, language remains a significant challenge in intercultural communication between the litigants. In order to ensure that all parties involved in the courtroom can communicate effectively despite the language barrier, the interpreter should act as an advocate and be aware of potential cultural differences that may take form in the level of politeness, non-verbal communication, speaker's intention, culture-bound terms and customs. For instance, the inability to maintain eye contact may indicate guilt but it also means respect in some Asian culture. Also, speakers of some languages, especially those from Mediterranean cultures may have a tendency to speak in a loud voice that might appear as threatening in some host countries (Hale, 2014). The questioning process in adversarial legal systems often happens very quickly that the interpreters do not have time to give clarifications for the cultural-related issues. Consequently, interpreters' failures to accommodate these cultural elements possibly lead to misunderstandings and conflict in the courtroom.

DISCUSSIONS

PRAGMATIC MEANING INTERPRETATION AND VERBATIM RENDERING IN COURT INTERPRETING


For preserving the speakers' intention, pragmatic meaning interpretations are more viable in producing intercultural rendition. Generally, verbatim translations may seem grammatically correct and understandable, yet they sometimes fail to convey the sense and deeper analysis of a speakers' intention. Hale (2007) reported that in the case of O. J Simpson, a witness was called upon and was asked whether the witness have stayed in the country for 27 years. However, due to limited ability in counting, the witness requested that the attorney make the calculation by mentioning only the arrival year to which the interpreters misinterpreted the request to an allegedly imperative answer. In the hearings, the interpreter used verbatim translation and failed to identify that English uses "Would you...?" or "Could you..." to express a request, and that Spanish does not have the equivalence for indirect requests. As a result, the witness were considered to imply sarcastic and offensive utterance and thus cause conflicts in the further process of the court proceedings. This misinterpretation would be unlikely to occur if the interpreters used the pragmatics meaning interpretation in which thorough analysis of cultural differences had to be made before rendering, including analyzing the speakers' intention.

However, verbatim rendering is more likely to replicate speakers' speech style than pragmatic interpretation. In adversarial court rooms, every single element of utterances matter, including repetitions, hesitation, and inexplicitness. Lee (2011) described that

some judges ordered that interpreters provide verbatim rendering and ignore pragmatic effect of the utterances. This might be caused by perceptions that the use of pragmatics meaning may omit the speakers' original voice. Furthermore, Goodman-Delahunty and Martschuk (2016) state that neglecting communicative use of hesitations may eradicate the message veracity. Replicating the speakers' tone and hesitation are exceptionally important in assessing the speakers' testimony credibility whether the speakers are making false confession. For example, when interpreting from Korean to English, the interpreter omitted one pivotal element in the speakers' voice that implied the hesitation, "*I mean obv-obviously after the incident- what was alleged to be incident, it has been very tough for me*" into "*I mean, since the incident really, you know, I found it really hard*". Failure to replicate the hesitation may influence the judge's plea and might result in debate over the jury whether the speakers' made any false confessions.

The verbatim translation often caused the fragmented narration that might result in the deportation of asylum seekers. The refugee determination process requires the asylum seekers to provide reasons on their fear of prosecution by their own country. However, the applicant are asked to break down the confession into short phrases and sentences so that it could be fully translated by the interpreters. This fragmented narration will interrupt the communications' flow and some substantial information regarding the well-founded fear of persecution. Consequently, the Custom Border Protection officers will find the applicant as illegible to fulfill refugee criteria as ruled in the The United Nations 1951 Convention. As a result, some asylum application were rejected due to the alleged inconsistencies in applicants' answers.

Pragmatics meaning interpretation is more likely to produce optimal and complete message transfer than verbatim in cultural bound terms and cultural customs. The challenge in interpreting culture-bound terms and customs are that sometimes the words does not have an English equivalent. For instance, a Latin American witness stated that he could not decide whether to spend lottery money on buying property or his daughters' 15th birthday. Verbatim rendering might accurately produce an exact equivalence of the words. However, without further explanation of context, this might cause confusion amongst the litigants and wondered if such a dilemma might occur (Hale, 2014). In contrast, the pragmatic meaning interpretation will provide an explanation on the cultural background of the 15th birthday that parents will throw big feast for the celebration. However, a study by Hale (2014) suggested that 76% of 138 interpreters involved in the study would only offer such clarifications only in certain situations when the terminologies might impact the judicial proceedings. Furthermore, it also indicates that judicial officers and tribunal members expected interpreters alert them about potential misunderstandings, as long as the interpreter are highly qualified.



