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INTERPRETING IN A DIFFERENT LEGAL CULTURE: A STUDY OF CHINESE INTERPRETERS AT ANGEL ISLAND STATION (1910-1940)

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(1910-1940)

A Thesis Presented

by

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CHAPTER 1

CHINESE IMMIGRANTS IN THE UNITED STATES

Despite the similarities between translation studies and interpreting studies, a dichotomy between them has existed for centuries due to their different modes of delivery and final products. Between the two, interpreting studies has received the less scholarly attention; nonetheless, it might actually be a more complex activity inasmuch as it involves face-to-face encounters and oral communication and allows less responses time. Unlike translators with their printed or hand-written texts, interpreters first receive individual voices, with all of their variations in tones, facial expressions, and gestures that accompany them. Instead of texts, which enjoy greater freedom from specific time and places, interpreters work with individual persons who speak and act in accordance with their role in defined relationships. Moreover, interpreters also receive immediate feedback from speakers or audiences.

While translation studies took the so-called "cultural turn," initiated by Susan Bassnett and André Lefevere in 1990s, over a decade had passed before interpreting scholars, such as Michael Cronin, confronted corresponding cultural issues such as class, gender, and ethnicity/racial background (Cronin, 2002: 46). This cultural trend echoes the gender and postcolonial theories that were applied to translation studies; in light of the interpreter's exposure to a myriad of cultural factors within the face-to-face, bilingual encounter, the "cultural turn" should open new doors to researchers, allowing to them to reconsider cognitive or physiological factors of the interpreting activity and offering them with new perspective, from which they can

combine their research with current translation studies investigations.

Thanks to this disciplinary shift, the study of conference interpreting studies, having long dominant scholarship in the field of interpreting, is being supplanted by the study of situations more rich in cultural connotations, such as medical and legal interpreting. The latter is even more difficult than the former to render because of its highly regulated courtroom contexts, the differences between legal systems, and the "hidden agendas often associated with lawsuit" (Mikkelson, 2000: 2). According to Roseann Dueñas González, legal interpretation "refers to interpretation that takes place in a legal setting such as a courtroom or an attorney's office, wherein some proceeding or activity related to law is conducted" (1991: 25). She further distinguishes between quasi-judicial and judicial interpreting (i. e. court interpreting), according to the settings. Quasi-judicial interpreting encompasses all "out-of court" (extra-judicial) interpreting situations, such as interviews and hearings that have some degree of impact on court proceedings; judicial interpreting refers specifically to in-court proceedings, such as arraignment, bail hearings, and sentencing (1991:25). In recent years, legal interpreting has seen a rapid development in the world due to the increase in international business and tourism as well as constant, large-scale population movements as refugee and emigrants who seek legal status in foreign nations. Due to the difference between the legal traditions and judicial systems from one culture to another, researchers of legal institutions in different cultural and national contexts have not yet to reach a consensus regarding the standard or principles that govern cross-cultural legal encounters involving interpreting. As Holly

Mikkelson observes in her book, *Introduction to Court Interpreting*:

> Standards for what must be interpreted vary from one country to the next. ... In some courts, the interpreter merely provides a consecutive interpretation of the judge's summary of the proceedings after they have concluded. Often there are no guidelines for interpreters, who are left to determine for themselves what the defendant or witness should hear. In countries where defense counsels are allowed to act as interpreters, it is obvious that the defendant will receive only a summary interpretation at best (Mikkelson, 2000: 3).

As for the problem of bridging cultural and social gaps in legal settings, researchers' views differ. González's voice leads the mainstream of American legal interpreting scholars in advocating strict adherence to the original linguistic features and limiting interpreters' intervention, such as explanation or clarification of culturally-rooted misunderstandings-on the part of the interpreter. The interpreter, cast in this role, is merely a "language specialist," rather than "an anthropologist, a linguist, or a psychologist," and thus should not volunteer or be consulted as "an expert on the non-English-speakers' language or culture" (González, 1990: 502). This school of thought emphasizes the legal equivalence, namely "a linguistically true and legally appropriate interpretation of statements spoken or read in court, from the second language into English or vice versa" (González, 1989:7, qtd. in González, 1990: 16), which is to be achieved through verbatim interpreting and conservation of all linguistic and paralinguistic elements. In other words, court interpreting should provide limited- or non-English-speaking defendants or witnesses with language rights equivalent to English speakers in order that they be able to hear everything said in courts, instead of an adjusted or adapted rendition that simplifies or clarifies legal terms or situation for the benefit of these language minorities.

On the other hand, another school of thought, which finds its leading spokesperson in Rosemary H. Moeketsi, contends that redefining the court interpreters' role is necessary when there is a significant division between the participants' respective forms of discourse as based on racial, educational, economic, and linguistic differences (1999: 3-4). Without this accommodation, interpretation that is exclusively language-based inhibits these language minorities who may lack foreknowledge of the legal system in which they find themselves as well as adequate education to understand the sophisticated legal terminology coming from English. They thus find themselves both incapable of following court proceedings and without the equal legal rights to which they are entitled. Instead of refraining from "usurping" the attorneys' roles, Moeketsi's school supports the practice of "interpreters' intervention," which can take the form of explaining the legal system before beginning to interpret formally. This explanation serves those on the lower end of a "tremendous disparity in the level of sophistication of legal professionals and laypersons, many of whom are illiterate and have no legal counsel" (Mikkelson, 2000: 3). Pre-existent ethical and professional principles, such as strict linguistic equivalence in interpretation, the restriction of all modification or adaptations in order to avoid conflicts of interest and to maintain impartiality, are considered by overly idealist and unachievable.

As the above discussion demonstrates, the behavior of interpreters with regard to cultural issues in legal settings continues to be controversial and problematic. Interpreters struggle to maintain neutrality when they perceive cultural

misunderstandings in legal proceedings; furthermore, there exists the danger that certain cultural issues, for example gender, race, class, and legal customs, may go unaddressed by interpreters, thus confusing and misleading judges, jurors, or attorneys. Opportunities for clarification of such misunderstandings may not only be lost as interpreters adhere to strict linguistic transmission of information but may not be detected and brought to the attention of relevant experts. For that reason, understanding the culture issues related to legal interpreting would serve not only to supplement the interpreters' repertoire of skills but also would facilitate social justice and equality for language minorities.

Chinese Immigrants in the United States

Legal interpreting in the United States developed in conjunction with immigration itself. As a symbol of freedom and wealth, the United States has attracted millions immigrants per year from every corner of the world. Since the early seventeenth century, Scotch-Irish, African, Jews, Slavs, Greeks, Italian, Armenians, Chinese, Japanese, and other peoples with varied languages and diversified cultural backgrounds have converged on the North American continent and engendered a uniquely inclusive American culture. Some of these immigrants, particularly those who speak English and follow Anglo-American customs, have assimilated into the American society; others, still representing a large number, adhere to their mother tongues and to the cultures of the homelands. The latter, like immigrants who have arrived more recently and have yet to assimilate, creates pressure on the United

States' justice system, where legal proceedings are carried out in English.

Immigrants' struggles in terms of education, employment, and social life were all factors in the Civil Rights Movements of the 1950s and 1960s, paving the way for the realization of equal right for language minorities in American courts. The 1978 Court Interpreter Act provided non-English speakers with a guarantee of the right to a competent interpreter; this ground-breaking law was followed by the Court Interpreters Amendments Act 1988 and Interim Court Interpreter Regulations of 1989, addressing, respectively, the problems of uncertified interpreters in courtrooms and the guidelines for evaluation for those uncertified, professional qualified (PQ) and language skilled (LS) interpreters (González, 1991: 67-69).

As this thesis only discusses one language and culture pair, namely English and Chinese, its attention focuses on Chinese immigrants, arriving first in the United States as early as in the eighteenth century. The first Chinese immigrants to this nation on record were the three unfortunate seamen left by the ship *Pallas* on August 9, 1785 (Chinn, 1966:3-5). Since then, the influx of Chinese has continued, despite the long journey. In comparison to emigrants from other nations who have assimilated more easily, the Chinese have struggled for acceptance in American society.

The first major wave of Chinese immigrants coincided with the Californian Gold Rush in 1849. According to legend, news that gold had been found in the Sacramento River reached even the most remote Chinese villages in the form of rumors that nuggets of gold were strewn on the ground, available for the taking (Hoobler, 1994: 11). Under the rule of Qing government, China was suffering from

the famine brought by periodic floods and political turmoil, both foreign and domestic, namely the Opium Wars (1839-42 and 1856-60) with the Western countries and the Taiping Rebellion (1850-64) initiated by oppressed peasants. In such a situation, Chinese readily emigrated with the hope of finding wealth abroad. Upon these historical factors are based three of the significant characteristics of early Chinese immigrants; these factors, furthermore, are inextricable from the complications of interpreting for these immigrants. The first is that the majority (95%) of the Chinese who arrived during the first wave of immigration came from Pearl River Delta region, the current Guangdong province (Hoobler, 1994: 9).Reasons for this include the Qing government's historically "closed door" policy and the Pearl River Delta's geographic proximity to Hong Kong, which after the Opium War (1840) became a British Colony and consequently a port from which Chinese could board ships bound for the United States. The predominance of this emigrant group meant that dialects of Cantonese became the necessary varieties of Chinese in terms of immigration interpreting. Thomas W. Chinn cites that the overwhelming majority of early Chinese immigrants in the United States spoke at least one (if not more) of three varieties of Cantonese dialects (in order of importance): (1) the Sze Yup (Si Yu) local dialect (including four district variations: Sunwui, Sunning, Toishan, and Yamping); (2) Standard Cantonese, as spoken in Canton (current Guangzhou) and Hong Kong; or (3) the Chungshan local dialect (1969: 4). Given the discrepancies of pronunciation between dialects and the tendency of each dialect to sub-divide, the task of identifying Chinese-speakers' dialects and assigning appropriate interpreters, arduous tasks even for today's

American agencies, were extremely challenging for nineteenth-century immigration officials, who knew little of the Chinese language.

The second characteristic is the generally low social status, and corresponding low literacy rate of early Chinese immigrants. Most immigrants were peasants who were incapable of feeding their families and required loans to purchase passages to the United States. A small number of them were merchants who made, at first, a positive impression on local Americans. As one elderly resident in San Francisco, California recalled, "[I]n the fall of 1894 the Chinese in San Francisco numbered several hundred. They were not laborers who came; not of the coolie class at least. Very few of them went into the mining district...Most of the Chinese who came here were men of means enough to pay their own way and here they mainly embarked in mercantiles or trading pursuits [...] in 1849 [...] no Chinaman was seen as a common laborer [...]" (O'Meara, 1884: 477-81). However, unlike in the United States, merchants had long been oppressed and despised by Chinese society, a trend that emerged from thousands of years' Confucian morality that condemned profit-oriented activity. As both merchants and peasants lacked access to education in the nineteenth century in China, their difficulties in adapting to a new legal setting and in following the English-based legal proceedings in English, even with interpreters' assistance, are easy to imagine.

The third feature is the unbalanced gender of early Chinese immigrants. According to the United States' immigration records, there were only 2 Chinese women, in contrast to the 787 Chinese men, entering this nation in 1850 (Bancroft,

1890: 336). There are various reasons for this exclusion of female immigrants, including the high expense of keeping a family in the United States, the traditional women's role of caring for children, and serving their parent-in-laws at home, and the desire of giving wives and daughters a Chinese education (Chan, 1990: 95-6). The phenomenon of a "bachelor society" in Chinese communities in the Unites States continued for a long time. Even in 1920, Chinese females only comprised 12.6 percent of the Chinese population in the United States, which only increased to 30 percent in 1940 (Chan, 1990: 94). But what really matters for the topic of legal interpreting in this thesis is the prejudice against the few Chinese female immigrants, who were invariably viewed by the whites as prostitutes in the United States. In 1854, there was a report made by a municipal committee visiting Chinatown in San Francisco stating that most of the women there were prostitutes; for a long time the attitudes of the American public as well the government had toward female Chinese immigrants were tainted (Chan, 1990: 97), thus jeopardizing the immigration applications by other Chinese women who were not prostitutes but who were coming to meet their husbands in the United States. These Chinese women might be looked at prejudicially by the American public as well as the judicial system.

Protected by the 1868 treaty between China and the United States, namely the Burlingame Treaty, Chinese people could migrate to the United States freely, although they had no chances of becoming "naturalized citizens" because they did not belong to the white race according to a federal law passed in 1790 (Hoobler, 1994: 35-6). This treaty spurred the coming of the second wave of Chinese immigrants, bringing

the Chinese population in the United States to 100,000 people in 1880 (Hoobler, 1994: 35-6) and providing significant labor resources for the development of this country, especially during the construction of the Central Pacific Railroad, where "approximately 15,000 Chinese were hired when the railroad stretched into the western frontier" (American Immigration Law Foundation, 2005). At the same time, the animosity in American society toward Chinese immigrants increased because of this large influx of cheap labor, especially when the nation was experiencing a depression in the mid-1870s. The augmented anti-Chinese feelings and frequent riots between Chinese and American communities finally led to the 1882 Chinese Exclusion Act, prohibiting the immigration of all Chinese except students, merchants, merchants' family, tourists, diplomats, and those "permanent residents." Because of this 1882 Act, every Chinese person coming to the United States was interrogated in immigration or custom stations by American immigration officers in order to prove their non-excluded status. This Act almost prohibited the coming of Chinese labor for two decades until 1906, when an earthquake struck San Francisco, California. The fire following this earthquake devastated all government birth records, opening one door for incoming Chinese to be exempted from the 1882 Exclusion Act. Since people born in the United States automatically became American citizens who were entitled to bring their family members to the United States, many Chinese "permanent residents" claimed to be native born after the fire in San Francisco in order to bring in other Chinese, who usually paid a certain amount of money for false birth papers to be "paper sons" of these "native born" Chinese American citizens (Hoobler, 1994: 36-7).

This "paper son" strategy quickly drew the attention of immigration officials, thus making the screening of Chinese immigrants even stricter. The way of bringing their wives to the nation by Chinese immigrants was again blocked by a new federal law in 1924, "barring aliens ineligible for citizenship from entering the country, including the Chinese-born wives of Chinese American citizen" (Hoobler, 1994: 36-7).

In 1943, when the Chinese Exclusion Act was finally repealed, Chinese immigrants were finally allowed to bring over their family members from China, although there was a quota of only 105 every year, which was later relaxed for Chinese American soldiers who once served in World War II to bring in their wives. Chinese students, who were still in America when the Sino-American relationship was threatened by the new communist government in China in 1949 and the Korean War in 1950s, were also allowed to stay. Although the 1964 Immigration and Nationality Act led to a new quota system allowing up to 20,000 new immigrants from any country, before the formal diplomatic relationship was established between the People's Republic of China and the American government in 1979, most new Chinese immigrants came from Hong Kong, Taiwan, or other southern regions, thus continuing the dominant position of Cantonese among Chinese in the United States.

The 1979 "Reform" and "Opening-up" policy in mainland China unlocked the bar on Chinese immigration to the United States and started the first wave of government-funded education programs for Chinese students in the United States since the founding of the People's Republic of China. From then on, Chinese immigrants from mainland China started to tremendously change the features of the

Chinese population in the United States. One consequence is that the dominant place Cantonese occupied was gradually replaced by Mandarin, the official language new immigrants spoke in mainland China, which is partly because of these new immigrants outnumbered those speaking Cantonese, from Hong Kong and other areas, and partly because of the popularity of Mandarin education in mainland China. According to the report of *Singtao Daily* (American Version), the statistical data (published on August 15, 2005) from U. S. Citizenship and Immigration Services during 2004 fiscal year indicates that among the 64,000 Chinese immigrants who were granted citizenship in 2004, people from mainland China accounted for 80%, reaching 51,000. (Latenight News, 2005)

Another factor concerns the two extremes of literacy levels of new immigrants in the United States. On the one hand, since 1979 most Chinese coming to the United States through legal avenues have college degrees, urban cultural backgrounds, and a certain degree of English education. They have also been supported by the Chinese government, American universities, or their own families. These newly arrived Chinese are mostly students pursuing higher degrees, scholars participating in international research or exchanges, and entrepreneurs looking for business opportunities in the United States. The 1995 statistics from the Institute of International Education in New York City show that compared with other countries in East Asia, more students from mainland China in the United States are in graduate schools and in advanced science field, with an undergraduate to graduate ratio of 15:82, compared to 34: 61 for Taiwan, 72:18 for Japan, and 44: 46 for Korea (Wang,

1996).[1] On the other hand, with a relatively relaxed domestic political environment and the continuing poverty of Chinese peasants in the budding marketing economy in China, an increasing number of illegal Chinese immigrants from Fujian, a province situated along China's southeastern coast, who were attracted by the comparatively much higher salaries in the United States, were smuggled into the nation in the 1990s. Most of them are from Minjiang Golden Delta, especially from Fuqing, Changle, and Lianjiang counties in this region, where they worked hard everyday in the fields but had little income. The situation that the first lot of illegal Chinese immigrants received political protection from American government and earned enough money to send some back home greatly encouraged their townsmen to follow suit. According to the report published by the American Immigration Department on January 31, 2003, through January 2000 there were 7,000,000 illegal immigrants in the United States, while the majority of illegal Chinese immigrants were from Changle, Fujian Province, reaching 200,000. Unlike those students pursuing advanced degrees here, these illegal immigrants usually did not have a formal education and had to work illegally in Chinese restaurants, laundries, and other industries in Chinese communities.

At the same time, the illegal status of these Chinese immigrants not only jeopardized their own civil rights in the United States, but also affected the mainstream of legal interpreting practice for Chinese immigrants in the United States. As the report on the investigation of immigrants in the United States issued by the U.S. Immigration Study Center indicates, Chinese immigrants are ranked as the second

[1] These numbers might not include high school students in some countries.

fastest growing immigrant group in America, just after Mexican immigrants. In the past four years (2000-2004), 307,000 legal Chinese immigrants arrived in the United States, making the current Chinese population in this nation nearly 2,000,000. Although the reliability of these numbers has been questioned by other scholars, the records of the requests of Chinese court interpreters at least give some clues to readers. In New Jersey's *Interpreting Workload Statistics in Court Year 2000-2001* (New Jersey Judicial, 2001), Chinese court interpreting ranked No. 5 (567 Mandarin and 151 Cantonese) among foreign languages used in American courts, following Spanish (57,951), Polish (1,093), Portuguese (884), and Korean (799). However, in one article published in the Newsletter of the Federal Courts on February 2005, "Court Interpreters Feel Impact of Illegal Immigration Caseload," Chinese is said to be the second most used language for interpreters in the Federal Courts in fiscal year 2004 (with 1114 Mandarin requests and 676 Cantonese), followed by Arabic (1,028), Russian (893), Vietnamese (839), Portuguese (676), Korean (641), French (501), and Haitian Creole (378) (U. S. Court Office of Public Affairs, 2005). The different rankings of court requests for Chinese may be related to the uneven distribution of Chinese population in the United States, but these data are enough to prove the necessity and the significance of studies on Chinese legal interpreting in this nation.

