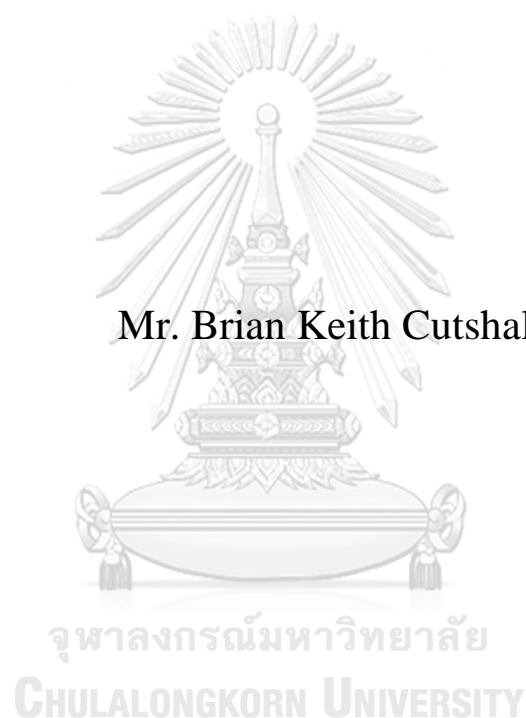


A study of the problems encountered by interpreters in  
translating criminal case examination questions from Thai into  
English

Mr. Brian Keith Cutshall



An Independent Study Submitted in Partial Fulfillment of the  
Requirements  
for the Degree of Master of Arts in Translation and Interpretation  
Field of Study of Translation and Interpretation  
FACULTY OF ARTS  
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การศึกษาปัญหาที่ล่ามพบในการแปลคำถามในการสืบพยานคดีอาญาจากภาษาไทยเป็น  
ภาษาอังกฤษ



สารนิพนธ์นี้เป็นส่วนหนึ่งของการศึกษาตามหลักสูตรปริญญาอักษรศาสตรมหาบัณฑิต  
สาขาวิชาการแปลและการล่าม สาขาวิชาการแปลและการล่าม  
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Thai into English  
By                                      Mr. Brian Keith Cutshall  
Field of Study                      Translation and Interpretation  
Thesis Advisor                    NUNGHATAI RANGPONSUMRIT

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Accepted by the FACULTY OF ARTS, Chulalongkorn University in Partial  
Fulfillment of the Requirement for the Master of Arts

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จุฬาลงกรณ์มหาวิทยาลัย  
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ภาษาทางการที่ใช้ในระบบศาลยุติธรรมของประเทศไทยคือภาษาไทยกลาง เอกสารและคำให้การทุกอย่างต้องยื่นเป็นภาษาไทยกลาง โดยเหตุนี้เอกสารทุกอย่างที่เป็นภาษาต่างประเทศจะต้องถูกแปลเป็นภาษาไทย นอกจากนี้ในกระบวนการศาลสำหรับผู้ที่ไม่ชำนาญในการพูดภาษาไทย จำเป็นต้องมีผู้ทำหน้าที่เป็นล่ามแปลภาษาในขณะที่มีการให้ปากคำในศาล ดังนั้นเป้าหมายของการวิจัยนี้ทำขึ้นเพื่อศึกษาให้เข้าใจปัญหาในการแปลคำให้การและการซักค้านในศาลเกี่ยวข้องกับคดีอาญาจากภาษาไทยเป็นภาษาอังกฤษ แต่การบันทึกเสียงและการจดบันทึกในขณะที่มีการพิจารณาคดีในศาลไทยไม่สามารถทำได้เนื่องจากกฎหมายไทยไม่อนุญาต ดังนั้นข้าพเจ้าจึงได้จำลองเหตุการณ์การพิจารณาคดีอาญาในศาลและได้ทำการบันทึกวิดีโอไว้ ในวิดีโอดังกล่าวมีคำซักถาม 17 ข้อ คำถามค้าน 22 ข้อ และ คำถามดึงอีก 2 ข้อ จากผู้แปล 9 คนที่เป็นอาสาสมัครในการศึกษาครั้งนี้ คำถามทั้งหมดที่ใช้ถามพยานเป็นคำถามที่ตรงไปตรงมาและกระชับ จากการศึกษาค้นคว้า คำซักถาม 3 ข้อใน 17 ข้อ คำถามค้าน 5 ข้อใน 22 ข้อ มีผู้แปล 4 คนจาก 9 คน แปลคลาดเคลื่อนทำให้เจตนาของคำซักถามผิดเพี้ยนไปเมื่อมีการแปลจากภาษาไทยเป็นภาษาอังกฤษ จากผลการศึกษานี้เห็นได้ว่าล่ามที่แปลภาษาไทยประสบปัญหาในการแปลภาษาไทยเป็นภาษาอังกฤษในการแปลการซักถามในคดีอาญา ถึงแม้จะเป็นคำถามที่ไม่มีความซับซ้อน