Nevertheless, despite the rights to interpretation, sometimes defendants do not have access to highly qualified interpreters and might ended up treated partially. This might be caused by limited availability of interpreters compared to the number of cases filed. For example, the number of people applying for asylum in European Countries exceeded the number of interpreters that caused the refugee status determination take up to three years (Kehayoiyou, 2005). When this happens, the court will utilize judicial officers who might be fluent in both the target and source language. However, there is a serious flaw in this process as these judicial members often direct the defendant to state answers the attorney expected to plea the defendants' guilty (Garcia, 2008). For this reason, it is more likely that either the asylum applicant or immigrant only be accompanied by the highly qualified who had received the sufficient trainings in such areas.


CONCLUSIONS

In conclusion, pragmatics meaning should be used to completely convey the asylum seekers' statement to avoid possible communication breakdowns. However, in practice, this interpreting strategy has to be used along with the verbatim rendering so that it can preserve not only the speakers' intention but also their speech style. Furthermore, it is pivotal that the use of this approach is implemented only by qualified interpreters in order to avoid cultural bias.

REFERENCES

- Ackermann, D. (2010). A matter of interpretation: How the language barrier and the trend of criminalizing illegal immigration caused a deprivation of due process following the Agriprocessors, Inc. raids. *Columbia Journal of Law and Social Problems*, 43(3), 363-398.
- Ainsworth, J. (2015). Legal discourse and legal narratives: Adversarial versus inquisitorial models. *Language and Law/Linguagem e Direito*, 2(1), 1-11.
- Aliverti, A. (2016). *Immigration offences: Trends in legislation and criminal and civil enforcement* (Migration Observatory Briefing). COMPAS. http://migrationobservatory.ox.ac.uk/wp-content/uploads/2016/04/Briefing-Immigration_Offences.pdf
- Archer, D., Aijmer, K., & Wichmann, A. (2012). *Pragmatics: An advanced resource book for students*. Routledge.

- Birzu, B. (2016). The right to interpretation and translation within criminal proceedings in the European Union. Comparative examination. Critical opinions. *Juridical Tribune*, 6(1), 137-147.
- Chi, D. L. (2016). *Intercultural communication. Differences between Western and Asian perspective* [Master's thesis, Centria University of Applied Sciences]. https://www.theseus.fi/bitstream/handle/10024/118823/Dang_Linh.pdf
- Garcia, L. (2008). Language issues in Cook County. *Latino Studies*, 6(1), 201-204.
- Gibb, R., & Good, A. (2014). Interpretation, translation and intercultural communication in refugee status determination procedures in the UK and France. *Language and Intercultural Communication*, 14(3), 385-399.
- Goodman-Delahunty, J., & Martschuk, N. (2016). Risks and benefits of interpreter-mediated police interviews. *Varstvoslovje: Journal of Criminal Justice and Security*, 18(4), 451-471.
- Hale, S. (2007). The challenges of court interpreting: Intricacies, responsibilities and ramifications. *Alternative Law Journal*, 32(4), 198-202.
- Hale, S. (2014). Interpreting Culture. Dealing with cross-cultural issues in court interpreting. *Perspectives: Studies in Translatology*, 22(3), 321-331.
- Khani, F. H. A, & Hadidi, Y. (2016). A comparative study of interpretation strategies applied by Tabriz professional simultaneous interpreters in dealing with culture-bound terms. *Theory and Practice in Language Studies*, 6(1), 164-170.
- Lee, J. (2011). Translatability of speech style in court interpreting. *The International Journal of Speech, Language and the Law*, 18(1), 1-33.
- Katz, C. M. (2008, March). *The connection between illegal immigrants and crime* (Project). Center for Violence Prevention and Community Safety, Arizona State University. https://www.researchgate.net/publication/282980812_The_Connection_between_Illegal_Immigrants_and_Crime
- Kehayioylou, K. (2005, December 6). *How a man from Darfur cannot get his asylum claim heard in Europe today*. UNHCR. <https://www.unhcr.org/news/latest/2005/12/4395c3354/man-darfur-asylum-claim-heard-europe-today.html>
- Pierce, S., Bolter, J., & Selee, A. (2018). *U.S. immigration policy under Trump: Deep changes and lasting impacts*. Migration Policy Institute. https://government.report/Resources/Whitepapers/c2673a0f-5adc-4b74-94e1-58b87f6e98d9_TCM-Trump-Spring-2018-FINAL.pdf



United Nations High Commissioner for Refugees (UNHCR). (2017). *Statistical Yearbook 2016*. United Nations High Commissioner for Refugees. <https://www.unhcr.org/5a8ee0387.pdf>

United Nations High Commissioner for Refugees (UNHCR). (n.d.). *Refugee status determination*. <https://www.unhcr.org/id/en/refugee-status-determination>

United Nations, Department of Economic and Social Affairs, Population Division. (2017). *International Migration Report 2017* (ST/ESA/SER.A/403) <https://www.un.org/en/development/desa/population/migration/publications/migrationreport/docs/MigrationReport2017.pdf>