Facing the recent trend of increased Chinese immigration to the United States, combined with the complicated domestic and international political situations the United States is currently facing, such as the consequences of the September 11, 2001 terrorist attack, the Iraq War, as well as the new Sino-American visa agreement and

diplomatic dialogue, the American government is trying a variety of strategies to control the immigration situation: illegal Chinese immigrants should be prohibited to enter the United States, but the illegal children under 18 have to be educated and properly protected; Chinese students and scholars with sensitive research fields should be carefully admitted and controlled, but the market for Chinese international students has to be well protected from other Western countries; Chinese from mainland China asking for political asylum should be protected for political purposes, but a good diplomatic relationship has to be maintained for the economic and military considerations. All these factors, inherited from the past or emerging recently, result in a complicated situation for Chinese immigrants' lives in the United States. Their legal status, social status, oriental traditions, and customs form the main topic of this thesis. This thesis supports the cultural turn in interpreting studies (Cronin, 2002: 46), arguing that interpreting is deeply involved in the negotiation between groups with differing degrees of power.

Topics of Thesis

My thesis takes a closer look at the legal interpreting provided for Chinese immigrants in the United States, with a case study of interpreting at Angel Island Station (1910-1940), where early Chinese immigrants, through the help of interpreters, were interrogated by immigration officers before they were allowed to enter the United States. Through Chinese interpreters, every Chinese immigrant, regardless of age or gender, experienced those detailed and stressful questionings. The introductory

chapter provides an overview of the definition and history of legal interpreting, especially court interpreting, in America. I also present an overview of recent research in interpreting studies. Because of the strictly controlled legal context in court interpreting, researchers in different countries have not yet reached a consensus on the standards for these trans-cultural legal interpreting nor on the identity and role of court interpreters. Two schools of thought regarding court interpreting studies, with different arguments on interpreters' professional ethics, represented respectively by Roseann Dueñas González and Rosemary M. H. Moeketsi, will be looked at in this chapter.

Before the discussion about the situation and problems facing Chinese legal interpreters at Angel Island Station, this thesis pinpoints the salient features of traditional Chinese legal culture, and highlights the corresponding problems that Chinese immigrants, American judges, and court employees encountered as well as the implications of these problems for legal interpreting studies. For example, I show in this chapter that Chinese immigrants are suspicious of all law enforcement, personnel and use every effort to avoid involvement with legal proceedings, because they have been educated by the principles of Confucius, which state that "no litigation is a virtue." For them, being tolerant and sacrificing one's own benefits is the proper form of behavior. However, when these Chinese immigrants have to face legal issues when they set foot in the United States, they have a long established mistrust of judicial officials, including of those interpreters working between them and those court officials. This situation is related to the fact that in Chinese legal culture,

judicial power is more flexible and usually corrupt, as some well-known Chinese sayings indicate: "Officials will only protect officials (Guan Guan Xiang Hu.);" [2] "Walking along the river everyday will easily make one's shoes wet (Chang Zai Hebian Zou, Nayou Bu Shixie);"[3] "If one is not harsh enough to the public, he cannot be an official; if one does not accept bribes, he is not a real official (Wu Du Bu Guan, Wu Guan Bu Tan)." More importantly, in American legal settings, Chinese immigrants behave according to their social status and gender as expected in Chinese legal culture, such as lowering their eyes and restraining their body movements, showing obedience and powerlessness, or keeping silent and modest. This form of behavior easily confuses Americans, who believe an innocent person should act naturally on an equal footing with others. These paralinguistic differences between the expectations in American and Chinese legal cultures, plus the linguistic problems in the legal interpreting between Chinese and English, constitute many communication barriers for both Chinese immigrants and American judicial officials, who have to resort to the help from interpreters, the only people who might understand the whole situation, but who are constrained from addressing complicated cultural problems during their interpreting because of their professional ethics or regulations.

Cases involving legal interpreting for Chinese immigrants and my personal experience providing language services for the investigation of immigrants' cases will be referred in this chapter. Although the social and legal situations current Chinese

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[2] All translations, unless otherwise noted, are mine.

[3] This saying is used to indicate that no matter how righteous an official is, he will finally fail in resisting bribery.

immigrants encounter are much different from those earlier, legal interpreting, especially for Chinese, is less accentuated than for Spanish. These cases echo and reinforce the cultural and linguistic problems discussed in Chapter Two and further demonstrate the need for more developed cultural interpreting and regulated professional certification and practice.

As will become obvious in the next chapter, the legal interpreting provided for Chinese immigrants at Angel Island Station occupies a significant position in both Chinese immigration history and the Chinese legal interpreting history in the United States. Before the establishment of Angel Island Station, there have been records showing that Chinese interpreters had worked in American courts as early as 1878.[4] Yet the fact that a total of 175,000 Chinese immigrants were interrogated at Angel Island for a period lasting as long as 30 years, well into the early twentieth century (another 30 years before the 1978 Court Interpreting Act), makes careful research on this topic undeniably important and valuable to legal interpreting studies.

Early in the twentieth century, neither immigration officers who hired Chinese legal interpreters nor people who worked as Chinese interpreters at Angel Island Station had adequate knowledge about what language and professional skills a legal interpreter should possess, especially when they were facing immigrants from oriental cultures and legal systems. However, several Chinese interpreters were hired to work with immigration officers in every aspect at Angel Island Station, including reception,

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[4] Mr. Charles T. Jones, a District Attorney of Sacramento County, testifies that he once employed a Chinese interpreter, Ah Quong, in court. The interpreter was threatened and killed because of his work. More information can be found in *Chinese Immigration: Its Social, Moral, and Political Effect.* (Report to the California State Senate of its Special Committee on Chinese Immigration), 1878, Sacramento: State Office: F.P. Thompso, Supt. State Printing.

physical examinations, interrogation, literacy tests, and detainment. The interpreters' language skills were challenged by the immigrants' varied dialects. A national evaluation of each Chinese interpreter serving in main immigration stations in the early twentieth century in this country would reveal a picture of the Chinese interpreters' situation at Angel Island. However, besides the language problems Chinese legal interpreters encountered at Angel Island Station, there was also much misunderstanding, mistrust, and hatred among interpreters, immigrants, and immigration officers due to different cultures and legal systems, which in turn affected the interpreters' efficiency. The fact that the whole process was situated in a special historical moment when Chinese immigrants were excluded from and discriminated against by American society, the Chinese legal interpreting at Angel Island provides a valuable topic for scholars to see different cultural systems work in the context of interpreting for immigrants in legal settings.

As the conclusion of this thesis, I discuss whether legal interpreters should be a messenger or a cultural broker, and in each case show how far they can go within legal settings. After all, the basic spirit in American legal system is to provide justice and equality to every person. When one's education or cultural background affects the continuation of this spirit, either the interpreters' or judiciary officials' work, no matter how accurate, becomes insignificant. In this chapter, my thesis looks at court interpreters' professional guidelines as well as at the current federal certification exam for court interpreters, although it is written mainly for Spanish interpreters. I analyze the officially desired court interpreter behavior concerning cultural issues during legal

interpreting, point out potential cultural problems, and propose possible solutions for Chinese legal interpreters while working with Chinese immigrants in the United States. With the development of globalization and the increasing official, commercial, and academic communication between these two countries, there will be more requests of Chinese legal interpreting in the future. The author sincerely hopes that this thesis will not only help Chinese legal interpreters and Americans to work more efficiently with Chinese immigrants, but also improve the delivery of justice and equality to those immigrants who come to this country with their dreams of democracy and freedom.

Theoretical Framework

This thesis starts from Michael Cronin's groundbreaking paper, "The Empire Talks Back: Orality, Heteronomy and the Cultural Turn in Interpreting Studies" (2003), appeals for a "cultural turn" in interpreting studies. Cronin reviews sociologist R. Bruce W. Anderson's essay "Perspectives on the Role of the Interpreter" (1976), which observed an exploitation in the arena of interaction (political, military, academic, and religious) and a level of tension in interpreting practice. The ethnic groups' attitudes and prestige towards languages spoken and interpreters was a significant factor in the interpreting process, thus opening up a whole range of questions and issues related to anthropology, ethnography, power, gender, and politics in interpreting studies (Anderson, 1976: 208-28, qtd. in Cronin, 2003: 52-3). In this paper, Cronin criticizes the bias within interpreting studies, with its recurrent priority

given to conference interpreting, which de-politizes and minimizes context factors, and risks building interpreting studies on over-controlled experimental studies. To him, interpreters are "those that cross linguistic and cultural boundaries; depending on the identity of the interpreter and the nature of the context, interpreters cross boundaries of gender, class, nationality, or ethnicity" (Cronin, 2003: 53). With the example of the admired and loathed interpreter, Malinche, in the *Lienzo de Tlaxacala*, whose language and culture abilities made her a "herald of the cultural hybrid societies of the future" (Bowen et al. 1995: 262 qtd. in Cronin, 2003: 55) and a "mother of a bastard race of mestizos and a traitress to her country" (Mirandé and Enríquez 1979:24 qtd. in Cronin, 2003: 55), he further accentuates the social and anthropological role of interpreters and the ambivalent perception by their natives, arguing for "a more materialist, politically self-aware approach to interpreting studies" (Cronin, 2003: 46).

The theory of powerful and powerless speech in court testimony established by William M. O'Barr and the linguistic pragmatic study by Susan Berk-Seligson on bilingual court provide a further theoretical basis for this thesis. In his book, *Linguistic Evidence: Language, Power, and Strategy in the Courtroom* (1990), O'Barr openly questions the widely accepted sense of justice, and the cultural values on which it is based, and claims that in the American justice system, "settlements depending on verbal means similarly favor people who are either on their own or through their advocates most able to manipulate words" (1982: 11). Based on Robin Lakoff's study of women's powerless speech in his book *Language and Woman's Place* (1975), O'Barr (1982:61-87) proposed five features of powerless testimony in

court, namely, intensifiers, hedges, hesitation forms, polite forms, and witnesses asking the attorney questions. These features, pursuant to O'Barr's research, are more often used by persons of a low social order than others in court, which directly affect the credibility of the speakers' testimony. His research on a wide variety of trial tactics manuals also brings out more linguistic issues in court testimony, including narrative versus fragmented testimony styles, hypercorrect testimony style, interruptions and simultaneous speech. These styles of speaking reflect speakers' social prestige and ethnic identities and are easily controlled and manipulated by lawyers and interpreters to affect judges' and jurors' decisions. Based upon this theory, I suggest that Chinese immigrants' negative linguistic and paralinguistic reactions to the court may be better explained by their impression of class privilege in traditional Chinese legal culture and their lower social status in America.

Susan Berk-Seligson applied O'Barr's theory to her timely court interpreting studies. In her book *The Bilingual Courtroom* (1990), she demonstrates that interpreters can easily affect the verbal outcome of lawyers' questions and witnesses' or defendants' answer, as she notes:

> In a variety of ways the interpreter will be seen to interact with the key verbal participants in the courtroom, and often through no fault of her own, interferes with the attempts of examiners to get out their questions in the way that they want to, and the efforts of testifying witnesses or defendants to formulate their replies as they would wish to.
> (Berk-Seligson, 1990: 25)

In order to show the ways in which interpreters can intervene and control to achieve a particular pragmatic effect, Berk-Seligson further analyzes the verb form and blame avoidance in Spanish, including ergativity, agentless passive, and impersonal

constructions. By extensive interviews of interpreters and observation of their linguistic strategies, she argues that interpreters can usurp some of the controlling power held by lawyers and manipulate defendants' or witnesses' verbal or nonverbal behavior for a variety of psychological reasons (Berk-Seligson, 1990: 118). Therefore, remaining neutral and restraining from any distortions in legal interpreting become key factors for every interpreter in court. However, when interpreters are situated between two parties representing two completely different legal cultures, the full conservation of each party's speech will be difficult to realize because of different expectations from both sides. Discussion of this difficulty and interpreters' corresponding strategies will be further carried out in this thesis.

Furthermore, continuing the topic of understanding different legal cultures in legal interpreting for Chinese immigrants, I also look at Ruth Morris's research on the issue of power in court interpreting and court interpreter's role. Morris reviews the history of language dominance in court and points out the negative attitude held by the court to language minorities and interpreters. As she indicates, some judicial participants still believe that "language-switching is necessarily unreliable and distorts the legal process by enabling rules of evidence to be broken and making it impossible to assess the demeanour of witnesses" (Morris, 1993: 266-7). Combined with Arlene M. Kelly's 1999 survey of 100 court employees and interpreting related people in her paper "Cultural Parameters for Interpreters in the Courtroom" (1990), I analyze the "crisis" in control of the court due to interpreters' presence and the narrow space for interpreters' dynamic role as a cultural broker. Pragmatic studies on community

interpreting for immigrants will be briefly touched upon in the last chapter in order to provide a view for the future training of legal interpreters, who are expected to have both cultural competency and communication skills in legal settings. Sandra Hale's (1995) theory of pragmatic interpreting studies and Diana Abraham's and Melanie Oda's (1998) cultural/community interpreting training project will respectively be analyzed. Hale develops Berk-Seligon's pragmatic consideration of court interpreters' usage of polite forms, register, and styles and furthers her studies to the converting the pragmatic force from the source language (SL) to the target language (TL). She observes that "interpreters are required to understand the pragmatic meaning of the SL utterance and then convert it into the TL in a way that conveys the assumptions and implications intended in the original" (Hale, 1995: 203). Abraham's and Oda's project aims to train cultural/community interpreters working in a domestic violence court. The unique perspective of designing interpreters' cultural competence and skills within a combination of community and court interpreting provides an important base for reflection on Federal Court Interpreter Certification Examination (FCICE) in this thesis.

CHAPTER 2

INTERPRETING TRADITIONAL CHINESE LEGAL CULTURE

The statement that translation and interpreting studies cannot be carried out in a cultural vacuum has almost become a platitude, but its very obviousness in no way diminishes its truth. Correctly understanding and expressing different traditions and cultural psychologies is extremely important for interpreters' effective work, especially when such understanding is situated in legal interactions with certain degree of tension. Although China has been known in the world for its nearly two thousand year imperial history and dominant Confucian ideology, its well-documented legal tradition, which dates from the second century B. C. E., has not been touched upon by most translation studies scholars. This pre-modern legal tradition, with a series of basic legal ideas, survived many centuries of development with little changes and continues to influence most Chinese legal perception and behaviors as well as judiciary decisions in modern Chinese society. Therefore an insight into this traditional Chinese legal culture is essential for studies of legal interpreting for Chinese early and present immigrants.

The Confucianization of Law

An obvious feature of Chinese history and society is the nation's tenacious resistance to disintegration, which has accomplished the remarkable feat of uniting into one society a large population and a wide territory despite a spate of minorities

and dialects. Chinese governors throughout the many vicissitudes of their history learned to keep their benevolence and tyranny at balance, because in "such a vast land, with such a great number of people, no government could survive without the goodwill of the masses" (Bhatia, 1974: 4). This balance, reflected as a Confucianized legal system, was the result of a series of debates between the Confucianists and the Legalists about the supreme authority of governance at the formative stage of the Chinese empire.

Confucius developed a set of moral values in the sixth century B. C. mainly from early Chou rulers and their deeds, which were emphasized and developed by Mencius and Xun Zi. The core idea that the Confucian school held was to set up *li* (a series of proper rites and ceremony), educating and guiding people morally rather than by penal laws. For them, the good behavior and manners of governors formed the origin of law and set examples for the public to follow, and thus a harmonious social order could be created and maintained. Therefore, "*de* (virtue)" and "*ren* (benevolence)" became the most commonly used expressions by Confucians. Education, persuasion, and cultivation were the means Confucians preferred and expected from Chinese governors. As Confucius stated:

> 道之以政，齐之以刑，民免而无耻；道之以德，齐之以礼，有耻且格。(Lead the people by regulations, keep them in order by punishments, and they will flee from you and lose all self-respect. But lead them by virtue and keep them in order by established morality, and they will keep their self-respect and come to you).[5]

The legalists, mainly supported by Shang Yang and Han Fei Zi, insisted that heavy punishments were the only effective way to prevent people from committing

[5] Confucius, in *The Analects of Confucius*, II, 3, translated by Arthur Waley.

offenses, thereby making later recourse to punishment unnecessary. According to Shang Yang, "regard for the six lice (that is, care for old age, living with others, beauty, love, ambition, and virtuous conduct)" or the "ten evils (that is rites, music, odes, history, virtue, moral culture, filial piety, brotherly duty, integrity, and sophistry)" allows people too much latitude, undermines the principle of law and will ruin the state (Duyvendak, 1963:197-9 qtd. in MacCormack, 1996: 4). Han Feizi claimed a more hostile attitude to the moral values advocated by Confucians and regarded love and mercy as defective means of governance.

The spirit of legalists was greatly admired and adopted by the Chin State and Chin Empire, where severe punishments were imposed equally on every one without distinction, between kindred and strangers, the noble and the humble. However, the fall of the short-lived Chin dynasty brought an end to the domination of legalism in China. Legalism was replaced by Confucianism, which became the prevailing code with the beginning of the Han Dynasty in 206 B. C. The eclipse of Legalism and the rise of Confucianism were gradual and by no means absolute. In fact, Legalism continued to affect political and economical life in Chinese society and was used to reinforce a feudal social order held by Confucianism. Ju Tongzu's (T'ung-Tsu Chu) theory of the "Confucianization of Chinese Law" clarified how *fa* (law) was combined with *li* and music, providing the basic means of the Confucians to supplement virtue and moral influence in the Han and following dynasties. As Liu Xiang, a Han Confucianist, pointed out: "且教化，所恃以为治也，刑法所以助治也。今废所恃而独立其所助，非所以致太平也 (Moral influence is the means of

governing, and punishment is used to help in governing. Now to abolish the means and to set forth the help alone is not the way to reach peace)."[6] After the Han dynasty, the connection between *fa* and *li* was more apparent in all Chinese legislations of various subsequent dynasties. Confucian concepts usurped the equality and justice promoted by legalism and made *li* the basis of law. For example, the strongly stressed filial piety in Confucius permitted parents' concealment of his sons' crimes and the law did not ask that a man's children had to bear witness against him. According to *li*, no children were allowed to charge their parents or to "live under the same sky as his father's enemy," so that blood revenges were often pardoned in legal practice (Ju, 1961: 278). As Ju Tongzu stated at the end of his book, *Law and Society in Traditional China*: "What was approved by *li* was thus also approved by law and considered as legal; and what was not tolerated and was tabooed by *li* was also prohibited and punished by law" (1961: 279). These Confucian concepts, to a large extent, shaped the traditional Chinese legislations and popular responses to the law. Some of these reshaped ideas are closely related to legal interpreting for Chinese immigrants and will be discussed further in the following sections.