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สาขาวิชา            การแปลและการล่าม  
ปีการศึกษา        2564

ลายมือชื่อนิสิท .....  
ลายมือชื่อ อ.ที่ปรึกษาหลัก .....

# # 6388036022 : MAJOR TRANSLATION AND INTERPRETATION

KEYWORD Criminal Court Interpreting, Question-in-Chief, Cross-Examination,  
D: Re-Cross-Examination

Brian Keith Cutshall : A study of the problems encountered by interpreters  
in translating criminal case examination questions from Thai into English.  
Advisor: NUNGHATAI RANGPONSUMRIT

The official language used in the Thai judicial system is the Thai central dialect. All documentation and testimony must be submitted in this language. Because of this, all documentation in a foreign language that needs to be submitted to the court must first be translated into Thai. Additionally, non-proficient speakers of Thai (NPT's) require the services of an interpreter to render their foreign language testimony into Thai during court proceedings. The goal of this research was to study and better understand the types of problems that interpreters in court have in interpreting criminal case examination questions from Thai into English. As audio recordings and transcripts of Thai court proceedings are not available due to Thai laws that restrict all audio and video recording in the courtroom, a mock criminal trial scenario was developed and a video of it recorded. This video was then successfully used to obtain the interpretations for seventeen question-in-chief, twenty-two cross-examination, and two re-cross-examination questions from nine interpreters that participated in the study. Most of the witness examination questions were relatively straightforward and short. However, three of the seventeen question-in-chief examination questions and five of the twenty-two cross-examination questions saw at least four of the nine interpreters make errors that changed the pragmatic intention of the question in Thai when translated into English. This suggests that Thai interpreters do experience problems when interpreting even less complex criminal case examination questions from Thai into English.

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Field of Study: Translation and  
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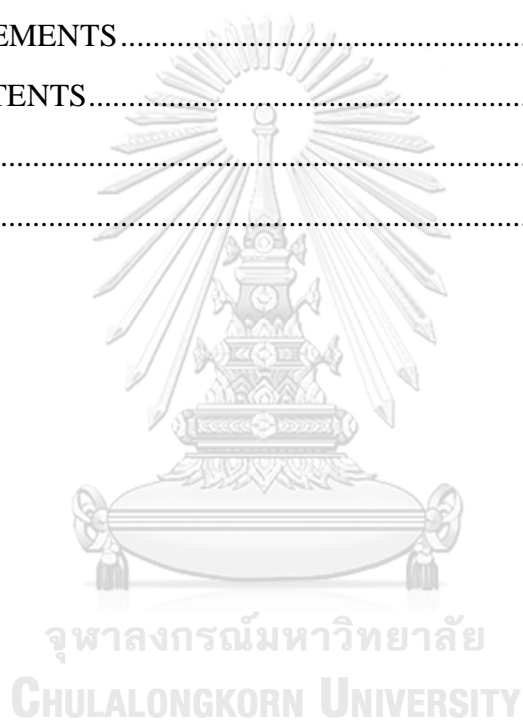
I would like to acknowledge and thank Supaporn Gassenschmidt for assisting me to develop the mock criminal trial scenario, writing the witness examination questions, and playing the part of the defendant's lawyer in the video we filmed. I also want to thank and acknowledge Kittiphong Konthong for volunteering his time to play the part of the prosecutor in the video. I am extremely grateful for all the advice and direction given to me by my academic advisor Assistant Professor Dr. Nunghatai Rangponsumrit. Finally, I want to express my love and gratitude to my wife, Kannigar, and my daughters, Lanna and Anya, for their love, support, and patience.

