Ethical Implications of Legal Translation:

A Forensic Linguistic Analysis of In-House Interpreters in Legal Settings in Thailand

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Abstract

This research explores the ethical implications of in-house interpreters who are also lawyers, particularly in the context of translating witness statements from everyday language to legal language. In-house interpreters often adjust witness testimony using legal jargon, a practice that may alter the original meaning or intent of the testimony. By applying forensic linguistics methodologies, including qualitative analysis, discourse analysis, and ethnographic observation, this study aims to examine the ethical concerns surrounding such translations and the impact on the fairness of legal proceedings.
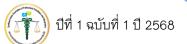
Introduction:

Language plays a central role in the justice system, especially in legal proceedings where accurate and faithful communication is paramount. In Thailand, as in many other countries, interpreters are often required to translate statements made by witnesses during legal proceedings. In some cases, these interpreters are also trained lawyers who have a deep understanding of legal jargon. While their legal expertise can benefit the translation process, it also introduces potential ethical challenges, particularly when they modify a witness's testimony to fit legal language. This research investigates the practice of in-house interpreters who translate witness statements from everyday language into formal legal language, considering the ethical implications of such translations and their impact on the fairness of legal proceedings.

Literature Review:

Forensic linguistics has increasingly focused on the ethical implications of interpreter practices, especially those who may alter or adjust testimony for various reasons. Research has shown that such adjustments, whether intentional or unintentional, can distort the meaning of witness statements and influence the legal process (Berk-Seligson, 2009; Hale, 2007). In-house interpreters, as both lawyers and translators, are particularly susceptible to conflicts of interest, as they may feel compelled to use legal terms to provide clarity or conform to legal expectations. The implications of this dual role require a careful examination of how language adjustments can undermine the accuracy and fairness of the testimony being interpreted.

Research Methodology:

This study employs a mixed-methods approach to analyze the ethical challenges of legal translation in the context of in-house interpreters. The research methodologies include qualitative analysis, corpus linguistics, discourse analysis, and ethnographic observation.

Qualitative Analysis (Case Study Approach):

This method is used to examine real-world examples of legal translations. The study analyzes specific instances where in-house interpreters, acting as both lawyers and interpreters, modify witness statements to include legal terminology. Case studies will be drawn from legal proceedings in Thailand, and the original witness statements will be compared to the translations provided by in-house interpreters.

Corpus Linguistics:

A corpus of legal documents and witness testimonies will be compiled, allowing for an in-depth linguistic analysis. The focus will be on identifying the linguistic shifts from everyday language to legal jargon and understanding how these shifts affect the meaning of the testimony.

Discourse Analysis:

Discourse analysis will be applied to assess how in-house interpreters' legal backgrounds influence the language choices they make. The analysis will focus on the power dynamics in the courtroom and the potential biases of interpreters when translating testimonies.

Ethnographic Methodology:

The researcher will observe the practices of in-house interpreters through participant observation and interviews. By immersing themselves in legal settings, they will gain a deeper understanding of the translator's role and decision-making process, highlighting the ethical dilemmas faced by interpreters in these situations.

Findings:

Case Study Analysis:

The case studies analyzed demonstrate that in-house interpreters often use legal terminology to translate witness testimony, even when the witness used everyday language. For example, one case study revealed that the phrase "He gave me something" was translated as "He transferred possession to me," which adds legal implications not present in the original testimony. In other cases, witness statements that simply mentioned "signing a document" were translated as "executing the document," a term with more formal and legal weight.

These examples suggest that the use of legal jargon by in-house interpreters may distort the original intent of the witness and create misunderstandings that could affect the outcome of the case.

Ethnographic Observations:

Interviews and observations revealed that in-house interpreters often feel pressured to use legal terminology due to their dual roles as interpreters and lawyers. While their legal expertise is valuable, it can lead to unintended bias when translating everyday language into formal legal language. Furthermore, the study found that the interpreters' decisions were sometimes influenced by the interests of the legal team they were working with, which could affect the neutrality of the translation.