Legal Rights and Responsibilities

The underlying principle of Confucian orthodoxy is the attempt to secure a social harmony through the exercise of kindness, protection, and benevolence by the superiors and of respect and submission by inferiors, thus maintaining fundamental

[6] Ban Gu, in *Han Shu*, Vol 22, translated and quoted by Ju Tongzu in *Law and Society in Traditional China*, p272.

family and social hierarchies. This reciprocity of obligations was soon reduced in practice to the emphasis on the duty of respect and submission by the junior. *fa* (law) in traditional Chinese society became a powerful tool for enforcing these obligations and maintaining social hierarchy, one which was frequently mentioned with *xing* (punishment) in any Chinese legal references, so that in written laws the latter was extended to "include not only the punishment per se, but also the written prohibitions whose violation would result in these punishments" (Bodde & Morris, 1967: 11). The frequency of *xing*'s occurrence with *fa* turned Chinese legislation into one with a strong penal emphasis, a development which not only put defending civil rights as a secondary interest, but also discouraged official legal intervention in civil matters. The preamble to the article on intimidation in both the Ming and Qing codes stated that "all persons who have quarrels and disputes ought to forbear from seeking redress otherwise than by complaining to the proper officer of government and submitting the justice of their cause to his decision" (MacCormack, 1996: 24). Moreover, the Confucians believed that human nature was good and that men could be educated to become good and to be ashamed of their improper behavior. Therefore individuals' self-cultivation and tolerance became symbols of virtue, and no litigation was regarded as the ultimate end of a society and the expression of a high level of social morality level. These two reasons led to a long tradition of avoiding litigation and deemphasizing civil rights in traditional Chinese society, one which has affected past and current Chinese immigrants' perception of their legal rights in the United States today.

Knowing and acquiring proper legal rights are surprisingly difficult for Chinese immigrants in the United States, a fact which might be partly attributed to their deep-rooted fear of law and to their ignorance of civil rights in American society. In the United States, the right of language minorities to a qualified interpreter in court is generally warranted either by judicial regulations or by statutes. There are at least nine states right now providing the statutory right to a court interpreter: Arizona, California, Colorado, Illinois, Massachusetts, Minnesota, New Mexico, New York, and Texas (Berk-Seligson, 1990: 27). Although the presiding judicial officer usually is the one to determine whether defendants or witnesses need interpreting services in their proceeding or not, and who is in charge of certifying interpreters' language competences, individuals themselves also have rights to ask for language assistance. According to Article (e) (1) of the *1978 Court Interpreters Act*:

> In any criminal or civil action in a United States district court, if the presiding judicial officer does not appoint an interpreter under subsection (d) of this section, an individual requiring the services of an interpreter may seek assistance of the clerk of court or the Director of the Administrative Office of the United States Courts in obtaining the assistance of a certified interpreter.

The Act also requires that the presiding judicial officer appoint "the most available certified interpreter, or when no certified interpreter is reasonably available as determined by the presiding judicial officer, the services of an otherwise qualified interpreter," one who might be replaced if found to be "unable to communicate effectively with the presiding judicial officer, the United States attorney, a party (including a defendant in a criminal case), or a witness."[7] This Act, without doubt,

[7] The 1978 Court Interpreters Act, Article (d), (e) (1).

made a major breakthrough in the progress of language minorities' rights in the American judiciary system, but the real difficulty of implementing such rights sometimes is depends upon immigrants themselves. Early Chinese immigrants, without an English education background might not be aware of the existence of this civil right or be too afraid to ask for any language assistances; current Chinese immigrants, who have already acquired some English or even sufficient English to function adequately in their daily life, might ignore their language rights or waive it in order to avoid unexpected legal troubles. However, silence regarding one's right or a seemingly language fluency may mislead the presiding judicial officer, or even the immigrants themselves, who might think they can handle legal proceedings as comfortably as they are in other matters, but finally find that they have problems understanding the whole proceeding, because of their language insufficiencies.

The famous "Supporting David Wong" campaign (1992-2005) in Chinese communities in the United States demonstrates well the problems Chinese immigrants encounter concerning their legal language right. David Wong[8] spent 22 years in prison in the United States for two crimes in which he was judged to be involved. He was innocent in both cases, but lacking of full and accurate communications, to a large extent, contributed to Wong's tragedy. In the first case, David Wong was charged with robbing a Chinese restaurant owner. Wong once accompanied one of his friends' friends to a restaurant in order to collect this friend's unpaid salary. The owner was scared by his friend, who had his gun in his hand, and promised to pay off in a week.

[8] More details can be found in *Shijie Zhoukan* (World Journal), August 21, 2005, A5.

So when this friend made excuses for not having the time to pick up the money and asked help from Wong, Wong, without a second thought, went to the restaurant, without any weapons or ideas of robbing but only of helping his unpaid friend. He was caught by five plainclothesmen called by the restaurant owner in advance. Wong's friend's friend never showed up again, and Wong could not afford a private attorney. Without any English ability or assistance from interpreters, Wong was defended by an attorney assigned by the court who even did not try to communicate with him. Wong, only 20 years old at the time, was convicted and sentenced to eight to twenty-five years in prison. His appeal was waived, and the reasons are understandable: fearing the authorities, ignorant of English and his legal rights, and unable to afford the cost of appeal. Wong naïvely thought that he was young, and after eight years' prison life, when he was released, he could still be a new "Hao Han (Hero)." Two years later (1986) in Clinton county prison, Wong happened to witness a murder by accident and was wrongly accused of killing an African prisoner. During the ten-month hearing, Wong attended several times without an interpreter, and even his own attorney assigned by court thought he spoke Cantonese, in spite of the fact that he was from Fujian and spoke the Min dialect. On the day of his sentencing, the court finally found a Chinese person from a local Chinese restaurant to act as interpreter for Wong, but the interpreter was completely untrained, only spoke Mandarin, who could not effectively communication at all with Wong. Wong was convicted again and sentenced to twenty-five years to life prison in April 1987. In 1992, Wong's case finally got the attention of the Chinese immigrant communities.

The verdicts were finally overturned and he was released from the prison, but it was already August 2005. When Wong finally ended his prison life, his English was said to be better than his Chinese due to his extraordinary hard study of English in prison. His English teacher praised him as the most diligent student she had ever had. However, it is really sad to note the fact that Wong, failing to ask for and acquire qualified language assistance, was forced to learn English from scratch and to speak up for himself.

Another example, this one taken from my personal legal interpreting, also reveals how Chinese immigrants are reluctant to become involved in legal issues and to bear legal duties. On the occasion, I had a chance to accompany an immigration worker to conduct a home-visit investigation in a Chinese adolescent immigrant case. The purpose of this investigation was to make sure that the adolescent's aunt could accommodate and protect the adolescent's safety and education rights in the United States, so that the young boy could be allowed to immigrate. The first part of my interpreting work was relaxed and pleasant; the boy's aunt was very polite and obviously wanted the boy to be landed as soon as possible; she even had already prepared a comfortable bed for his arrival. However, when I provided sight translation of forms for the aunt to sign in order to make her the boy's legal guardian, she appeared hesitant and confused. Noticing the woman's confusion, through my interpreting the immigration worker clarified the rights and responsibilities which a legal guardian would bear through my interpreting, including the court hearing she might have to attend and monthly reporting to immigration officials. Both the worker

and I understood well that being the legal guardian of this boy was the best option in this case for the aunt, but she was obviously scared by the possible legal issues. The worker's further clarifying through my interpreting made her more upset. She then decided to choose not serve as the boy's legal guardian, which surprised the immigration worker. She then had to further explain the possible consequence and other legal duties of not being the legal guardian. The woman was more lost than before, so that the immigration worker had to delay the signing of these documents until the next home visit, in order to allow her more time for consideration.

Two weeks later, when we revisited this woman's house, she was polite and pleasant as last time, but her final decision of not serving as the legal guardian again surprised both the worker and me. From the last conversation with her, it was apparent that the aunt was willing to accept and take good care of her nephew and that the aunt had already reached a certain agreement over telephone with her sister and brother-in-law, the nephew's parents, on the boy's future development. When the immigration worker explained again the differences between being and not being the legal guardian, the woman turned to me and asked in Chinese which option was better for her. As the interpreter, I could not provide my own opinions, which I made this clear to her immediately. Although very unhappy she remained, she decided to sign as her nephew's legal guardian at last. Both the immigration worker and I felt much relieved, while the woman continued to appear concerned and upset about her own decision.

As Wong's cases and the above legal guardian issue show, the necessity of

helping Chinese immigrants protect their legal rights and understand their legal responsibilities are obvious and urgent, especially when the number of Chinese immigrants are increasing a great amount these years, while American judiciaries and attorneys are not prepared yet to work with these immigrants and Chinese interpreters. Right now the federal courts only certify interpreters in Spanish, Haitian-Creole and Navajo, and there are only few states, such as California and Washington, which have Cantonese and/or Mandarin court interpreting certifications. Considering the limited resources and insufficient experience in training and employing certified Chinese court interpreters in the United States, it is essential to have American judiciaries and attorneys understand more about Chinese immigrants' social psychology and their experience under prior legal systems in order to insure that these immigrants' civil rights are realized.

Justice, Hierarchy, and Morality

A hallmark of Confucian thinking was that there was no possibility of equal relationships in society, which completely replaced the legalist idea of equality before the law. The core concept of Confucianism on this point was the notion of righteousness according to various human relationships and social hierarchies, which distinguished people's patterns of behavior in terms of their ages, gender, and social status. The much stressed "Three Cardinal Relationships" (emperor and subject, father and son, husband and wife) and social classifications (officials, commoners, slaves) by Confucians rearranged social roles in the relationships of superiority and inferiority.

The propriety of behaviors in this relationship constituted the basic moral and justice principles in traditional Chinese society. As Stephen B. Young notes:

> Moral distinctions are not usually made arbitrarily or randomly. To maintain a social and thereby a moral character, such distinctions when made by individuals must be consistent with a scheme of higher principles defining the ends and purposes of group activity. Another word for such a scheme is a conception of "justice" (1981: 38).

In other words, everyone should behave properly, according to his or her social roles and status in life, so that morality and social orders are maintained, and "justice" reached. This legal bolstering of social hierarchies and status reflected the legal privileges enjoyed by certain classes, and differs from the concept of "justice" in western societies.

As a much quoted dictum by Confucians, "礼不下庶人，刑不上大夫 (*li* do not extend down to the common people; punishments do not extend up to the officials),"[9] officials and nobles received remarkable judiciary privileges, including deliberation, petition, reduction of punishment, monetary redemption, and surrender of office (MacCormack, 1996: 102) . This situation was due to their special social status and closer relationship to royal power. For example officials and their relatives could not be arrested, investigated, or tortured without the emperor's permission; officials could be represented by others in court hearings; punishments for officials were commutable to monetary fines or administrative punishments. Derk Bodde and Clarence Morris pointed out that "the law gave formal recognition to the great gap which in other ways separated the mass of commoners from the small, highly educated, and theoretically nonhereditary group of scholar-officials" (1967: 35). The

[9] See *Li Ji*, I: 90 *Qu Li*. The translation was provided by MacCormack in The Spirit of Traditional Chinese Law, 102.

superiority of the officials not only was felt by themselves, but also was admitted and accepted by the commoners and slaves.

Scholars, farmers, artisans, and merchants belonged to commoners, but enjoyed a different social status. Among them, scholars were on the highest level because they were potential candidates for offices, while artisan and merchants were usually discriminated against in society and even in law. Commoners with various occupations might have different degrees of wealth but were disdistinguishly treated as the same group in law. In most dynasties, including Han, Sui, Tang, Song, and Liao, merchants and artisans were even not allowed to take civil examinations for entering officialdom (Ju, 1961: 129). The reason for the low social status of merchants and artisans might be related to an idea long held by governors, that agriculture, as the basic approach of production, was more important than business and entertainment for a nation's survival. Moreover, merchants' profit-oriented behavior was usually against Confucian's virtue-centered morality principle, and would both affect agricultural activities and give rise to more crimes. People on the lowest social level are government or private slaves, prostitutes, entertainers, and government runners.[10] These people and their children were barred from taking civil examinations and prohibited from marrying with people in higher classes (Ju, 1961: 132).

Morality was another remarkable feature that Confucianism stamped on traditional Chinese legal system. As mentioned before, the "Three Cardinal Relationship" served as the basis of Confucian morality; of prime importance was the

[10] This classification is referred from Ju Tongzu (1961: 129), who listed lectors, runners, administrators of corporal punishment, horseman, messengers, jailers, etc. but excluded treasury keepers, grain measurers, and militia.

loyalty of the subject, the duty of filial piety for parents, and the submissive and chastity of the wife. The law in imperial China was in fact a tool employed by governors to reinforce these social and family relationships. Among the "*shi'e* (Ten Unpardonable Offences)," which had been stipulated in Chinese laws from the year 581 A. D. onwards, "offence against parents and seniors" was listed as the fourth one, even ahead of "disrespect to the sovereign" (Chung, 1974: 46). The value of filial piety in traditional Chinese law was illustrated by the legislation that children were liable for the suicide of a parent if they had any unfilial conduct. MacCormack, in his book *The Spirit of Traditional Chinese Law*, presented a case in 1821 (1996: 65-6) which demonstrated well this striking legislation: a son did a trivial act and angered his mother. The mother went into a fit of insanity because of her anger, took poison, and committed suicide. When the provincial governor proposed the death penalty of the son might be reduced to exile because of his mother's insanity, the Board declined the proposal and observed:

> It is altogether impossible for a son to upbraid his parents. Only among the stupid people it is believed that they have simply been unable to comply with their parents' instructions, even when their parents, outraged at their disobedience, have committed suicide... That is why we evaluate the circumstances in these cases we let the law take its full course in order that a sense of moral obligation be firmly implanted into those people's minds. Consequently cases of disobedience have always been handled without any reduction of punishment for considerations of leniency.[11]

As this case showed, respect and proper manners toward the superior were greatly emphasized and promoted in traditional Chinese legal culture. The strict classification of social classes, together with moralized social roles, resulted in the self-cultivated,

[11] MacCormac quoted this text from HAHL, 2194; Meijier, "Criminal Responsibility," 120, 132.

prudent, and modest behavior by most common Chinese. The various social rituals regarding physical behavior, such as seating, worshiping, dining, as well as elaborate forms of polite address and humble self-address, which were usually regarded as virtuous behaviors a gentleman should have, echoed the obedience and modesty that Confucianism expected and promoted. It is not true to say that current Chinese immigrants still strictly follow the feudal concept of "justice," moral rules, and rituals, but it is not uncommon to see that during legal interpreting for Chinese immigrants, misunderstanding and confusion arise on each side because of their history of different legal cultures and customs.

On one hand, the fact that these immigrants use extraordinary polite language in front of officials is inconsistent with what these Chinese do at other times is sometimes annoying and hard to understand for Western officials. For example, while a Chinese frequently nod with an officer, an attorney, or a judge and says repeatedly "*Shi, shi* (Yes, yes)," that person does not necessarily agree with what the other is saying, but just wants to show his respect for the speaker; and when a Chinese answers questions with "*Mei you shen me*," he might mean "Nothing is wrong. /You are welcome. / I am fine," or even just a modest expression to avoid showing off or further troubles although something did happen to him or he did care about something. On the other hand, the Confucianized concepts of justice and human relationships that Chinese immigrants apply to their lives deviate from the principles the American judiciary holds, thus constituting many problems for interpreters, attorneys, and judges. Take the idea of "friends" as an example, as an old Chinese saying goes, "在

家靠父母，出门靠朋友。(One can reply on his parents when he is at home, but on his friends when he is outside.)" Friendship was actually the last of the Five Relationships[12] emphasized by Confucians. The fact that legal and social privileges certain classes and put commoners in a disadvantaged position had formed a unique social phenomenon called "*bang-hui* (gangs or groups)" in traditional Chinese society. Instead of asking for legal assistance and protection from governments, many Chinese resorted to various "*bang-hui*," which usually were based on brotherly friendship and followed their own rules. "*bang-hui*" were usually organized according to different industries and hometowns, and played an important role in regulating their own social class and protecting them from outside oppression. Businessmen in the salt industry had a national organization, the "*yan bang* (salt group);" workers in canal transportation had the "*cao bang* (canal group);" even beggars in the street had the "*gai bang* (beggar group)." These organizations had systematic management with divisions in major cities throughout the country. This special social structure continued to exist openly in China until the middle of twentieth century and reinforced Chinese group centric spirit and inclination toward friendship over law. This spirit became stronger among Chinese immigrants, due to their weaker social position and limited resources in the United States. Because most early Chinese immigrants were from Fujian and Guangdong provinces, various *Fuzhou Bang* and *Chaozhou Bang*[13] had strong controls over Chinese communities in the United States.

[12] San Gang (The Three Cardinals) mentioned before in this chapter is based on the Wu-Lun (Five relationships), which include father-son, emperor-subject, husband-wife, elder-younger brothers, friend-friend.

[13] These Bangs are grouped according to their original places. Fuzhou Bang and Chaozhou Bang were people from Fujian and Guangdong provinces respectively.

Because of the lucrative criminal activities in which some organizations were involved, disputes and feuds for more territory and profits happened frequently, constituting the main crime in Chinatown, such as the well known Tong Wars in San Francisco and Los Angeles between the 1850 and the 1920s.[14] The trust in friend's friend and self valued "heroic behavior" in David Wong's case discussed in this chapter reveal how much "friendship" weighs in Chinese immigrants' mind and how it may result in possible confusion and misunderstanding for American judge and attorney. This cultural difference was also observed by Judith Shapiro, a Mandarin court interpreter, in her article "Mandarin in Legal Arena":

> A difference that often leads to incredulity from attorneys, judges, and juries, and sometimes to unwarranted suspicions that the defendant or witness is not revealing all what he knows. For example, a Chinese person might do a favor for an associate without questioning why the favor was being asked or seeking to learn about the circumstances surrounding it. Such a favor might seem, in the Western context, to be huge, such as an out-of-the-blue request to drop everything and come to a certain place to do something, no questions asked, or to write out a check in a certain way, or to lend a large sum of money. It is not uncommon for a Chinese person to hold large amounts of cash, to lend that money to a friend without asking for a receipt, sometimes without even asking why the money is needed. I have often encountered the skepticism of an attorney or judge who cannot believe that the Chinese person would be so generous or unquestioning in providing help to someone else. (2001: 3)

One of my interpreting assignments was about an interpreting for an immigration officer and a young Chinese boy who was just about to arrive and be accommodated by his uncle in the United States. This work involved both of the above factors. The boy's response to the officer's questioning serves as a good example where interpreters need to be alert and careful:

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[14] About the Tong Wars, more details can be found the website: http://en.wikipedia.org/wiki/Tong_wars.