Brian Keith Cutshall



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## 1. Background & Rationale

The official language used in the Thai judicial system is the Thai central dialect. All documentation and testimony must be submitted in this language. Because of this, all documentation in a foreign language that needs to be submitted to the court must first be translated into Thai. Additionally, non-proficient speakers of Thai (NPT's) require the services of an interpreter to render their foreign language testimony into Thai during court proceedings. For civil law cases the NPT litigant is required to provide their own interpreter. However, for criminal cases the court is obliged to provide an interpreter for NPT defendants and plaintiffs. During Thai trials the judge or judges are the sole recipients of the testimony given to the court. One judge dictates the official witness testimony into a Dictaphone which is then transcribed by a court clerk and becomes part of the permanent court record. No video or audio recording of the trial proceedings is allowed in Thailand at this point in time. Upon completion of the proceedings for a trial session, all parties are asked to read and sign off that the testimony recorded by the judge is accurate and correct. If any inaccuracies are recognized, the official record can be changed at that time before a witness signs verifying its accuracy. To summarize, like all court litigants NPT's must be able to follow court proceedings, provide evidence either in the form of documentation or sworn testimony, and sign off verifying that the court record as transcribed by the court clerk is accurate, all in a language they are not proficient in speaking. Court interpreters are the individuals that assist NPT's in doing this. The question every NPT asks him or herself is "How good is my interpreter?" and "Will they ensure I receive a fair trial or not?"

According to Alexandre Chitov (Chitov, 2021) the Thai criminal procedural code is a hybrid of the common law and civil law systems found around the world. It cannot be interpreted as being strictly based on common or civil law systems. In civil law cases the judge has the inquisitorial power and is the central figure in the investigation of crimes and the presentation of evidence (Mikkelsen, 2016). Common law is described as being both accusatorial and adversarial where the public prosecutor has the burden of proving accusations against a defendant to a judge who is considered to be a neutral referee (Mikkelsen, 2016). The common law system is considered adversarial because the defendant's lawyer can refute the charges laid against his client and can actively try to discredit any damning evidence or testimony given against him or her. Although the Thai court system is clearly adversarial in nature, Chitov (2021) points out that Thai judges are not simply neutral referees but also have the power to request information. Nevertheless, the trial system in Thailand is very similar to that in the United States, Canada, Australian, New Zealand, and the United Kingdom. And in these systems, evidence must be submitted to the court in physical form i.e., written documents, photographs, etc. or in the form of verbal testimony.

In the adversarial court system witnesses don't have the right to just speak in court. Instead, they have the right to answer the questions put to them by the



prosecutor and the defendant's lawyer. Thus, in practice the narrative given to the court is teased out of the witness by the questions asked them by the lawyers. The quality of the narrative is a direct result of the questions asked by each lawyer. During Question-in-chief or Direct Examination, the lawyer is trying to elicit his witnesses' narrative to support their case. These questions are generally simple and straight forwarding giving the witness the opportunity to share their story. Yet, during Cross Examination lawyers try to get the witness to say something that contradicts and discredits their previous testimony. They do this by asking difficult or confusing questions. Finally, on Re-Direct Examination, the witness' lawyers ask questions designed to correct any damaging statements given during cross examination. From this, it is easy to understand the importance to the trial process of interpreting the questions properly as misinterpreted questions could lead to a person being proven guilty for something they didn't do.

Therefore, the fairness of a trial is directly linked to the ability of an interpreter to properly interpret the pragmatic intention of the lawyer's questions. A great deal of research has been done on translating English questions into Spanish (Berk-Seligson, 1999, 2017; Hale, 2001; Hale, 2004; Rigney, 1999). A smaller amount of research has been done focusing on Korean (Lee, 2009, 2010). Even some research has been done regarding interpreting English in Arabic (Bawazeer, 2016). However, the author was unable to find any research done on interpreting English into Thai or vice versa. The objective of this research was to study and better understand the types of problems that interpreters have in interpreting criminal case examination questions from Thai into English.