Discourse and Corpus Linguistic Analysis:

The corpus analysis highlighted a pattern in which legal terms replaced more neutral words used by witnesses, significantly altering the meaning of their testimony. For instance, "negotiation" and "mutual agreement" were commonly used to translate "talking" and "agreeing," imbuing the statements with a formality that may not reflect the witness's original intent.

Examples of Translation Shifts:

The following examples illustrate how in-house interpreters, who are also lawyers, may modify the language of witnesses by translating everyday speech into formal legal language, which can carry additional legal weight and implications. These examples highlight the potential for altering the meaning of witness testimony, leading to ethical concerns about fairness and accuracy.

Example 1:

> Witness Statement: "แล้วก็เซ็นเอกสาร"
>
> Expected Translation: "And then signed the documents."
>
> Legal Interpreter's Translation: "And then executed the documents."
>
> Back Translation: "And then signed with binding legal effect."
>
> Difference: The term "executed" carries the implication that signing the document results in legal obligations, which may go beyond the intent of the witness.

Example 2:

Witness Statement: "เขาให้ของมา"

Expected Translation: "He gave me something."

Legal Interpreter's Translation: "He transferred possession to me."

Back Translation: "He transferred ownership to me."

Difference: "Transferred possession" is a legal term suggesting an official transfer of ownership, which the witness may not have intended to imply.

Example 3:

Witness Statement: "เราคุยกันแล้วตกลง"

Expected Translation: "We talked and agreed."

Legal Interpreter's Translation: "We negotiated and reached a mutual agreement."

Back Translation: "We negotiated and entered into a formal agreement."

Difference: The terms "negotiated" and "mutual agreement" imply a formal, structured process that may not reflect the informal nature of the conversation as intended by the witness.

Example 4:

Witness Statement: "ฉันยืมเงินเขา"

Expected Translation: "I borrowed money from him."

Legal Interpreter's Translation: "I entered into a loan agreement with him."

Back Translation: "I made a formal loan agreement with him."

Difference: Adding the term "loan agreement" introduces the idea of a formal contract, which may not have been the witness's intention in a more casual borrowing situation.

Example 5:

Witness Statement: "เขาไม่ยอมคืนของ"

Expected Translation: "He wouldn't give the stuff back."

Legal Interpreter's Translation: "He unlawfully withheld the property."

Back Translation: "He unlawfully withheld the property by law."

Difference: "Unlawfully withheld" is a legal term suggesting a criminal act, which the witness may not have intended to accuse the person of.

Discussion:

The findings indicate that in-house interpreters, when translating from everyday language to legal language, may inadvertently or intentionally modify witness statements in ways that compromise the accuracy and fairness of the testimony. This practice raises significant ethical concerns regarding the fidelity of the translation and the impartiality of the interpreter. As interpreters, their primary responsibility is to ensure that the witness's testimony is conveyed faithfully, without the introduction of unnecessary legal jargon that could alter the meaning.

Furthermore, the research suggests that in-house interpreters may experience conflict due to their dual roles as legal professionals and language mediators. While their legal knowledge can improve the quality of the translation, it also increases the likelihood of bias in favor of one party's legal strategy.

Conclusion and Recommendations:

This research highlights the ethical issues surrounding in-house interpreters who translate witness statements from everyday language to legal language. The study calls for clearer ethical guidelines and training programs for interpreters, emphasizing the importance of neutrality and fidelity to the original testimony. Interpreters should focus on accurately conveying the witness's words without introducing legal concepts unless necessary, and legal professionals should be mindful of the potential impact that altered translations can have on the fairness of the legal process.

Future research should explore the effectiveness of training programs aimed at increasing awareness of these issues among in-house interpreters and improving their ability to remain neutral in their translations.

References:

Berk-Seligson, S. (2009). The Bilingual Courtroom: Court Interpreters in the Judicial Process. University of Chicago Press.

Hale, S. (2007). Community Interpreting: A Critical Perspective. Palgrave Macmillan.