O-Officer I-Interpreter B-Boy
O: What do you do in your spare time here?[15]
I: 你平常空闲时间干什么？
B: 不干什么。
I: I don't do anything.
O: Do you make some friends here?
I: 你在这里交了什么朋友没有？
B: 没有什么。
I: No.
O: Do you have any hobby here? Such as sports, music, or reading?
I: 你在这里有什么爱好吗？比如说运动、音乐或是阅读？
B: 嗯，我喜欢打篮球。
I: Yes, I like playing basketball.
O: Where did you play?
I: 你在哪里打？
B: 后面的院子里.
I: In the backyard.
O: Whom you played with?
I: 你跟谁一起打过？
B: 我跟我朋友一起打。
I: I played with my friends.

Confusions in this questioning are obvious: the fact that one played basketball with his friends contradicts with both the facts of doing nothing in one's free time and having no friends. Suffice it is to say that if these answers were recorded in English and submitted for judges' consideration of this boy's case, the boy would be regarded as dishonest and inconsistent, with possible more hided information, which would definitely affect his other testimonies. However, if we consider the young boy's prior cultural and legal system, it is not hard to understand his contradicted answers. When young Chinese people are asked by superiors about what they do in their spare time, it would be considered cockiness and showing off for them to tell the truth, saying how hard they work or how talented they are. A modest answer with proper explanations from their proud parents, relatives, or teachers would be more polite. For this reason,

[15] This transcript was recorded after the author came back from the interpreting assignment in June 2005. There is a possibility that some information was missing.

a question about one's hobbies, avoiding the risk of overbearing, usually obtain more satisfied answers from Chinese. The second problem on "friends or not" could be explained by the boy's intention of protecting his "friends" (people he met) from possible legal problems because of his illegal status and relationship with smugglers and his wide definition of "friends" (anyone who played basketball with him). Similar problems like these made the immigration officer go back to correct his records and add notes frequently during his investigation. Therefore, cultural consideration and careful choice of words become essential for interpreters in this situation.

Judiciary Power, Linguistic and Paralinguistic Evidence

In the imperial system of the past two thousand years, governors in each dynasty developed various judiciary systems, however, the basic principles underlying judiciary power was generally carried out in four levels: district, prefecture, central government, and the emperor. Two distinctive features of judiciary power shared by most Chinese dynasties were an authoritarian system and confession oriented procedures in court, both of which have a significant role in understanding Chinese immigrants' linguistic and paralinguistic behavior in legal settings.

Since Qin dynasty, China had established a universal imperial bureaucracy with a supreme and divine royal power. The Emperor was called the "Son of Heaven" and his orders were respected as the mandate from Heaven. The elaborate rituals and ceremonies in court further made the emperor loftier, more prestigious and his people more loyal and obedient to him. The superiority the emperor had to his subjects even

overrode the other two relationships: he is the father of the people in his nation; he is also the husband of his subjects in society. The divinized royal power was then passed on to officials on various levels with support from the Confucian moral education and severe penal laws. Officials were usually recruited and promoted according to their knowledge of literary classics, merit principles, and the most important, the "full execution of comprehensive and universal norms promulgated by the emperor and his authorized representatives" (Miyazaki, 1980: 56). This vertically centralized political structure formed the unique authoritarian tradition in Chinese legal culture. The best example for applying this tradition is the fact that magistrates in district courts, which dealt directly with civil cases, acted as judges, prosecutors, and attorneys at the same time.

As discussed before, Chinese citizen were usually reluctant to resort to law because of indoctrinated Confucianism. For Chinese officials, one of their obligations turned out to be discouraging or even punishing those who engaged in litigations. The first approach some governors took was to prohibit the public's access to law so that people would not circumvent and take advantage of it. According to Miyazaki's research on the legal tradition in Song dynasty (960-1279AD), individuals were not allowed to print, copy, or possessing any code provision, otherwise they would be punished by 100 blows of the heavy bamboo (1980: 58). The second method prevailing in nearly every dynasty was the discouragement of legal professionals except members of the government or administration. Lawyers were not allowed in imperial Chinese court and were usually regarded as the origin of false accusations

and litigation tricksters. Illiterate people might get help from other people to write petitions, but it was strictly controlled that the helper would not contribute any suggestion of his own for any cases, otherwise severe punishments would be imposed on the helper (MacCormack, 1996: 25). Therefore, magistrates, the direct executors of law in imperial Chinese society, presided over all issues in the court, although they were usually scholars educated by Confucian classics rather than specialist in law, which was largely due to the fact that most officials were selected and appointed according to their achievements in examinations of those classics. This situation thus directly led to one salient feature of the practice of Chinese judiciary power: Confucian judgment.

Most Chinese magistrates, following the non-litigious spirit of Confucius, emphasized prevention and peaceful resolution of disputes. As Bobby K. Y. Wong pointed out in his article, "Dispute Resolution by Officials in Traditional Chinese Legal Culture"; "the role of law was not so important as custom, people's feeling or Confucian propriety [...] Dispute resolution was often used to teach the disputants the importance of keeping good relationships with others" (2003: 2). The following lengthy quoted by Wong illustrates a judgment of a Chinese magistrate that attempts to educate people about the bad consequences of litigation:

> Neighbors should be on good terms with one another. If they are in good relationships, a man may get support from his neighbors when he is sick or in need of money or help. It would be good to all. If there is a dispute, none of them can get help when it is needed. That would be in no one's interests. Nowadays, only a few people understand this. Often, people fight for their immediate interests. They do not consider their own interests in the long run. Whenever there is exchange in words, they would bring the matter to the local official, forgetting their relationships

> with their neighbors. But what can they get from litigation? They need to go a long way to the Yamen. Time is wasted. Runners are to be paid. In the Yamen, they would be scared or even be caned. The outcome of the case is at the discretion of the officials. Even if a man wins the case, the other party may revenge in the future. And there will be no end to it.[16]

However, in terms of protecting rituals and moral standards, Chinese officials spared no efforts in their judiciary power. Another cases Wong cites concerns a disciple who sued his master's brother so that the master owed his disciple 160 taels of silver, which turned out to be 300 taels thirty years after the master's death. The magistrate rejected the disciple's claim because it was intolerable for the disciple to sue for the money that his master had borrowed from him, especially with an interest. In addition, the brother of this disciple, another official, was caned for his vigorous argument which showed no remorse on his part. Moreover, another 70 taels of silver was taken from the disciple for the remuneration of the master's teaching because the magistrate found that the master had been treated in a very mean manner in the past.[17]

Cases like the example above were not uncommon in each dynasty. Rationality and justice used in Western legal system turned out to be mixed with Chinese "*qing* (compassion)," "*ai* (love)," and "*de* (virtue) in this nation. Moreover, in Chinese imperial court, a suspect is guilty until proven innocent, and that a limited use of torture by officials was legal and common. It is therefore not surprising to find several salient features that are characteristic of Chinese immigrant behavior in any court system. These become more misleading and confusing when conveyed through a different linguistic system. Recognizing these features is crucial for interpreters

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[16] Bobby quoted this judgment from Mi Gong Shu Pan Qing Ming Ji vol. 2 393-4.

[17] Bobby quoted this case from Fan Shan Pan Du, Case No.3: Pi Hao Ke Dong Cheng Ci 《樊山判牍　批判三批郝克栋呈词》 quoted in Fan Zhong Xin Qing Li Fa Yu Zhong Guo Ren 范忠信《情理法与中国人》227-8.

because improper interpreting of Chinese immigrant language and behavior might constitute important evidences, negative or positive, to them, and affect jurors' and judges' decisions.

The first feature characterizing Chinese immigrant behavior is their self-effacing testimony style. Robin Lakoff's studies on women's language provide the basis of research on gender-based linguistic variations. According to her findings, features which occurred frequently in women's speech included various hedges ("I guess..., It seems like..."), tag questions (John is here, isn't he?), extraordinary politeness (if you don't mind..., Would you please...), less frequent speaking, and overuse qualifiers (I think that...). These features were further analyzed and developed in studies of courtroom language by O'Barr, who through 10 weeks observation of cases in North Carolina courts suggested that these women language (WL) features were distributed in both sexes and were closely related to factors, such as social status, education or professional background, and previous courtroom experience (1982: 64-71). As discussed before in this thesis, the social status of Chinese immigrants and their education backgrounds were considered to be lower, especially early comers, and their psychology preparation and experience for American court were nearly zero. What the Chinese thought proper to say in court according to their social positions and Confucian rituals sometimes turned out to be wrong or improper, thus contributing to their guilty impression in court. As Susan Berk-Seligson states, the use of different styles by speakers can manipulate the impressions that others in the courtroom have of them and of their interlocutors, "this

is to say that through a conscious or unconscious strategy, participants in courtroom proceedings try to phrase their questions and answers in such a way as to make themselves look better, and the opposing side worse" (1990: 20).

Therefore, interpreters' faithful interpreting or intercultural transformation becomes extremely important in court. Because of the long term interrogating tradition and authoritarian judiciary power in the imperial Chinese court, Chinese immigrants were used to answering questions briefly without elaboration before first being granted permission. This style of relatively short answer is defined by Berk-Seligson as "fragmented testimony styles," because "person testifying in narrative style will answer a question with a relatively long answer, whereas persons using fragmented style will answer in brief, non-elaborated responses" (Berk-Seligson, 1990:21). O'Barr further points out that in the Angle-American legal system, lawyers usually attempt to control the substance and form of witnesses' testimony; they "allow their own witnesses some opportunity for narrative answers and should restrict opposition witnesses to brief answers as much as possible" (1982: 77). The favorable perceptions by attorneys of their own witness will help jurors accept the evaluation the attorneys have of their witnesses.

Moreover, compared with English, Chinese language has a comparatively looser grammatical system, without strict requirements for sentence completion, tense, and compact structures. For example, it is quite common for Chinese to have the following conversation between a husband and a wife:

"吃什么？"

"吃面。"

"吃啥面！走，吃馆子去！"

Following is first their equivalent English expressions and then their literal meanings:

"What we will have for lunch/dinner?"/ "Eat what?"

"We may have noodles." / "Eat noodles."

"Why we should only have noodles! Come on, let's eat out."/ "Eat what noodles! Go, eat restaurants!"

As we can see, for English speakers to understand this conversation, pronouns, such as "we," has to be spelt out; the meal in question should be clarified; future tense has to be added; and the abstracted structures (such as "eat restaurants") have to be extended to ("eat out [in restaurant]"). This is only a simple example of the problems that Chinese interpreters have to solve during their interpreting. Now let's look at two interpreted interrogations:

1. What kind of feet does your mother have?[18]
   Unbound.
   How large is Lim Mee Village?
   About 40 houses.
   Which way does the village face?
   North.
   Who lives in the fourth house, second row (of your village)?
   Yee Soo Loy.
   What family has he?
   Natural-footed wife; two boys and two girls.

2: What is the style of her mother's feet?[19]

[18] From the interrogation of Yee Wee Thing, October 31st, 1916, W. D. Heitmann (Inspector), Joseph H. Gubbins (Interpreter), and Sarah Davies(Stenographer). Downloaded from: <www.paperson.com/interrogation.htm>.

[19] From the interrogation of Yee Bing Quai, May 12, 1938, Charles E. Golding(Inspector), Recoder

She has natural feet.
What were you doing in China before coming to the U.S?
Attending school in CHUCK HOM, Market HPD, China. I began at the age of 10 and continued until the end of the 12th month of CR 26 and since I left school I remained at home until I came to the U.S I always attended school in CHUCK HOM Market.
Why did you attend school in CHUCK HOM Market?
Because school was not held in HIN Village.
How far and in which directions is CHUCK HOM Market from HIN Village?
A little over a li, west.
Is there any name to the school in CHUCK HOM Market?
It is called the HIN NGIN school.

Compared with the first example, the interpretation of this second interrogation apparently contains more elements of English grammars: features such as simplex, diffusive and active voice of Chinese language were replaced with a complete and passive voiced compact sentence structure. It is well known that in English using passive voice and providing complete answers are both regarded as more formal, being "a characteristic of bureaucratic language in general" and the occurrence of such forms "extremely high in American judicial settings," thus constituting "a linguistic mechanism for making witnesses appear more blameless and others more blameworthy" (Berk-Seligson, 1990: 106). Chinese is more likely to omit pronouns and prefer active voice in their speech, so that the original answers to the third and fifth questions in Chinese should be:

Question 3:

Because school was not held in HIN Village
因为 HIN 村没有学堂。
(Because HIN Village had no school)

Question 5:

Marion T. Lovett(Inspector), David Lee (Interpreter). Downloaded from: <http://www.paperson.com/Transcript%20Page%201.htm>.

It is called the HIN NGIN School.
叫 HIN NGIN 学堂。
(Called HIN NGIN School)

These readjustments through interpreting not only prevented the witnesses from leaving interrogators with a negative, incompetent, and uncooperative impression, but in some extent disguised the witnesses' social status and literacy levels.

The second feature involves differing responses to cultural intimidation that Chinese immigrants have in a U. S. court system. The former usually will feel very uncomfortable while they are facing an American attorney's coercive cross examination or an immigration officer's stressful interrogation; the later are thus confused by Chinese immigrants' emotional expression, shame, and nervousness. Because lawyers never officially existed in imperial Chinese courts, most Chinese immigrants have little experience in dealing with American attorneys' well planned questioning and pressures during their hearings. One interpreter once noted in his testimony to an appellate case about interpreters, "It seems to me that woman was a country woman, and she was very indifferent in her answers, and every question I put to her she said 'I don't know,' or didn't give us any satisfaction at all."[20] As for coercive questions, Berk-Seligson further developed Danet and Kermish's research (Danet et al. 1980b: 24) and noted:

> Declaratives are the most coercive, since rather than to ask a question, they make a statement (e.g., "You did it..."). The next most coercive types of questions are interrogative yes/no questions (e.g. "Did you do it?") and choice questions (e.g., "Did you leave at nine or at ten o'clock?). Third in order of coerciveness are open-ended wh-questions -that is, questions that use interrogative words such as who, what, where, when, why, how, and so on (e.g., "What did you do that night?"). The

[20] This testimony was by interpreter J. G. Mclaymont on September 25, 1915 concerning the case of Interpreter Lum J. Ying's corruption at Angel Island Station.

least coercive, and simultaneously most polite and indirect, are what Danet and her colleagues call "requestions," questions that on the face of it seems to ask the witness whether or not he/she is able to answer a question, but actually ask for information, although in an indirect manner (e.g., "Can you tell us what happened?")....in addition, coercive questions have been found to produce shorter answers. Shorter answers, it should be recalled, are associated with a more negative estimation by jurors.... (1990: 23)

Now it is time to look at some interpreted interrogations Chinese immigrants had encountered:

What is your name?[21]
Leong Sem.
Has your house in China two outside doors?
Yes.
Who lives opposite the small door?
Leon Doo wui, a farmer in the village; he lives with his wife, no one else.
Describe his wife.
Chin Shee, natural feet.
Didn't that man ever have any children?
No.
How old a man is he?
About thirty.
Who lives in the first house in your row?
Leong Yik Fook, farmer in the village; he lives with his wife, no one else.
How many houses in your row?
Two.
Who lives in the first house, first row form the head?
Yi Haw, I don't know what clan he belongs to.
Why don't you know what clan he belongs to?
I never heard his family name.
How long has he lived in the village?
For a long time.
Who lives in the first house, third row?
Leong Yik Gai; he is away somewhere; he has a wife, one son and a daughter living in that house.
According to your testimony today there are only five houses in the village and yesterday you said there were nine.
There are nine houses.
Where are the other four?
There is Doo Chin's house, first house, sixth row.

[21] The interrogation transcript is from Dorothy and Thomas Hoobler (1994) *The Chinese American Family Album*, New York/Oxford: Oxford University Press, P44-45, but the interpreter is unknown

What is the occupation of Leong Doo Chin?
He has no occupation; he has a wife, no children.
Describe his wife,
Ng Shee, bound feet.
Who is another of those four families you haven't mentioned?
Leong Doo Sin.
Where is his house?
First house, fourth row.
There are two [other] families, who are they and where do they live?
Chin Yick Dun, fifth row, third house.
What is his occupation?
No occupation.
What family has he?
He has a wife and a son; his wife is Chin Shee, natural feet.
Did you ever hear of a man of the Chin family marrying a Chin family woman? [This was forbidden by Chinese custom.]
I made a mistake; her husband is Leong Yick Don.
What is the name and age of that son?
Leong Yick Gai; his house is first house, fourth row.
You have already put Leong Doo Sin in the fourth row, first house.
His house is first house, third row.
You have already put Leong Yick Gai first house, third row.
I am mixed up.

In the above interrogation, the inspect or used several open-ended *wh*-questions to lead immigrants into detailed and complicated kinship questions, and followed with interrogative yes/no questions which decline the answers by pointing out the mistake of impossible family marriage. At this moment, the immigrant was obviously nervous and completely lost, and his next answer then left an opportunity for the inspector to use the most coercive statement and force the immigrant to admit his ignorance of his claimed "relatives."

As we can imagine, most interrogators and attorneys attempt to establish a fast question-answer pace, so that defendants more likely to speak facts without time to make up, recall prepared information, or to read the questioners' mind and predict the following questions. However, the back and forth interpreting of both parties'

discourses through interpreters definitely slows down the pace of an interrogation. The linguistic adjustments during interpreting from Chinese into English, such as adding hedges and articles as well as making up omitted cultural connotations, would lengthen the time for interpreting and allow more time for the immigrants to observe the immigration officers' behaviors and to prepare answers for their next questions, thus interfering the pace of the interrogation as expected and designed by the questioners.

