

**Is the Simultaneous Mode Feasible and Desirable in Court
Interpreting?:**

the Hong Kong Experience and Experiment

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Abstract

Like many other jurisdictions, common-law or not, interpreting services are provided in the Hong Kong courtroom. Under the existing arrangement in the present judicial system of Hong Kong, most of the interpreting is conducted in the consecutive mode. Simultaneous interpreting is usually carried out in the form of whispering interpreting, where the interpreter translates the submissions of the counsel for the benefit of the accused. As consecutive interpreting is generally acknowledged to be more time-consuming, the judiciary has attempted to introduce the simultaneous mode to all aspects of court proceedings where interpreting is required. In the present discussion, the author will compare the merits and demerits of consecutive interpreting and simultaneous interpreting in the legal domain. He will attempt a conclusion by looking at the various implications of the introduction of simultaneous interpreting in the legal context with special reference to the Hong Kong judicial system.

Introduction

The socio-linguistic matrix peculiar to Hong Kong has been instrumental in encouraging the robust development of court interpretation in the former colony of Britain. Since China's cession of the territory to Britain some 100 years ago, the English language has been, for obvious reasons, the language of the law in Hong Kong. The

present legal system has been based on and developed from the English common law. The law of Hong Kong has largely followed that of England and Wales. Section 3 of the Application of English Law Ordinance provides that the common law of England and rules of equity shall be in force in Hong Kong, so far as they are applicable to the circumstances of Hong Kong or its inhabitants, subject to such modifications as such circumstances may require. On the other hand, 98% of the population are Chinese, for whom the southern Chinese dialect, Cantonese, is virtually the lingua franca.

Against this backdrop, there has emerged a great demand for court interpretation between English and Cantonese. The Judiciary of Hong Kong now employs some 160 permanent court interpreters. They provide interpretation services between English and Cantonese, and, marginally, other Chinese dialects. When interpretation is required for speakers of other languages (such as Spanish and Tagalog, the lingua franca of the Filipino community in Hong Kong), freelance interpreters are engaged.

Despite the changeover of sovereignty in 1997 and the government's campaign to introduce a bilingual legal system, court interpretation has not been made to recede into the background. Firstly, the judicial bench still consists mainly of judges whose native language or second language is English. For convenience sake, they are all called expatriate judges. Secondly, some locally born Chinese judges and lawyers may be bilingual in the sense that they can speak both English and Cantonese, but they, although many of them would not have the courage to admit it, are reluctant to employ Cantonese in the court simply because they have been trained through the medium of the English language and have become accustomed to English as their working language in the legal domain. Likewise, many bilingual Cantonese speakers prefer to use their mother tongue in a court environment because they are not familiar with, and do not have the confidence in using, legal language.

Consecutive interpretation vs Simultaneous interpretation in the courtroom

Under existing arrangements in the Hong Kong courtroom, interpretation is conducted in the consecutive mode

during examination-in-chief, cross-examination and re-examination. The judgement is also interpreted in the consecutive mode for the benefit of the accused and other parties to the trial. Simultaneous interpretation is usually restricted to counsel's submissions, where the interpreter stands next to the accused and translates the submission to the accused. This form of whispering interpretation is also known as dockside interpretation. As consecutive interpreting is generally acknowledged to be more time-consuming, the local judiciary has attempted to introduce the simultaneous mode to all components of court proceedings where interpretation is required. The move, obviously, has been prompted by the thinking guided, or rather misguided, by the accountability argument, that everything the government does should be cost-effective, that every dollar of the taxpayers' money should be well-spent. The question then is: is the introduction of simultaneous interpretation across the board the answer to cost-effectiveness without undermining the administration of justice?

In response to a recommendation by the Panel on Administration of Justice and Legal Services of the legislature, the judicial organ of Hong Kong has run a number of mock trials to gauge the effectiveness of introducing simultaneous interpretation to all aspects of court proceedings. There were two rounds of mock trials. The first, consisting of three mock trials, was conducted in late 1995 and the other, where there was only one mock test, was carried out in mid-1996. Before the first round, court interpreters who would be involved in the mock tests attended a 50-hour tailor-made training course in simultaneous interpretation. As it was considered that simultaneous interpretation might not be suitable for evidence-taking, six actual appeal cases which had been decided were used as they would not involve new evidence. The mock trials were attended by 118 representatives from the judicial bench, the legal profession, academic institutions, the Chinese Language Division and other organizations. Subsequent to the mock trials, a questionnaire survey was conducted among the observers. While about 71% recommended the use of simultaneous interpretation for 'judgement of the court', only about 30% recommended it for 'arguments on law'. To identify the interpretation mistakes and differences in the mock tests, the Judiciary kept a verbatim record of

proceedings in its original languages without translation and a transcription of the corresponding interpretation actually delivered in court. The records and transcripts reveal that the accuracy rate was about 50 to 60% for submissions and 70 to 80% for mitigation.

According to an internal report of the Judiciary, these are the major difficulties in the use of simultaneous interpretation in court proceedings:

(1) In simultaneous interpretation, it is inevitable that there will be discrepancies in the translation, including omissions, wrong translations, inappropriate diction and so forth. These discrepancies are found in the transcripts of the interpretation.

(2) The standard and speed of interpretation varies among interpreters. Different interpreters may choose to interpret the same term slightly differently. As interpreters take turns doing the interpretation, several versions of the same term may emerge in the same trial case. This may lead to 'terminological' confusion.