From the above sample interrogation, the answers interpreted into English were obviously short and brief for the most part: only provide one-word Yes/No answers, relevant numbers and names, or simplest sentences. Most answers interpreted are markedly shorter than the corresponding questions posed, even at the risk of being misunderstood. For example, the answer to the question "Didn't that man ever have any children?" is very confusing for Chinese speakers, because the typical Chinese answers indicating the man never had any children might be "是的。(Yes, he didn't have.)," "不是。(No, he did have)/没有。(He didn't have)," or even a nod agreeing with the inspector. Even if the interpreter understood the answer correctly, the interpreting was still problematic, because with this discrepancy in negative questions between Chinese and English, it is better for him to make a complete and clearly defined sentence in case of a future appeal. Apart from the above problems, a worse situation occurs when the individual interpreters intervene in immigrants' answers. In Judy Yung "A Bowlful of Tears' Revisited"(2004), an interview of Lee Puey You, a female immigrant once detained at Angel Island for twenty months, revealed that

"sometimes the interpreters were cranky. When I said I wasn't sure or I didn't know, they would tell me to say yes or no. " This "crankiness" also reflected in the following nonlinguistic manipulations from the interpreters.

Such an intervention--prodding Chinese immigrants to answer questions-- in fact places the interpreter in a lawyer-or inspector-like position, a definite affront to professional codes of conduct for interpreters. When someone hesitates or cannot answer, that persons may "not understand the question but is afraid to say so, or the person may be formulating his or her answer with some care. The latter possibility, in turn, may be due either to the witness's or defendant's desires to be truthful and accurate in his or her statements, or it may be out of a desire to obfuscate and deceive" (Berk-Seligson 1990:192). Obviously, it is the second possibility that made immigration officials and interpreters push immigrants to give quick answers in interrogations. However this practice in fact infringes upon immigrants' basic right to express themselves in court. More important, this misconduct by interpreters would not only leave inspectors a negative impression of the immigrant, but also would upset and mislead the immigrant.

At the same time, because of their different legal and cultural expectations, the paralinguistic and physical behavior Chinese immigrants show in legal settings might easily mislead and confuse American judges, jurors and attorneys. For example, when Chinese people speak with authorities, lowering their heads and avoiding direct eye contact are ways to show the authorities respect. In Chinese culture, if those, who were usually considered to be guilty before the hearing, would look up straight at

judges and attorney, they were regarded as shameless and stubborn, and thus their case would result a more severe sentence. In American culture, people are supposed to make eye contact with the person asking questions; it helps that one is telling the truth to convince the other. To put it simpler, Chinese immigrants' modesty and customary behavior sometimes are treated by American jurors as an evidence of guilt.

Moreover, Chinese immigrants always have an inclination to import emotions and passion rather than to rationalities and justice in their hearings in order to obtain sympathy and support from judges and jurors. This inclination has its root in the legal spirit of Confucians, but also related to the traditional "wu-ting (five listening)" strategies adopted by imperial Chinese officials in their hearings and sentencing, which emphasized close scrutiny on the defendants' and witnesses' facial expression, the sound of their voices, related social norms, human relationships, and nature phenomenon. In different dynasties, various cases about the murder of husband by his wife was found and solved by listening to the wife's pretended sadness and insincere crying during her husband's funeral (Xi, 2005: 21). However, this strategy might negatively influence the hearing in American Judiciary system, especially for those with a different understanding of justice. The recent case of Zhao Yan vs. Robert Rhodes in Buffalo federal court is a good example on this point. Rhodes, the officer of the U.S. Customs and Border Protection, was indicted by a federal grand jury for using excessive force in capturing Zhao on July 21, 2004 near Niagara Falls at the United States-Canadian border. During the hearing, Zhao showed great anger and passion in her testimony and had to stop her testimony several times because of crying

and stuttering. She reiterated, both inside and outside the court, that she was a tourist, an invited friend from China, and demanded to know how Americans could treat a friend in this manner. Let's look at some of Zhao's testimony in court reported by some American newspapers:

> A Chinese businesswoman faced the Homeland Security officer accused of beating her during a dramatic courtroom encounter Tuesday, where she vowed she will "always remember his face."
> "How could I not know him (我怎么能不认识他!)？," Zhao Yan cried when asked whether the officer was present in U.S. District Court. "He beat me up with savagery and brutality. I will always remember his face my whole life. (我一生都会记住他的脸，那个如此惨无人道、恶毒地打我的人！)." "I cannot believe the American police are so savage. That's him (我不相信美国的警察会有这么恶毒的行为!)" Zhao continued before dissolving into sobs, a white handkerchief pressed to her face.22Zhao, 38, frequently cried while describing her visit to Niagara Falls, which she said she had wanted to see since reading about it in junior high.
>
> Zhao testified more than three hours Tuesday afternoon, finally becoming so emotional that District Judge Richard J. Arcara stopped the proceedings, directing her to return to the witness stand today. The officer's attorney, Steven M. Cohen, says his client was singled out for prosecution because he is gay and also questioned Zhao's credibility in an interview after the testimony.
> "Her testimony was honest [because] that's what happened to her," said Howard B. Ross, one of Zhao's attorneys in a multimillion-dollar brutality lawsuit against the federal government. "I didn't coach her."
> "I hope the jury knows an actress when they see one," Cohen said. "I would be more convinced of her sincerity if she had tears when she cried. I'd like to subpoena her handkerchief, to see if there are any tears on it."[23]

The verdict of this case disappointed Zhao, because Robert was pronounced not guilty. Later, discussions of Zhao' case were focused on Zhao's misconduct during the

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[22] "Tourist Identifies Border Officer in Beating Incident." By Carolyn Thompson. August 30, 2005. *Associate Press News*

[23] "Victim Testifies in Officer's Assault Trial." By Dan Herbeck. August 31, 2005. *Buffalo News*, B2.

incident and the American courtroom. One article published in *Xinwen Wanbao* (Evening News) clearly pointed out that her improper emotional outbursts in the American court lessened the credibility of Zhao's testimony.[24]

It is clear right now that while encountering emotional expressions or behavior by Chinese immigrants in American court, the interpreters' faithful interpreting become difficult and subtle. In fact, Zhao's interpreter was challenged by Robert's attorney, who suspected the interpreter's former working experiences at *China Daily*, an official newspaper in English supported by Chinese central government, would affect his objective interpreting in this case. Although the judge immediately overruled this objection, and the interpreter's selection of registers of witnesses' emotional testimony without doubt played an important role in the jurors' and judge's evaluation and perception of the witnesses, a role which Zhao herself might have expected to be positive but which had the opposite effect in the United States.

This chapter has provided a brief discussion of possible problems that legal interpreters who interpret for Chinese immigrants might meet because of differences in legal culture and related judiciary procedures understood by these immigrants. Although China has officially imported a modern legal system in 1949 and has experienced several revisions in recent years, the traditional legal spirit continues to affect current legal practice, new legislation, and especially the common people's understanding and perception of law. For example, the slogan of "de-zhi (a virtuous governing)" is still popular and appealing in current Chinese society. Therefore,

[24]"大陆官方媒体评论:专家分析赵燕在美被殴案败诉原因 (Discussions by Mainland Official Medias: Experts' Comments on the Loss of Zhao's Case in the United States" by Li Ningyuan, September 9 2005, *Evening News*.

interpreters for Chinese immigrants have to overcome more difficulties because of the bindings of their professional ethics and the judiciary procedures in the United State. How did these interpreters behave? What do Chinese immigrants think of them? And why are Chinese interpreters criticized by Chinese immigrants and mistrusted by American officials? For a further discussion of those questions, the next chapter will take a look at the example of Chinese interpreters at Angel Island Station in San Francisco, California.

CHAPTER 3

CHINESE INTERPRETERS AT ANGEL ISLAND (1910-1940)

Legal interpreting in the United States has increasingly become a regulated professional activity. The 1978 Court Interpreter Act not only warrants non-English speakers' civil right to receive interpreting service in the American court but requires the competence of the interpreters who provide the service. Based on this Act and its 1988 Amendments, the Federal Court Interpreter Certification Examination (FCICE) was established in 1980, certifying court interpreters in Spanish, Haitian-Creole, and Navajo. Right now, most attention from both federal court and interpreting studies scholars is on the certification and practice of Spanish court interpreting. However, considering the recent skyrocketing number of Chinese immigrants in this nation and increasing court requests for Mandarin and Cantonese interpreters, studies on legal interpreting for Chinese immigrants, especially on the influence from their prior legal culture and judiciary system, are indispensable. Angel Island in San Francisco, California is an excellent starting point for this legal cultural study. Due to the 1882 Chinese Exclusion Act, 175,000 Chinese immigrants were interrogated by immigration officers through interpreters between 1910 and 1940 (Lai, 1980: 8). The remarkable cultural and linguistic gaps between Chinese immigrants and immigration officers at Angel Island constituted various barriers for interpreters. A close look at these interpreters at Angel Island provides valuable data for current and future

research and professional practice.

An Investigation of Chinese Interpreters

The strict screening of Chinese immigrants by the United States government in the early twentieth century was the consequence of the 1882 Chinese Exclusion Act, an "unprecedented measure barring immigration on the basis of both race and class" (Barde, 2003:3). This anti-Chinese legislation prohibited Chinese laborers' entries with exceptions granted only for teachers, merchants, government officials, and students. Before Angel Island Station was formally established in 1910, Chinese immigrants who wanted to enter the United States through San Francisco had to go through interpreted interrogations in a two-story shed at the Pacific Mail Steamship Company wharf. Similar situations were found elsewhere in this country. Chinese interpreters were employed in various immigration stations for assisting the verification of immigrants' status according to the 1882 Act. For immigration officers, qualified Chinese interpreters with sufficient English and Chinese abilities, especially knowledge of various Chinese dialects, were extremely hard to find. Few early Chinese immigrants had a chance to receive formal education in the United States and there were fewer Chinese language programs for Americans. The problem of incompetent Chinese interpreters was so severe that an investigation of all Chinese interpreters employed by the Immigration Service was conducted from 1907 to 1908. Data from this investigation might serve as an important index for the pre-evaluation of Chinese interpreters at Angel Island, because after this investigation most tested interpreters still remained in their position. This situation was due to the lack of

competent Chinese interpreters with experience in cooperating with immigration officers.

On June 3, 1907, two Chinese interpreters named John E. Gardner and T. W. G. Wallace--the former stationed at San Francisco and the latter at New York--were instructed to conduct this nationwide investigation. In a memorandum dated October 21, 1907 to the Secretary of Immigration and Naturalization, Washington Bureau, by the Commissioner-General, the targeted interpreters' abilities of this investigation were as required:

1) Ability to speak the various Chinese dialects in common use in the United States.
2) Ability to write the Chinese language.
3) Ability to translate Chinese into English, and vice versa.
4) General bearing of interpreter and whether his personality is such as to lead to best results in examining Chinese.
5) Personal character, conduct, and habits of interpreters[25]

The (4) testing item "best results in examining Chinese" was ambiguous and misleading. It might refer to interpreters' sufficient interpreting skills for a full and impartial interrogation; but it is more likely to mean interpreters' cooperation with immigration officers to bar as many Chinese as possible from this nation, if one takes consideration the Chinese exclusion policy and the prejudice and animosity the American public held toward Chinese immigrants.

The investigation report by the Chinese inspector and interpreter John E. Gardner on October 5, 1907 concluded that Chinese interpreters they tested were "an inferior body of officers, not so much as regards their conduct or character which I

[25] This letter was found in Various Chinese Interpreters (1907-1924), Reel 2: 0001 Case file 53360/34 [June 1907 - May 1924], Records of the Immigration and Naturalizaiton Serviced, NARA-Pacific Region (San Francisco) microfilm edition.

have found in almost every instance to be excellent, as their ability to perform the duties proper to their office."[26] As Gardner observed, most interpreters either did not read English or Chinese, or had insufficient written English or Chinese ability in order to translate. More important, these interpreters, who were "greatly relied upon and expected" by American immigration officers, were unprofessional:

> One thing that struck me forcibly is that, considered as a body, these employees are without education or training as interpreters. This is a sad deficiency in view of the important position occupied by an interpreter, since in proving statements of witnesses in court, interpreters, and not inspectors, are competent witnesses, and since further most of our inspectors are practically deaf and dumb without an interpreter, and it is all the more important in the case of interpreters of the English and Chinese languages, since of all languages these are the two most difficult for foreigners to acquire.[27]

Among the investigation records, there was a detailed report on 26 Chinese interpreters.[28] Of them, 8 interpreters were rated as having fair or poor interpreting ability; 23 with fair, poor or no translation ability; 4 with not good or fair general bearing and personality, although the last testing item concerning interpreters' characters and habits were all regarded as good or excellent, except one newly employed. On October 24, the Commissioner-General, F. P. Sargent, wrote a letter to the Secretary of Commerce of Labor concerning the results of this investigation, in which he admitted the incompetence of these interpreters but emphasized the considerable length of time they worked honestly with immigration officers and

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[26] ibid.

[27] This statement was included Gardner's letter to Commission-General of immigration on October 5 1907. The letter was made on October 16, 1915. File No: 12001/79-80. Records of the Immigration and Naturalizaiton Serviced, NARA-Pacific Region (San Francisco) microfilm edition.

[28] There were some interpreters who had been investigated and examined but not listed. More information about these 26 interpreters can be found in October 21, 1907 Memorandum to The INS Washington Secretary by the Commission-General in the case file noted in [31].

possible danger of importing dishonest ones from outside with finished education. To him, the interpreters' "honesty" overweighed their language competency for their positions. While replying to Sargent's letter, the assistant secretary upheld that Chinese interpreters should be appointed unless they could interpret well in simple and complicated cases. He further argued that interpreters with limited Chinese reading or writing ability were "useless" due to the fact that Chinese writing was inevitable in many cases concerning Chinese immigrants: "I do not understand how our officers have been able to make up their reports and records in these cases without having a person who could read Chinese."[29] However, as Gardner pointed out in his report, these inferior Chinese interpreters were already the best that could be obtained in this country, so that Sargent was forced to agree that if no competent person could be found to replace the insufficient ones, the latter could continue their original interpreting work.

In this situation, another Chinese interpreter-at large, Mr. Seid Gain, was instructed to review those below average in Gardner's last report and to search for new applicants, including their associations, qualifications, standing in the community, and their ability to interpret and translate. The result of further examination of these below average interpreters was listed in the following table[30]:

Table 1

Name	Interpreting	Translating	Bearing &	Character &

[29] This letter was dated as October 26, 1907 in the case files mentioned in [31].

[30] These interpreters were from Prtal, North Dakota; San Francisco, California; Salt Lake City, Utah; Minneapolis, Minn.; El Paso, Texas; New Orleans, La. Portland, Oregon; Chicago, Ills. More details were in the letter by Acting Commissioner-General on March 13, 1908 in the case files mentioned in [31].

	ability	ability	personality	Habit
Eng Chung	Fair	Poor	Good	Not reported
Chin Jack	Good	Fair	Fair	Good
Chin Willie	Resigned effective November 23			
Wong Chong	Fair	Poor	Fair	Good
Wong Alloy	Good	Poor	Good	Good
Charlie Lee Chung	Employed temporarily. Not now in service. Seid Gain directed to not investigate, as whereabouts not definitely known			
Frank H. Tape	A very limited knowledge of written Chinese. Resigned.			
J. C. C. Longchallon	"Sadly defective"	None	(not reported)	

Although the second examination of these interpreters turned out to be not satisfying at all, the only measure taken by the immigration officers was to exonerate Frank H. Tape and to reassign Longchallon to New Orleans Station, considering his usefulness as an interpreter of Spanish. Another report dated on February 4, 1908 in the same case file in the National Archives (San Francisco) revealed that the examination of selected applicants for Chinese interpreters was still unsatisfying, especially in regards to written Chinese. This ten-month investigation of Chinese interpreters finally came to the end, and there were no further documents found concerning these tested interpreters or newly employed ones in this or other related case files. Though this investigation might only present a small part of Chinese interpreters working in the United States, it did signify potential problems both immigrants and American officials might encounter in the early twentieth century. For example, the insufficiencies in reading and writing Chinese would certainly undermine these interpreters' perception and awareness of the deep social and cultural structure of

Chinese society and impair their understanding of immigrants from that structure.

Two years later, the San Francisco Immigration Station moved to the newly built Angel Island Station and became one of the most important entries for Chinese immigrants in the twentieth century. Chinese interpreters, prepared or not, willing or not, had to encounter and act between different cultures and legal systems. Presumably, with the additional expectation of the "best results in examining Chinese," the interpreters' task at Angel Island Station would be very arduous and ambivalent.

Being Chinese and an Interpreter at Angel Island

According to the 1882 Chinese Exclusion Act, in order to prove their exempted status and health situation, all potential Chinese immigrants had to face examinations and interrogations before their entering into the United States. Those with proper documentation would be allowed to go ashore, but all the others had to go to immigration stations for hearings. As the gate to San Francisco, the "Golden Mountain," the Angel Island Station became a pivotal place for sifting out unwanted Chinese immigrants, where "200 to 300 males and 30 to 50 females were detained at any time"(Lai,1980: 16). The various dialects these immigrants spoke, as discussed in Chapter 1, made the Chinese interpreters' presence at Angel Island a necessity, where they interpreted in reception, medical examination, interrogation, and detention situations as well as serving as witnesses and investigators. But the problems went far beyond language itself: interpreters and immigrants had to face the discrepancies

between the immigrants' perception of law and that of the American officials; differing cultural and ethic identification; and the prominent prejudice and mistrust. A look back at literature and oral history on Chinese interpreters at Angel Island provides some clues helping us understand the interpreters' performance there.

Angel Island Prisoner 1922

In Chinese immigrants' eyes, these interpreters were definitely empowered because of the alien language they spoke and the close relationship they had with immigration officers. While the immigrants' language and behavior were not understood and appreciated by American officials, Chinese interpreters, recognized as the witnesses of those suffering and misunderstanding, were naturally expected by Chinese immigrants to help them out. In fact, the interpreters were criticized by many immigrants. Some complaints were related to immigrants' improper expectations of reading the interpreters; some concerned the insufficient communication through interpreters.

The dissatisfaction with Chinese interpreters finds a lot of echoes in Chinese American literature on Angel Island. A children's novel by Helen Chetin, titled *Angel Island Prisoner 1922*, establishes the image of Chinese interpreters through the character Wai Ching, a young Chinese girl. Together with her mother and baby brother, Wai Ching came to the United States to meet her father, and they were detained at Angel Island for medical examinations and interrogation. The novel describes Wai Ching and the thirty other Chinese women's lives at Angel Island,

offering insight into the Chinese female immigrants' special understanding of love, friendship, country, and identity in the United States. Understanding the interpreters' performance and role through Wai Ching's eyes helps us better understand these Chinese immigrants.

In the novel, the first person that Wai Ching and other women met when they stepped on shore was an interpreter. This interpreter "started shouting at them as if he were someone very important, like an overseer for the Emperor," and "didn't dress like a Chinese" but "wore a white demon's kind of suit" (8). While other women turned down his order to leave their belongings, the interpreter "waved his arms and yelled "Do as you are told! You will be sent back to China if you don't obey!" (8). However, his words did not have much effect until an immigration officer spoke to the interpreter and the interpreter repeated in a softer voice: "Your bags will be put in a separate shed. There's not enough space for all of them in your sleeping room. Every week you can go to the shed and get what you want. Please be agreeable and follow this woman" (9). From this moment, the interpreter became temporarily transparent in the novel. Wai Ching and other women watched carefully the white female officer rather than the interpreter, who spoke to them directly with gestures, and followed as if they could understand.

In the subsequent medical examination, a Chinese nurse acted as an interpreter, and ordered these women to take off all their clothes, otherwise they would stay there for ever. Since undressing in front of another man, even the doctor, made Chinese women feel ashamed, they did not follow the nurse's order. Instead, they looked at the

floor or glanced at the doctor. These women finally surrendered and undressed, but tried to cover their bodies with their hands and clothing. A later conversation Wai Ching had with other women revealed misunderstanding and insufficient communication through interpreters:

> Wai Ching said to a woman next to her: "Why did we have to get naked for that?"
> "To shame us." the woman said.
> "To make us feel bad." another woman said.
> "To make us think we're weak women or they won't let us enter the country." the first woman said.
> "Angel Island devils!" the second answered. "We'll see more of their bad ways." (10)

Several days later, Wai Ching received her interrogation through an interpreter. Being too young to remember detailed information about her family and too intimidated to answer well, Wai Ching was prodded by the interpreters several times:

> "How many people live in your village?"
> "I don't know," she said, "I never counted them."
> "How many houses?"
> "Many houses." She was sure of that though she'd never counted them, either.
> "Who lives on your left?"
> "The Wong family and there three sons, four--"
> "Hush!" the interpreter said, interrupting her. "Give short answers. He wants to know how many steps between your house and theirs."
> Steps? Wai Ching wondered if he meant stone steps or footsteps. She closed her eyes and imagined herself walking between the houses, counting her steps as she went. She heard the chickens. Her little cat ran between her legs, meowing, and she lost count. Oh! Should she turn around and start over or keep walking and try to remember? Oh, how she had to pee!
> She opened her eyes and said, "Five steps."
> "Five steps?" the interpreter asked, astonished. "Think again."
> "Ten steps." she said. (19-20)

Wai Ching ended up her interview with wet pants and tears, fearing that she had brought shame to her parents, her ancestors, and to all of the women on the island.

The interpreter's intervention was obvious, especially during the interrogation. His personal instructions of answering and continuous prodding made Wai Ching more nervous and prohibited her from clarification and expansion. As the novel describes, questions came nonstop and her answers went crazy: "her grandmother was a hundred years old; her grandfather was thousand years old; her father lived on a mountain of gold rocks as big as a fist" (20).

At the end of the novel, Wai Ching, her mother, and little brother are allowed to enter the country and to meet her father in San Francisco, the "Golden Mountain," while other women still wait endlessly on the island. The images of the interpreters in this novel echo the memories of many immigrants today. For example, Mr. Leung,[31] who was detained at Angel Island Station in 1936, recalled: "My deepest impression of Angel Island now was the rudeness of the white interrogators. They kept saying, 'Come on, answer, answer!' They kept rushing me to answer until I couldn't remember the answers anymore. And it wasn't just the whites. The Chinese interpreters did too..." (Lai, 1991:116). While pressure during interrogations was identified as a negative feature of the interpreters' performance, it is interesting to speculate what these immigrants expected Chinese interpreters to do. Apparently there was an assumption by most Chinese immigrants in the novel that Chinese interpreters should be on their side because their shared national and cultural identity, or at least that they should aid communication between both sides. But the reality turned out to be different: the interpreters' "loyalty" to immigration officials and empowering

[31] There is no further information about this Mr Leung in Him Mark Lai's book, and his first name is unknown.

linguistic ability had further alienated them from the immigrants.

A Charge against Two Chinese Interpreters[32]

In 1915, two Chinese interpreters at Angel Island, Lum Joe Ying and Robert F. Lym, were accused by a Chinese immigrant, Jew Ten Lem, of extorting $200.00 to assist his alleged wife, Woo Shee, to enter the United States. But the charge was first brought to the attention of the "Native Sons of the Golden State," a Chinese community organization, rather than the immigration officials, until a stenographer at the organization warned immigration inspectors to review the transcripts of the hearing. The alleged husband claimed that he met Lum Joe Ying and Robert F. Lym several times before his wife's arrival and had borrowed money from Hom Bong to bribe these interpreters. The husband claimed that he met Robert F. Lym on street for a couple of times and was recommended by the latter to seek help from Lum Ying, who was the president of the San Francisco parlor of the Native Son. Jew Ten Lem then met Lum Ying many times on the street and in the Chew Jan Store, where Lum Ying had an office in the rear room. The two interpreters admitted the husband's approaches but denied taking any money. At the same time, the accused interpreters alleged that they were charged of extortion because someone wanted to make them lose their jobs and then to take their places.

However, testimony by other witnesses tended to support the allegation that the

[32] This case was found in Various Chinese Interpreters (1907-1924), Reel 2: 0001 Case file 53360/34 [June 1907 - May 1924], Records of the Immigration and Naturalizaiton Serviced, NARA-Pacific Region (San Francisco) microfilm edition. There are more testimonies by each party concerning this case.

husband did pay the money to the interpreter. More important, a review of the alleged wife's examination showed something suspicious: the original examination of Jew Ten Lem's wife turned out to be very unsatisfactory and her application to enter was denied right way by the examining inspector. But twenty days later, when she was reexamined and asked, "Now tell us the truth where you did not tell the truth before," she clarified several discrepant points without even being questioned. Considering the accused interpreters' presence in some sections of the wife's and husband's testimony, there would have been a significant chance that interpreters furnished the couple with some important information. Moreover, the statement by another witness indicated that Jew Ten Lem's attorney also suggested that he seek help from Lum Ying, one of the accused interpreters. As the Acting Commissioner pointed out in his report to the Commissioner-General of Immigration in Washington, D.C., that this information at least demonstrated "the possibility of some illicit understanding existing between the attorney and the interpreters."[33]

Both interpreters were said to have clean records and were recognized as among the most competent and willing interpreters at the station. But their multiple personal meetings with the alleged husband aroused suspicions. During the investigation, the attitude the Chinese community held toward these two interpreters also served as strong circumstantial evidence of their guilt, especially the order expelling these two interpreters from the "Native Sons of the Golden State." Although the husband's testimony was also suspect because of his past involvement in the Tang War, the two

[33] For detailed case file information, please see note [25].

charged interpreters were believed to be guilty as charged in the end. As the Acting Commissioner noted in the report on this case made on October 16, 1915, the numerous meetings between the interpreters and immigrants while the case progressed had already jeopardized the interpreters' impartiality: "This, in itself, irrespective of whether or not money was paid for the information, is a very serious dereliction of duty."[34]

Although the above case might not represent the whole situation for interpreters at Angel Island, it did reflect, to some degree, the Chinese immigrants' cultural psychology and social expectations regarding the interpreter, as well as the interpreters' insufficient self-restraint and identity confusion. Longstanding bureaucratic corruption in former Chinese judiciary systems had suggested to Chinese immigrants that sending money or gifts to officials was an effective way to settle a legal case. So when immigrants were detained and interrogated at Angel Island Station, they naturally recognized Chinese interpreter, the only party they might have easy access to, as the possible turning point of their case, thinking that their detentions at Angel Island Station could be ended with bribes. This perception of law and the legal system was reinforced by the fact that in San Francisco, some Chinese Americans did succeed in bribing immigration station employees to change interrogation transcripts stored at Angel Island Station and create slots for new immigrants (Gee, 1999: 62). Interpreters recalled that some brokers or lawyers, who took care of immigrant cases, did ask immigrants to send money through them to

[34] Ibid.

interpreters, and that interpreters were even asked to help bribe inspectors by immigrants (Him, 1991: 115). A Chinese interpreter who was asked to carry out the duty of informing a female immigrant that her case was denied was scolded by the immigrant that "It's because we didn't give you enough money. If we had, we would have been landed" (Him, 1991: 115). At the same time, immigration officers at Angel Island station tended to mistrust and discriminate against Chinese interpreters, which might be partly due to the inspectors' former perception of improper behavior by Chinese interpreters and partly due to the prevailing animosity toward Chinese in American society.

Prejudice and Mistrust

> The real reason Chinese wanted their attorney and interpreter present "was on account of the applicant being so DUMB that the Cyndicate [sic] was in doubt as to his ability to remember this answers... The Attorney heard the questions, he (indicated) in English to his companion [the interpreter], the answer the applicant should make to the question, the companion SIGNALED to the applicant[t]... and the question was answered!... You will readily see the danger in having such persons present during an examination.[35]
>
> ------Agent Greenhalge

The trust issue of interpreters in legal settings is not only attributed to the widely recognized low standard of interpreting quality, but also related to the attitude of English-language legal systems to non-English languages. As Ruth Morris noted in her paper "Pragmatism, Precept and Passion: The Attitudes of English-Language

[35] Greenhalge to Chance, "Report on San Francisco," File 52730/84, INS Subj. Corres. Quoted by Lucy E. Salyer in *Laws Harsh as Tigers: Chinese Immigrants and the Shaping of Modern Immigration Law*, 63.

Legal System to Non-English Speakers" (1995), before becoming the dominant language in legal system, English had undergone a "centuries-long struggle" with French and Latin in legal systems. Morris further claimed that the long period of judicial obstruction of English use in the courts resulted as the later over-enthusiastically embrace of English monolingualism (Morris, 1995: 268). Those who claimed to be unable to speak or understand English in court might be suspected to be lying, considering the possibility that they would take this advantage to win more time and space and circumvent English law. This mistrust of other language speakers is the main reason for the reluctance of judiciary officials and attorneys towards providing interpreters, and this mistrust even extends to interpreters as individuals.

In the early twentieth century, Chinese interpreters were especially mistrusted by officials, who suspected interpreters of disclosing information and colluding with Chinese immigrants. The situation became worse when racial discrimination increased in American society at that time. The prevailing conceptions of Chinese "deception" and "sneakiness" of Chinese inevitably affected American officials' perception of Chinese interpreters. In 1896, the Department of the Treasury issued an order to discharge all Chinese interpreters hired by Collector Wise and replace them with whites, although this order was soon cancelled because of limited numbers resources of white interpreters who possessed enough Chinese skills, especially in the various Chinese dialects. In 1907, F. P. Sargent, the Commissioner-General in Washington Office of the Bureau of Immigration and Naturalization, reported to the

Secretary of Commerce and Labor on the issue of hiring new Chinese interpreters, in whose report discrimination and mistrust were still prominent:

> The Bureau has in its files a considerable number of applications from persons supposed to be qualified as interpreters and translators of the Chinese language, and some of those applicants are recommended by people of apparent responsibility, but these applicants are, without exception, persons of the Chinese race, and the engagement of any one of them is necessarily an experimental matter so far as their integrity (i. e. their ability to withstand the temptations that attach to the position) is concerned; and the Bureau believes that it is more important to have honest interpreters than to have interpreters with finished education, although it is very desirable to have both of these qualities combined in a single person.[36]

The Chinese interpreters' situation at Angel Island station appeared to be even more complicated and tenuous. The fact that interpreters had chances to work closely with inspectors, staffs, and missionaries both in and out of interrogations did worry American officials. They took measures which included alternating interpreters in different sections and keeping from interpreters any information related to immigrants' cases before interrogations were ready to start. For the same reason, a distance between Chinese interpreters and American officials was also consciously kept by both sides. This unspoken rule was verified by Tye Leung, the first female Chinese interpreter, who started to work at Angel Island in 1910. According to California state law at that time, a Caucasian was not allowed to marry a person of Asian descent, so when Tye Leung met and fell in love with an immigration officer, Charles Frederick Schulze, she had to travel with Schulze to Vancouver, Washington State, in order to get married legally. When they came back to Angel Island, both of them lost their jobs (Berson, 1994: 288-93). Research on the interpreters'

[36] This part comes from the same letter as indicated in note [31].

backgrounds also show an interesting fact that most Chinese interpreters working there had close relationships with either Christian churches. Does this mean that immigration officers expected some assimilation on behalf of the Chinese interpreters? How did these "Christian or Catholic interpreters" feel and act regard the discrimination they and Chinese immigrants received from the white officials and society?

One interpreter interviewed by Him Mark Lai in 1976 once claimed that "some inspectors were very fair-minded and impartial, and I would say, good. Then there were some who were very technical, and who were very prejudiced, who had no love for the Chinese" (1976: 36). Other interpreters might have the similar opinions, and their attitudes without doubt would consciously or unconsciously affect their interpreting and presence at immigration station. Genny Lim demonstrated how a female Chinese interpreter, Miss Chan, might behave at Angel Island through her play, *Paper Angel* (1993). Miss Chan, described by Lim as "a Christian convert, who carries out her duties as an interpreter with distinction and objectivity," although she is "sympathetic to the immigrants, her loyalty is to her job" (1993: 11). However, when Miss Chan detected the evidence of deportation while interpreting for the mission, she did not demonstrate complete loyalty. After being examined and interrogated several times, Ku Ling, a young Chinese girl, was notified that she was allowed to enter the country. But the address she presented to the mission, which was given to her by her father before her trip, was actually a house of prostitution. The mission wanted to put Ku Ling into Christian custody, while Miss Chan claimed, "If I

report this to the department she will be deported." But then the mission refuted: "Then you have to prove it, won't you? Anyway, you wouldn't want this poor girl deported on your account, would you, Miss Chan? (No reply.) That's what I thought..." (18). Miss Chan's silence indicated her moral dilemma and ethnic identification.

After their interpreting work on Angel Island, many Chinese interpreters chose to contribute the rest of their careers toward promoting Chinese immigrant rights and welfare in American society. The fired Chinese interpreter Tye Leung Schulze, who was dismissed as a legal interpreter, later became a great social worker in a Chinese hospital and an interpreter for the Chinese community. She was even listed as the only Chinese woman among the thirty-five unrecognized heroes of American history by Robin Kadison Berson. Does this phenomenon express something about the interpreters' attitude or their "objective" work at Angel Island?

Conclusion

With the exception of the immigrant oral histories and the National Archive's interrogation transcripts, Chinese interpreters at Angel Island from 1910 to 1940 were almost unknown to the outside world. However, studies of these interpreters' performances when they encountered linguistic, cultural, and ethnic problems in immigration hearings opens up new perspectives for current legal interpreting studies. On one hand, these early Chinese interpreters were disdained by their own people, and on the other hand they were also mistrusted by their American employers. At the

same time, American society's animosity to Chinese in the early twentieth century further jeopardized Chinese interpreters' credibility and professional ethics. Immigration officials had to rely on Chinese interpreters' language skills to carry out their exclusive policy, but they also mistrusted these interpreters because of their prejudiced perception of Chinese people. However, the real victims in this trust and mistrust issue were the Chinese immigrants, whose understanding of the American legal system and whose communication with American officials was hindered because of the required image of "loyalty" by Chinese interpreters. The poems carved in Angel Island Station's wall provide evidence of these immigrants' uninterpreted resentment and anger, and register not only a protest against the mistreatment of Chinese immigrants but also an appeal for improved understanding and communication. Such words continue to remind us of the necessity and urgency to further reflect on interpreters' role and to properly regulate interpreters' performance in immigrants' cases in the future.

CHAPTER 4

THE CULTURE COMPETENCE OF LEGAL INTERPRETERS

Perspectives on the Role of Legal Interpreters

The history of interpreting at Angel Island discussed in previous chapters constitutes an excellent example of the role that Chinese interpreters have played as they encounter their native legal culture in immigration cases. The analysis of interpreters' performances, and of the immigrants' corresponding frustration, resentment, and disempowerment within the American legal system, introduces cultural and social dimensions into current legal interpreting studies. The term "legal interpreting" has been widely recognized to cover various interpretations in all kinds of legal settings, including courts, police stations, lawyers' offices, immigration authorities, jails and prisons, and other public agencies associated with the judiciary. However, there is still no consensus on the distinctions among legal interpreting, court interpreting, and community interpreting. For example, in the *Routledge Encyclopedia of Translation Studies* (1998), community interpreting refers to "the type of interpreting that takes place in the public service sphere to facilitate communication between officials and lay people, which may happen at police departments, immigration departments, social welfare centers, medical and mental health offices, schools and similar institutions."[37] According to this definition, legal interpreters who

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work inside or outside courtrooms are both regarded as community interpreters. But Roseann D. González, in her *Fundamentals of Court Interpretation: Theory, Policy, and Practice* (1991), makes a clear distinction between legal interpreting and other forms of interpreting. For her, legal interpretation consists of quasi-judicial interpreting and court interpreting, and community interpreting is the interpretation "provided by non-professional interpreters" (1991: 29).

More importantly, the conventional reading of the role of legal interpreters is still strikingly under the sway of the code of ethics for court interpreters, because the latter is considered a higher level of the former. Although there are at present no laws in the United States specifying the interpreter's legal status, the *Code of Professional Responsibility of the Official Interpreters of the United States Courts* issued by the Administrative Office of the U. S. Courts (AO) put forward in the first Canon that all federal court interpreters should "act strictly in the interests of the court they serve" (González, 1990: 585). This canon obviously has grouped interpreters with court officers and justified the courts' interests that court interpreters remain "impartial" and "neutral," because interpreters "serve the court and the public to which the court is a servant" (Hewit, 1995: 202). The expected aim of interpreters' performance stated by American judiciary is then "to place the non-English speaker, as closely as is linguistically possible, in the same situation as an English speaker in a legal setting" (González, 1990: 155). However, the fact that court interpreters also work outside of courtrooms and most languages still have no accreditation tests for interpreters working in courtrooms contributes to the confusion of the role of legal interpreters.

Should there then be two standards for evaluating interpreters' role in court and other legal settings? If the aim of facilitating communication in community interpreting is denied by court interpreting, then what is the goal of court interpreting? As the analysis of interpreting at Angel Island shows, there are many areas concerning immigrants' prior legal culture and interpreters' cultural and ethnic identity which need to be considered. A flurry of recent related writings from various counties has already broken the myth of mechanical interpreting in the legal sphere, but in the United States neutrality still occupies a dominant place in studies of the training of court interpreters and there is less latitude left to interpreters than in other countries.