(3) Unlike consecutive interpretation with which court interpreters are more familiar (the abbreviations bear uncanny resemblance!), a simultaneous interpreter has to follow the pace of the speaker. She cannot control the speed of delivery and, more fatally, she is not given time to correct wrong interpretation even if she realises that she has made a mistake or given a less than full interpretation.

(4) During submissions, there would be exchanges between the judge and counsel and also between counsel. Interpreters involved in the mock tests found it difficult to cope with such situations. In simultaneous interpretation, there is basically no 'role-playing' if there is a rapid exchange of conversation, unless, of course, the interpreter specified whose speech was being translated.

In the 1995 dummy runs, some 66% of the observers recommended the use of simultaneous interpretation for some stages of a court trial, whereas only 19% recommended it for all stages. The conclusion was that the employment of simultaneous interpretation will neither improve nor promote the cause of justice per se.

The 1996 dummy run was intended to continue where the 1995 mock tests had left off, which was to assess the feasibility of applying simultaneous interpretation in the evidence-taking stage of a trial. A High Court

criminal case on drug trafficking was used. The evidence-in-chief, cross examination, counsel's submissions and the judgement were all interpreted in the simultaneous mode. The views expressed by the observers were quite similar to those in the 1995 experiment. The majority recommended the use of simultaneous interpretation for counsel's submissions and the judgement. As for evidence-in-chief and cross examination (and logically re-examination), a surprising 32% of respondents recommended interpretation in the simultaneous mode. The high percentage may be accounted for by the fact that in the mock trial in question, the interpreter was a barrister who had substantial experience in simultaneous interpretation. Small wonder why some of the observers were impressed with her performance and satisfied with the level of accuracy. In reality, one has to admit, that an interpreter with such backgrounds is a rare species. A comment from one observer warrants special mention: it was meaningless to measure level of accuracy in percentage terms because on some important issues, one percentage error would be one too many.

A Judiciary's information paper prepared in January 1997 reveals that because simultaneous interpretation was regarded as an unacceptable mode of interpretation in court proceedings, plans for introducing simultaneous interpretation services and facilities were abandoned.

A preliminary comparison between consecutive interpretation and simultaneous interpretation in the courtroom context

I will now try to compare and summarize the merits and demerits of consecutive interpreting and simultaneous interpreting in the context of courtroom trials.

Other things being equal, we have to admit that a much higher degree of accuracy can be attained with consecutive interpretation than is the case with simultaneous interpretation. Time offers the greatest advantage. The speed of both the interlocution and the interpretation is controlled by the interpreter, whereas in a simultaneous interpretation situation, the interpreter plays a much more passive role when it comes to speed-control. With more time in his hands, the

interpreter can afford to think out his translations, or even correct himself right on the spot. There is no denying the fact that accuracy in court interpretation takes precedence over other considerations, including cost-effectiveness, if justice is to be done and miscarriage of justice to be averted. As the simultaneous interpreter is hard-pressed for time, there is no guarantee of accuracy. The interpretation often turns out to be an approximation, a summary with many details omitted.

In simultaneous interpretation, the interpreter has to translate non-stop. There is no way the interpreter or other parties can check the accuracy of the translation against the original speech (not until after the act and fact, with the help of the transcripts). Quite often, bilingual counsel would point out the discrepancies in the translation when they think the interests of their clients will be compromised as a result. Even if parties to a trial could hear both the original speech and the interpretation at the same time, they would not know which chunk was being translated. I wish to stress at this juncture that the average interpreter operates with a self-checking mechanism and that the extent to which this self-checking mechanism is activated is proportional to the time available for his interpretation. Simultaneous interpretation militates against the activation and activeness of this mechanism.

As I have already pointed out, it is extremely difficult for the interpreter to switch roles in a simultaneous interpretation situation if there is a rapid interchange of conversation between the various parties. She would have to specify whose speech is being translated every time she switches roles, perhaps by saying "I am now translating the witness' testimony", "I am now translating the counsel's question" and so forth. The scenario is simply inconceivable. In the case of consecutive interpretation, the role-switching is clearly demarcated.

In a typical simultaneous interpretation situation (as in contradistinction to whispering simultaneous interpretation), the listeners have to listen to the interpretation through the headphones. Otherwise, there would be a cacophony of noise as the speaker and the interpreter have to speak at the same time. From a linguistic viewpoint, heavy reliance on aural signals

would not be conducive to effective understanding. To have a thorough understanding of the message, one would have to reckon with the paralinguistic features associated with the original speech.

There are other factors which militate against the use of simultaneous interpretation in the courtroom but these are the major ones. To ensure the fairness of a trial and to prevent any miscarriage of justice, the Judiciary of Hong Kong has made the right decision of keeping the status quo, namely, restricting the use of simultaneous interpretation to counsel's submissions.

The sixty-four dollar question then is: why is simultaneous interpretation used or, to be more exact, tolerated in the stage of counsel's submissions, despite all its shortcomings in a courtroom context? I honestly do not know the answer, if there is an answer at all. There are three possible, and perhaps plausible explanations. First, a counsel's submission is essentially a dialogue between the experts, namely, the judge, and other counsel at the trial. It is not intended for the accused, or the defendant and the plaintiff in a civil case. Second, no new evidence will be involved in counsel's submissions. Third, a submission is usually read out at one go. This means that the problems associated with role-switching will be obviated and that its textual integrity makes it amenable to non-stop interpretation, which is simultaneous interpretation.

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