"Monsters" and interpreters

Research by R. Bruce W. Anderson (1976) and Michael Cronin (2003) provides a unique cultural perspective for rereading the interpreters' role in mixed cultures and unbalanced power relationships, one which will be essential for understanding the significance the adversarial legal system has to legal interpreters in the United States. In his essay "Perspectives on the Role of the Interpreter" (1976), Anderson points out the influence of variables, such as social class, education, gender, and age on the role of interpreters. Based on Wallace Lambert's (1955, 1968) studies of the linguistic behavior of bilingual speakers, which is said to be related to "the order in which they learned the languages," the "relative dominance of their languages," and the "extent to which the language systems merge" (1976: 213-5), Anderson analyzes the different roles coordinate bilinguals and compound bilinguals play in their interpreting. The

concepts of "coordinate bilinguals" and "compound bilinguals" that Anderson refers in this article comes from Ervin and Osgood, who term a bilingual who operates in merged language systems a compound bilingual; and the one who has to associates new words and society with their empirical referents a coordinate bilingual. (1954:69 qtd. in Anderson, 1976: 213) To Anderson, coordinate bilinguals have a better performance in linguistic and cultural aspects than compound bilinguals; while compound bilinguals are more likely to identify with clients whose culture they share in preference to a client with whom they are culturally at odds (Haugen, 1956 qtd. in Anderson, 1976: 216). Therefore, those who tend toward coordinate bilingualism are more likely to remain neutral while they interpret (Anderson, 1976: 216).

This cultural positioning by interpreters based upon their transcultural identity is significant in understanding their real work in an often tense situation. Cronin further develops the question of interpreters' transcultural role in his paper "The Empire Talks Back: Orality, Heteronomy and the Cultural Turn in Interpreting Studies" (2003). He challenges the assumption that interpreters can remain impartial to their indigenous culture because of their knowledge of a foreign language and culture. He anticipates possible "insuperable problems of translation" due to the different cultures expressed through languages (Cronin, 2003: 53). In the same paper, Cronin borrows the idea of *monsters* and *teras* from Rosa Braidotti's *Nomadic Subjects* (1994), comparing the in-between interpreters' ambivalent status to *monsters* who are "born with congenital malformations" of their body and are "both horrible and wonderful, object of aberration and adoration" (Braidotti, 1994: 77 qtd. in Cronin,

2003: 54). Doña Marina (also known as Malinche) was the interpreter who knows Mayan, Spanish and the language of Aztec. Through the example of Doña Marina in the *Lienzo de Tlaxacala*, Cronin emphasizes how Doña Marina acted as a monster, admired for her language and cultural ability but loathed as the traitress to her indigenous culture. The awe and alienation implicated in the metaphor "monster" will be more prominent when interpreters work in unbalanced power relationships, such as between colonizers and natives, or immigrants and officials.

As the novel *Angel Island Prisoner 1922* by Helen Chetin demonstrates, through the character Wan Ching's eyes, interpreters dressed in Western suits, spoke foreign languages, and behaved arrogantly and threateningly to their own people. Without the officials' consent, the interpreters gave orders themselves; while confronting the immigrants' questions, the interpreters did not interpret their questions or convey their problems to officials, but threatened those immigrants to be obedient; during interrogations, the interpreters prodded and shaped immigrants' answers in front of immigration officials. These phenomena indicate the attitude interpreters had to their own society and culture, one which directly influenced the awareness and the extent of interpreters' cultural invention. The interpreters' attitudes to their native culture and people inevitably were related to the interpreters' social status, education background, gender, and family affiliations. Considering the racial discrimination and prejudice the Chinese community endured from the mainstream American society in the early twentieth century, it is not hard to understand why Chinese interpreters at immigration stations used their cultural flexibility and linguistic privileges in order to

construct barriers meant to alienate their native people, a "lower and weaker" group in American society.

Legal interpreters serving for Chinese immigrants in the United States have diverse social-economical and educational backgrounds. Some of them are Western-educated, American-born Chinese who believe in and follow the American social norms and customs; some of them are from mainland China with socialist or communist perspectives; some of them are from other Chinese communities, such as Taiwan, Hong Kong, or Singapore, who might have a different perception of Chinese legal culture. The different political and ideological backgrounds that legal interpreters carry directly influence their attitudes to Chinese immigrants who might not share the same background. As Holly Mikkelson notes in her book *Introduction to Court Interpreting* (2000), in the mainland legal system not only ancient Confucian principles play an essential role, but the influence of Soviet socialism is also prominent. She takes the Article 2 of the *Criminal Law of the People's Republic of China* as an example in order to elucidate that socialist order is always above individual rights (Mikkelson, 2000: 30). For this reason, some interpreters from mainland China might despise the "snobbish" and "ego-centered" behavior of certain immigrants, while some interpreters from other areas and with a different education might regard some immigrants from mainland China as stubborn and uncultured. The influx of illegal immigrants from remote areas in mainland China to the United States in the past ten years has already alerted American judiciary's attention to the attitude of Chinese interpreters toward these immigrants.

Who Controls the Bilingual Courtroom?

There are various metaphors applied to court interpreters. In her Ph. D dissertation *Images of The Interpreter: A Study of Language-Switching in the Legal Process* (1993), Ruth Morris presents the court interpreter as "a phonograph, a transmission belt, transmission wire or telephone, a court reporter, a bilingual transmitter, a translating machine, a (mere) conduit or channel, a mere cipher, an organ conveying (presumably reliably) sentiments or information, a mouthpiece and a means of communication" (Morris, 1993: 236-7). All these terms indicate that court interpreting, the highest form of legal interpreting, is still strictly confined as an unobtrusive and impartial mechanical process. The central problem regarding the court interpreters' role turns out to be the problem of power in the bilingual courtroom. The legal guarantee of providing interpreting service for immigrants in courts formally introduces the presence of a third party into the courtroom, usually the only party to understand both sides there. Having already ceded some control to interpreters, both judges and attorneys are very cautious about limiting the interpreters' linguistic behavior only. Therefore, court interpreters are repeatedly warned by various professional codes of conduct to provide an accurate and faithful interpretation without editing or embellishing and to refrain from any behavior that might arouse suspicion of partiality or bias from other parties. For example, the articles 1, 7, 10 of the *Code of Ethics and Professional Responsibility* for all federal court interpreters, which was developed by the Federal Court Interpreter Advisory

Board, clearly reflect this inclination toward maintaining control over the official court interpreters. These articles require interpreters to "act strictly in the interest of the court they serve," to "work unobtrusively with full awareness of the nature of the proceedings," and to "refrain from giving advice of any kind to any party or individual and from expressing personal opinion in a matter before the court" (González, 1990: 585).

While cultural diversity has become the norm and at the same time a problematic issue in the court system of the United States, the need for cultural awareness and even intervention by court interpreters is becoming increasingly obvious to both professional interpreters and researchers. A report issued in 1992 by the Massachusetts Supreme Judicial Court, named *Reinventing Justice 2022: Report of the Chief Justice's Commission on the Future of the Courts* has already proposed that both linguistic and cultural connotations should be considered by the State court system by 2022. In 1999, Arlene M. Kelly conducted a survey among 100 court personnel, interpreters, prosecutors, defense attorneys, and legislators from Massachusetts as well as interpreters, trainers, and administrators throughout the United States. This survey reflects diverse views on various issues concerning the legal interpreter's cultural intervention, such as the necessity of conveying cultural differences through interpreters in courtrooms, the qualification of competent court interpreters before their cultural instructions, and the relevance of cultural problems to justice to court, as well as suggesting less intrusive approaches in order to give cultural clarifications and explanations. The results of this survey were presented in

her paper "Cultural Parameters for Interpreters in the Courtroom" (1999). As Kelly notes in this paper, most judges declared that "interpreters should not convey cultural differences in the courtroom" (Kelly, 1999:136-8). The crux of this reluctance towards the cultural intervention of interpreters in court comes from the fear that interpreters' neutrality might be undermined consciously or unconsciously by their extra-linguistic performance. So, many interviewees claim that interpreters should be qualified by court as experts first and foremost and that cultural differences can only be addressed when they "consist of evidence which met the tests of admissibility: relevance and materiality, for example" (Kelly, 1999: 137). As for the idea of "proper circumstances" where interpreters could participate as cultural experts as proposed by one interpreting educator in the survey, Kelly further explains that this "circumstances" should be the moment "whenever a miscarriage of justice could occur through misunderstanding of a materials issue" (Kelly, 1999: 138). The concerns of others about over-extended proceedings and irrelevant cultural lecturing in court are understandable, but the "ball" comes back to interpreters, because they might be the only parties present who could be aware of cultural misunderstandings and communication breakdowns. Interpreters are often able to perceive and predict the possible miscarriage of justice in their interpreting. But in actual courtrooms, many issues that may seem to be irrelevant at first turn out to be relevant later or significant during another witness's testimony.

In Kelly's survey, several attorneys thought that cultural information might be helpful to their cases. Many attorneys at the same time emphasized the training and

education of interpreters, and one attorney even indicated that cultural differences should be clarified during the attorneys' meeting with their clients, rather than in court. In other words, the right of cultural intervention by court interpreters should be surrendered to the attorneys. The fear that interpreters may disempower attorneys and impede the process of cross-examination is related to the adversarial legal system in the United States. Attorneys' well-planned questioning might be delayed and jeopardized by the process of interpreting and cultural information given by interpreters, thus the examinees not only obtain extra time to think over their answers, but also are protected from attorneys' intentional ambiguities by the interpreters' paraphrasing and clarification. Therefore, the attorneys' authority to direct the interrogation diminishes, and the communication in cross-examination becomes more complicated and unpredictable.

Kelly's survey provides a multi-dimensional perspective for looking at the power relationships in courtroom and understanding the dilemmas that court interpreters encounter concerning the issue of "control." However, in her survey, one group is excluded: language minorities. How do immigrants feel about interpreters' providing cultural information? And what kind of interpreting service will immigrants need for an effective communication with attorneys and judges in court? This exclusion is also pointed out by Cronin, who says that immigrants are the real "victims of this theoretical exclusion," because they cannot speak for themselves, but "others (social workers, government officials, academics, the police) speak for them" (Cronin, 2003: 51). While legal professionals reiterate their full control of the

courtroom and an image of a neutral and unobtrusive interpreter, the rights of immigrants may be obstructed and silenced. Many interpreters, daunted by the constraints imposed by judges and attorneys, might "rather struggle on than intervene" (Fowler, 1995: 195). Therefore, the debate regarding the court interpreters' role in fact develops into a conflict initiated by legal professionals with the aim of protecting their control and position in courtrooms.

What Should be Interpreted in Courts?

As Kelly's survey reveals, one reason for unwelcomed clarification of cultural differences is that "our judicial system judges people, especially criminal defendants, by the standards of the prevailing culture, not their culture of origin" (1999: 140). Does this mean that interpreting immigrants' native legal culture is unnecessary and misleading? The purpose of informing legal professionals about the different legal culture that language minorities have is not to find excuses for their misbehavior or to change the prevailing legal system in courts in the United States; rather, it is to incorporate new approaches which better understand and evaluate the non-English speakers' testimony and thus improve public legal service in this country.

Under the adversarial court system in the United States, attorneys are responsible for collecting, sifting, and presenting evidence, and they usually have less supervision from judges and jurors than in other legal systems. However, research show that the adversarial system aims not one "to discover the truth" but to "win the case" (Sabine Fenton, 1995: 32). Contrasting sharply with the inquisitorial legal

culture in other countries, the American adversarial courtroom is aggressive and belligerent, in which lawyers take the lead role and direct a show to manipulate the opinions of judges and jurors. In the examination-in-chief, the re-examination, and the cross-examination, lawyers frequently use leading questions to influence witnesses' testimonies. On one hand, the immigrants' alienated legal culture and corresponding social-psychology may constitute negative factors to their credibility in court. For example, Chinese immigrants' fear of and respect toward for authorities could be mistakenly perceived as indications of guilty in the eyes of the lawyers or jurors. On the other hand, certain judicial procedures and legal concepts of the prevailing culture will be unknown and confusing to immigrants, thus impeding an effective communication in cross-examinations. For example, if immigrants do not have an idea of the principle of "rule of evidence" in American courts, they will not understand the attorneys' accusations implied in their leading questions.

Holly Mikkelson devotes a whole chapter in her book *Introduction to Court Interpreting* (2000) to discuss legal traditions of the world, including civil and common law; African, Hindu, Islamic, Judaic, Socialism, and Confucianism; as well as International Law and Supranational Courts. Her action has already anticipated the future of in-depth studies which combine the study of law and interpreting, because when the linguistic handicap is ostensibly made up by verbatim interpreting, non-equivalent legal concepts, principles, and psychologies are the real crux of miscommunication and misperception. To put it more clearly, the intended meanings from one side may fail to be conveyed or be distorted in interpreting because of the

different legal system. What then should court interpreters convey? The literal meaning or the intended meaning? And what is the standard of "accuracy" and "equivalence" in court interpreting?

Pragmatists in interpreting studies, such as Sandra Hale, argue for the interpreting equivalence at the pragmatic level, which requires the interpreted version to achieve the same reaction in the Target Language (TL) listener as it would in the Source Language (SL) listener. In her paper "The Interpreter on Trial: Pragmatics in Court Interpreting" (2004), Hale indicates that languages are used strategically in court to "build up a natural argument for the jury" rather than to "elicit information unknown to the questioner" (1995: 202-4). As she points out, the lawyers' choice of words, with their careful juxtaposition, verb tense, and special syntax, psychologically intend to "discredit" the witnesses and psychologically influence juries' decision, but interpreters "are so preoccupied with rendering all the information, that they disregard linguistic subtleties, or worse still, feel annoyed at the treatment afforded the witness and interfere to ensure the answer is understood correctly" (1995:204). Starting from Speech Act Theory established by J. L. Austin (1962) and J. R. Searle (1969) and developed by Herbert Paul Grice's (1975) Cooperative Principle (CP), and then to Thomas Jenny's (1983) research on pragmatic failure, Hale tries to prove that without a shared knowledge of the legal system and culture, the illocutionary force will not be reached, and that the pragmalingusitc and sociopragmatic failure is mainly attributed to the pragmalingustic transfer, i. e., the process of interpreting.[38]

[38] According to J. Thomas (1983), pragmalinguistic failure is caused by mistaken beliefs about the pragmatic force of the utterance, which occurs when speech act strategies are inappropriately transferred from L1 to L2;

Therefore, the dual tasks for court interpreters to distinguish the lawyers' designated ends and to convey witnesses' intention to convince jurors constitute the central core of effective legal cultural communication in immigrants' cases. The following example, taken from the transcripts of an Angel Island Station's inspector's interview of a female Chinese immigrant, demonstrates the pragmalingustic failure through insufficient legal interpreting. The excerpt reads:

> Q: How long is it since you last saw your husband?[39]
> A: I haven't seen him for about 8 months. He has not been to see me at the Island.
> Q: Has he sent any word to you within the last 8 months?
> A: No. My lawyer brought me over $10 one day.
> Q: Did you ever get any money from your husband or from anyone else since you have been at the station here up until the time you received that $10 one day.
> A: No nothing... I would like to have you tell my husband to send me back to China.
> Q: Do you still maintain that you are the lawful wife of your alleged husband?
> A: I was married to him in China.
> Q: Have you any reason to think it was not a legal marriage?
> A: Yes. I think it was a legal marriage. My mother had me married.
> Q: How do you explain the indifference that your husband has shown towards you since you have been here?
> A: He is in the city. I don't know why he didn't come.

In the above example, the inspector obviously was leading the Chinese woman to admit that her marriage with the alleged husband was fake. However the concept of "lawful wife" failed in interpreting because of the two different legal cultures. When the woman emphasized that "I was married to him in China," she referred to the fact that she had gone through formal social customs for marriage, which were recognized

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sociopragmatic failure stems from cross-culturally different perceptions of what constitutes linguistic behavior. (Thomas, 1983: 206 qtd. in Hale, 1995: 206).

[39] This part of transcripts is quoted from Robert Barde's (2004) article "An Alleged Wife: One Immigrant in the Chinese Exclusion Era, Part 2." in Prologue, Spring 2004, Vol. 36, No. 1. The original transcripts is enclosed in Investigation Case File no. 15530/6-29 in Arrival Investigation Case Files, 1884-1944, Records of the Immigration and Naturalizication Service, Record Group 85.

as valid in her country. But the literal interpreting of this sentence did not directly answer the question that the inspector asked; and the inspector obviously did not think this woman understood the direction his questioning was leading. So the inspector rephrased his question to challenge again her legal status as the alleged wife. The woman reiterated her point and added that it was her mother that had arranged her marriage. What was couched in her statement was her intention to prove that her marriage was approved by her parents, which justified the validity of her marriage in traditional Chinese society, but would sound irrelevant to most Westerners without this cultural knowledge. What was hidden more deeply in her argument was a strong belief of the loyalty a wife shows her husband in traditional Chinese culture. In this culture, women were taught to be absolutely loyal to her husband at the very beginning of her engagement, no matter how her husband treated her, and that, even when she died, her soul would still belong to her husband. Questioning a woman's legal marriage almost meant challenging her innocence and loyalty to her husband. However, this embedded culture and this woman's status were not fully conveyed through the interpreting of her statements. The more she repeated, the less convincing her arguments sounded to the inspector, and the more uncooperative she appeared. It could be imagined that without a mutual understanding on this legal marriage issue, the questioning would continue in a tiring loop for both parties. The last direct question by the inspector revealed that his patience with this woman had already come up to an end. It would be improper to say the interpreting of the dialogue was wrong, but definitely did not go far enough. The fact that two parties were from

different cultural and legal systems had already determined that the dialogue between them would encounter cultural bumps. Without interpreters' proper cultural bridging, the successful communication might be delayed and incomplete.

In the same case file, when the inspector tried to persuade this Chinese woman to drop her petition for a writ of habeas corpus, the communication failed again, and the interpreter had to intervene. Following is the transcript and related record found in Robert Barde's his paper "An Alleged Wife: One Immigrant in the Chinese Exclusion Era" (2004):

> Q: It will probably take three or four months for your case to be decided in court.
> A: I am not willing to wait that long, since I have waited so long already.
> Q: Would you be willing to wait two months for the Court to decide your case?
> A: My lawyer has already promised me in two weeks, so I am not willing to wait any longer than that.
> Q: With due deference to your lawyer, I can state that your case cannot possibly be decided for two or three months at the very least.
> A: I have already asked him to ask my friends not to appeal my case any longer... I am determined to go back.
> [To the interpreter]: Mrs. Wisner, please explain to her that we have no right to urge upon the Court that she be deported day after tomorrow, irrespective of the wishes of her husband unless she herself absolutely demands it of us. (Interpreter complies)
> (by Applicant) I have nothing else in my mind now, except to return on the Nippon Maru on Saturday the 15th. I have nothing else to say about it; I insist upon going.
> (Statement by Mrs. Wisner, the interpreter): During the last month, every time I have seen this woman, I have been asked to take a note to Mr. Hayes or the Commissioner, begging them to use their utmost endeavor to send her back on the first Japanese boat. I have explained this statement to the applicant, and she says it is correct.

In the above example, the inspector's repeated inferring of the length of her case is an indirect illocution to allude that she would better to give up her appeal for a writ of habeas corpus. But the immigrant's answer shows that the inspector's intention of

persuading obviously did not reach her completely through the interpreter. The unsuccessfully communication then irritated the inspector, who ended up in asking the interpreter to explain. As this case shows, literal interpreting is not enough to meet the requirements of pragmatic equivalence in court, especially between clients from different legal cultures. While legal professionals and language minorities are playing their parts in drawing attention to this matter and convincing judges and jurors, there are other obstructions in their communications with each other. In this situation, a professional legal interpreter with cultural competence will be needed to work in-between them.

Training a Cultural Legal Interpreter

A repeated concern in this thesis has been the cultural awareness and competence of legal interpreters that could enable and justify their intervention in legal settings. Given the wide use of legal interpreters inside and outside court in the United States, this concern naturally turns to the issues of training legal interpreters to use their cultural expertise. Startng from the 1970s, various state and federal courts have developed accreditation exams for court interpreters for a few requested languages. The increased interpreting requests and 1978 Act's priority of using certified interpreters in court stimulate the founding of various court interpreter training programs. A close look at current Spanish-English Federal Court Interpreter Certification Examination (FCICE) sheds some light on the potential goals of such training programs for legal interpreters, thus disclosing neglected areas by

professionals and institutes, including interpreters' cultural awareness and competence, approaches to intervention, and co-working with legal professionals and language minorities.

The FCICE was created by the Administrate Office of the United States Courts (AO) after the 1978 Court Interpreter Act. Its advances are primarily due to the specialist Jon A. Leeth, who surveyed federal judges, court interpreters, conference interpreters, linguists, and psychometricians to find out the needs of the courts and the inherent linguistic characteristics of the language used in court (González, 1991: 524). To test the applicants' language proficiency and interpreting performance, the Spanish-English FCICE includes two main parts: a written examination (2.5 hours) and an oral examination (40 minutes). The written exam assesses the applicants' knowledge of both languages. For each language, there are a total of 80 multiple-choice items, which are divided into five equal parts of 16 items. The five parts are: reading comprehension, usage, error detection, synonyms, and best translation of a word or phrase. As the AO explains in the FCICE examinees' handbook (2004), the written section aims to test the "comprehension of written texts, knowledge of vocabulary and idioms, recognition of grammatically correct language, and the ability to recognize appropriate target language rendering of source language text".[40] After passing the written exam, applicants are eligible to take the oral test, which consists of five sections: sight translation (English to Spanish); sight translation (Spanish to English); consecutive interpreting: (Spanish to English/

[40] This handbook was prepared for the Administrative Office of the United States Courts (AO) by the National Center for State Courts on May 20, 2002 and was revised on March 22, 2004. It is available from FCICE website: http://www.cps.ca.gov/fcice-spanish/

English to Spanish); simultaneous interpreting into Spanish (monologue speech); simultaneous interpreting into Spanish (witness testimony). The purpose of the oral test is said to assess functional proficiency during actual task performances required for court interpretation (Etilvia Arjona, 1985:185), which means that interpreters can accurately preserve the meaning of a source language without embellishments, omissions, or alteration of the style or "register" of speech when rendering it into a target language. At the same they demonstrate their ability to keep up with the routine pace of court proceedings.[41]

It is interesting to note that in this FCICE examinee handbook, the purpose of court interpreting is stated differently from the definitions discussed earlier in this thesis. It says that "the purpose of interpreting for defendants who do not speak English is to allow them to understand everything that is being said and to participate effectively in their defense."[42] However, just a few lines after this definition, a common constraint of court interpreting reappears, that is, court interpreters have to provide an accurate translation, without adding, deleting, altering, or summarizing the content, given the fact that interpreters' words are heard as evidence and recorded in the official court transcript of the proceedings. The situation is contradictory. Which standard has priority? Effective communication or a perfect court record? The handbook provides its answer right away in the next section on court interpreters' qualifications, in which the mastery of both languages and the ability of working in three modes of interpreting (consecutive interpreting, simultaneous interpreting, and

[41] Ibid. page 28.
[42] Ibid. page 1.

sight translation of documents) are presented to be the main concerns of required qualification for court interpreters. While it describes in detail how many words per minute are respectively required for simultaneous mode and consecutive mode, there are no words referring to interpreters' cultural competence and ability of effective cultural intervention in court, let alone knowledge of legal cultures and systems in both languages. Especially in the oral test, examinees are only required to interpret simultaneously and consecutively a cross examination between a lawyer and a witness. And the fact of only interpreting a recorded testimony has already excluded interpreters' interventions and dynamic interaction. Given the complexity and tension of court interpreting in reality, it is suffice to say that the FCICE test does not sufficiently assess interpreters' knowledge and skills of cultural interventions in court. The reasons might be attributed to the complexity of cultural problems and the lack of effective testing approaches, or it might be the negative attitude the judiciary system holds in regards to a dynamic role for interpreters in court.

Although legal professionals in the United States still maintain an ambivalent attitude to legal interpreters' role regarding providing cultural information, and although an established accreditation of interpreters as bi-cultural experts is still a long way off, training programs focusing on legal interpreters' cultural competence and performance, especially the knowledge of legal cultures and systems, are foreseeable. This progress will benefit directly from current research on training community interpreters in other countries, which have more latitude for legal interpreters' interaction. A pilot project for training and providing cultural interpreters

in Toronto, Canada might shed some light on the training of interpreters' legal cultural competence in the United States. This project was implemented between June 1997 and March 1998, aiming to test the cultural/community interpreter training program for two Domestic Violence Courts and a hospital-based Domestic Violence Project. The whole project has a detailed description by Diana Abraham and Melanie Oda in their paper "The Cultural/Community Interpreter in the Domestic Violence Court - A Pilot Project" (1998). In this project, the various expectations of cultural interpreters from police officers, social workers in Victim Witness Assistance Program (VWAP), Crown Attorneys, and health care employees in Women's College Hospital are determined separately, and a general requirement for cultural interpreters' competence for working in the Domestic Violence Court. System is recommended. Four aspects of competence are suggested: knowledge, skills, role and responsibilities, and code of ethics. The part of knowledge required is further divided into general knowledge, communication knowledge, and administration and policy knowledge. Issues such as knowledge related to violence against women from the perspective of both the victim and the perpetrator; respect for and understanding of relevant aspects of the culture of both clients; an awareness of immigrant and refugee issues and interpreters' own personal values and attitudes are all clearly addressed in this section (Abrahm & Oda, 1998: 173-6). In the section of required skills, there are two additional skills expected from these cultural interpreters: interruption skills and communication skills. Some special items may provide some insight into general legal interpreting training: being able to interrupt; recognizing an appropriate moment to interrupt; communicating in a

non-judgmental manner; and asking for clarification of the meaning of the message in a tactful, assertive, non-judgmental manner (Abrahm & Oda, 1998: 175-6). These skills requirements are clearly represented in the statement of the responsibilities that cultural interpreters are assumed to have in this project. One is the responsibility that the interpreter "indicates to the speaker if the listener does not appear to understand the message"; another is that the interpreter "clarifies and when necessary, assists the speaker to reframe questions and statements to make them culturally and linguistically appropriate without changing the message" (Abrahm & Oda, 1998: 176-7). These revolutionary measures have extended the stage where legal interpreters can perform in Canada and may prove valuable in the future reform of training and certifying legal interpreters in the United States. These reforms may facilitate the communications between legal professionals and immigrants and improve the legal service in American society. At the same time, the more power that legal interpreters have requires stricter accreditation exams of these "empowered" legal interpreters. Given the current low pass rate of certified interpreters and limited language pairs for certification, the extra requirement of culture competence might further push prospect examinees away from the gate to certification.

In addition, improving existing and creating new language pair examinations for legal interpreters with extra requirements of knowledge and skills of interpreting legal culture and system will be challenging for both judiciary and prospective examinees. Finding potential qualified candidates with bilingual and bicultural abilities will be as hard as finding bicultural experts and bilingual testers. Addressing

these problems involves collaboration with foreign language programs, bilingual education programs, and native cultural and linguistic maintenance programs in the United States, and close cooperation among related fields, such as legal studies and cultural studies.

CHAPTER 5

CONCLUSION

The complexities of legal interpreting exist in various aspects, for example, technical terms, lexical vagueness, anfractuous syntax, and different legal systems. The objective of this thesis was to analyze the difficulties that legal interpreters might confront when they were working not only with two languages, but with two different legal systems and cultures. What triggered my interest in this topic is my personal interpreting experience for Chinese immigrants in my community and the reading of the immigration history of Chinese at Angel Island, San Francisco, California. The latter constituted the main case study in this thesis. When Chinese immigrants were interrogated through interpreters by immigration officials at Angel Island, these immigrants' prior perceptions, values, and practice of law undermined the trans-linguistic communications. The racial discrimination and judiciary mistrust that American society had toward Chinese interpreters at that time further hindered their performance in the trans-linguistic communication between immigrants and officials. Based upon these social conditions and historical background, the immigration interpreting at Angel Island constitutes a very special case in the history of legal interpreting for Chinese immigrants in the United States.

The continuous influx of Chinese immigrants to the United States in the past decades poses many challenges to legal interpreters due to the varieties of these immigrants' origins. Immigrants' dialects, literacy levels, knowledge of law, beliefs

and political ideologies, contribute to different situations for interpreters. For example, Chinese who emigrated from Fujian province before 1949 might only speak Min dialect and read traditional Chinese; those from Taiwan might read traditional Chinese but only speak Mandarin. Immigrants from northern China, southern China, Hong Kong, Macao or other areas all have subtle differences in terms of their values, assumptions, and customs of law. In this thesis, I have tried to present a combined analysis of the immigration history of Chinese and their characteristics in terms of a foreign language community, including their prevailing dialects, education levels, and potential ideological inclinations. For the same reason, but also for the sake of later discussion on the case study of Angel Island Station's interpreters, I have provided a detailed explanation of the features that Chinese immigrants and interpreters had at Angel Island Station from 1910-1930, especially the role interpreters played throughout immigration interrogations.

Taking a close look at the history of Chinese immigration to the United States helped to see the significance of research on ethnical and cultural issues in interpreting studies. In the past century, China has seen dramatic changes in social, economic, and political as well as linguistic fields. From early Pearl River Delta residents, "paper sons" with purchased fake documents, political "refugees," Taiwan and Hong Kong emigrants, mainland students, and scholars to illegal Fujian immigrants, the variety of incoming Chinese immigrants also demands constant adjustments of legal interpreting services for them. Dialect is always a problem in identifying the right interpreters; however, the discrepancies Chinese immigrants had

with Americans in terms of understanding and practicing law is a more serious but less mentioned issue. Because the concept of law that Chinese people have is mainly formed through a long period of Confucian moral education, the values and assumptions that they have about on law do not differ as much as their dialects, regional customs or their political positions do.

Based upon some well-known cases involving interpreting for Chinese immigrants in the United States and some of my personal interpreting experiences, an analysis was carried out on the principles underlying traditional Chinese legal culture and their influences on immigration legal interpreting. Since Han dynasty, the moral-centered Confucianism became the dominant ideology in Chinese society, when Confucians won its debate with legalists concerning the issue of "virtue-ruling" or "law-ruling" the country. The overwhelming divine royal power and the concept of tolerance and respect introduced by Confucianism to Chinese imperial laws easily broke the balance of rights and responsibilities established by former legalists and openly discouraged individuals' knowledge of law and their possible litigations. This negative attitude to legal issues and indifference to legal rights that Chinese had is so influential that even today in China, people still hold ambivalent attitudes to those who seek their rights through legal approaches, thinking that they are either very brave or troublemakers. Unsurprisingly, Chinese immigrants, with the imbuement of their prior culture, had difficulties in situating themselves in Anglo-American legal systems. The way to getting the right of free qualified interpreting service and accessing other legal rights through the service is thus obstructed by immigrants'

prejudiced understanding of law and unfamiliarity with another legal system. Therefore, the first step to improve legal interpreting service in the United States is to make this service known and accessible to immigrants in need. The other influence that Confucianism left on Chinese law is the mark of social hierarchies and overriding moral standards, which resulted in a different concept of justice and legal privileges in Chinese legal culture. Chinese immigrants' overcorrected polite language and modest behavior in front of the superior might be regarded as negative and uncooperative by American judges and attorneys if there is no proper interpretation or explanation on interpreters' side. In addition, some related cultural issues in immigrants' testimony, such as the priority Chinese people give to morality over law and their idea of justified unequal social relationship, would not sound convincing to American judges and lawyers. Recognizing and understanding these cultural and social issues are pre-conditions for legal interpreters' efficient work. Another peculiarity of Chinese legal culture having significant repercussion on immigration interpreting is its magistrate-centered judiciary power and corresponding principles in judgment. Because Chinese magistrates applied a set of principles, such as "*qing* (compassion)," "*ai* (love)," and "*de* (virtue)," in their judgment as well as limited torture to extract confession, people got used to be as self-confessional as possible in court to avoid torture and obtain sympathy. At the same time, the strictly controlled inquisitorial style in Chinese court significantly shortened and pressed people's answers and initiatives in their testimony. These powerless speech features along with a different grammar system in Chinese language, after being interpreted into English, turned out

to produce strikingly significant influence on immigration officials and American jurors. With some examples of Chinese grammar system and transcripts of interpreted interrogations at Angel Island Station and based on O'Barr's (1982) and Berk-Seligson's (1990) studies on "powerless speech" in courts, I pointed out possible linguistic ambiguities and the problematic control of speech right in courts because of the delay throughout the process of interpreting. At the end of Chapter Two, Zhao Yan's case was presented to indicate the emotional card played by Chinese immigrants in court and corresponding register-switching difficulties for interpreters.

In the case study of Chinese interpreters at Angel Island Station, I first represented the nation-wide investigation of Chinese interpreters at immigration station in 1907 and 1908. The results of this investigation with the correspondence between the Commission-General and the Secretary of Commerce of Labor concerning Chinese interpreters' competence and honesty clearly revealed the real situation of interpreters' language incompetence and the expectation and priority that immigration officials had on interpreters' performance. Following documentation from the National Archive, I took a close look at interpreters' image as perceived by Chinese immigrants in literary works and historical facts: a children novel, *Angel Island Prisoner 1922* by Chetin (1982), and a case of two corrupted Chinese interpreters. In the novel, Chetin reproduced an empowered "monster"--the interpreter-- through the eyes of a young Chinese girl, Wang Ching, who was detained and interrogated in Angel Island along with her family. The suits that the interpreters wore, the way they talked, and the attitude they held toward their people were

magnified and questioned through this young girl's perception, therefore calling into question the ambivalent position these interpreters might take. The 1915 case Lum Joe Ying and Robert F. Lym vs. Jew Ten Lem brought up the issue of interpreters' power and corruption in this thesis. The frequent meetings between interpreters and the detainee's husband, and the bribe by the husband matched the suspected testimony by the detainee through those interpreters. By looking at the special social and historical backgrounds for interpreters at Angel Island and the established negative attitude held by the English-language legal system toward non-English language, I gained insight into the issue of trust in interpreting within legal settings. In my opinion the misconduct of interpreters at Angel Island was obliquely related to the prejudice and mistrust that they encountered; and the intolerance of other languages in English-language legal system not only reflected the strict adherence of exactness in legal language, but revealed potential cultural and linguistic imperialism.

In the last chapter of the thesis, I dealt primarily with issues of the legal interpreters' role, potential interpreting problems rising from different legal cultures and systems, and possible solutions in training legal interpreters with adequate cultural competence. First I made an observation of various perspectives on legal interpreters' role and compared the boundaries legal interpreting distanced from other forms of community interpreting according to different schools. Deriving from Anderson's and Cronin's works on a cultural reading of interpreters' image and performance as well as Kelly's 1999 survey in Massachusetts, I questioned the long presumed neutrality and equality in legal settings and came to the conclusion that the

mechanical role interpreters played ran the risk of oppressing less informed immigrants, and that adequate cultural awareness and proper intervention skills of legal interpreters are essential. This conclusion helped me further discuss the interpreting of different legal cultures and systems with a pragmatic perspective derived from Hale. With examples from some interpreting transcripts, I underscored the pragmalinguistic failures during interpreting, which to some extent delayed and confused the whole process. The perceived and potential cultural problems in legal interpreting were addressed in the last part of this chapter. A close look at current Spanish-English Federal Court Interpreter Certification Examination (FCICE) was made to represent the standard of competent legal interpreters, calling into question the issue of certified interpreters' cultural competence. The fact that FCICE had no effective testing approaches on interpreters' cultural competence or intervention skills make a reform and readjustment essential for FCICE, considering the increasingly culturally diversified courts in the United States. A project training cultural interpreters for Domestic Violence Courts and a hospital-based Domestic Violence Project in Toronto, Canada served as a model for possible directions of FCICE's evolution. However this inclination of developing legal interpreters' cultural competence and skills opens up more questions: What is the minimum of the cultural competence a qualified legal interpreter should have? What should such a test include, especially for those with multiple sub-cultures but sharing the same language? How interpreters' cultural knowledge and court performance are evaluated? What is the bottom line for legal interpreters' unobtrusiveness in courts? And how do legal

professionals reach a consensus regarding this bottom line?

The aim of this thesis has been to bring attention to the problems embedded in interpreting within cultural diversified legal settings and to open the way for discussion on improving current legal interpreting service and promoting cultural researches in interpreting studies. As I pointed out with my research on the history of interpreting for Chinese immigrants at Angel Island, only seeking linguistic equivalence in legal interpreting might distance people from full communication and improper interpreting of immigrants' prior legal culture and system may result in serious consequences for immigrants. Thus I argue in favor of a pragmatic cultural interpreting by legal interpreters, which might be partly achieved by improving interpreters' cultural awareness and their corresponding linguistic strategies and proper intervention approaches. As legal interpreting continuously enjoys increasing popularity in the Untied States and in the world, I hope this thesis contributes in some ways to expedite this process.

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