## **2. Literature Review**

### **2.1 Key Concepts**

#### **2.1.1 Problems faced by courtroom interpreters in interpreting courtroom examination questions.**

Hale (2001) and (2004) looked at the difficulties that Spanish interpreters had in interpreting witness examination questions from English to Spanish in the Australian court system. She categorized the witness examination questions she observed in her research into three main grammatical categories of interrogatives, declaratives, and imperatives with each having sub-categories. She found that the Spanish interpreters had difficulty translating examination questions that had an English grammatical structure that did not have a comparative grammatical structure in Spanish.

Hale (2004) also looked at the use of discourse markers by English speaking lawyers to preface their witness examination questions. Hale concentrated on the use of "well", "now", and "you see." Even though her data showed that these discourse markers were important assertive devices used by lawyers to indicate superior

authority during their questioning, the Spanish interpreters systematically omitted them.

Rigney (1999) studied the Spanish testimony given by Rosa Lopez in the OJ Simpson trial in 1995. She reviewed 482 questions and found that the interpreter made pragmatic alterations to the questions as rendered in Spanish to certain types of English questions that did not have a cross-linguistic equivalence in Spanish. Examination questions that had a cross-linguistic equivalence between Spanish and English were more likely to be translated correctly.

### **2.1.2 Methods for assessing interpretation quality**

Barik (1994) provides a coding system for assessing the quality of simultaneous interpretations. His scheme focused on three main categories these being Omissions, Additions, and Substitutions and Errors. Each of the main categories have subcategories. The subcategories for omissions are Skipping omissions, Comprehension omissions, Delay omissions, and Compounding Omissions. The subcategories for additions are Qualifier additions, Elaboration additions, Relationship additions, and Closure additions. The subcategories for substitutions and errors are Mild semantic errors, Gross semantic errors, Mild phrasing change, Substantial phrasing change, and Gross phrasing change, resulting in a considerable difference in meaning.

Burn and Crezee (2017) and (2020) modified Barik's system by simplifying it to more easily assess the quality of consecutive interpretations provided by students interpreting courtroom examination questions and testimony. Barik's subcategories were dropped and only the main categories of his coding system i.e., omissions, additions, and errors in interpretation were used for the assessments.

## **2.2 Developments**

### **2.2.1 Using video clips to test interpreting skills**

The fundamental research methodology used for the present study was based on the work of Burn and Crezee (2017) and (2020) where the researchers used video clips of court testimony from New Zealand court cases posted on YouTube to test student interpreter's ability to interpret examination questions in English to a variety of other languages. The students recorded their interpretations, and the researchers sent the recordings to examiners who graded their performance based on interpretation omissions, additions, and errors.

### **2.3 Gaps**

An extensive review of the present literature only found one study on Thai court examination questions. Thabthan (2000) did a linguistic examination of the types of questions asked during examination-in-chief, cross-examination, and re-examination.

Presently, no research seems available regarding interpreting court examination questions from Thai into English. As English is the most frequently interpreted western language in Thai courts, research into the difficulties faced by Thai court interpreters in interpreting examination questions from Thai into English is sorely needed in order to improve the quality of court interpretations.

## **3. Research Methodology**

This study asked a sample of Thai interpreters to translate witness examination questions from a video of a mock criminal trial scenario that was developed by the author and shared over Zoom meeting software. The interpretations of the witness examination questions were recorded during the Zoom meetings and then transcribed using Otter.ai transcription software. The transcribed interpretations were then analyzed for omissions, additions, and errors in translation that changed the pragmatic intention of the English version from that of the original Thai version. The methodology is explained in detail below in sections 4.1 and 4.2.

### **3.1 Population / Sample**

The population studied in this research paper were Thai interpreters. The sample was comprised of five graduate students studying master's degrees in conference interpreting and four freelance professional interpreters who have previously done court interpreting. The professional interpreters ranged in experience from three to nineteen years and have interpreted for five or more court cases. However, the major criterion for participation was having an English language proficiency strong enough to do courtroom interpreting.

### **3.2 Procedures**

#### **3.2.1 Step #1: Development of witness examination scenario and video**

All previous research on the interpretation of court examination questions (Berk-Seligson, 1999, 2017; Burn & Crezee, 2017, 2020; Crezee et al., 2017; Hale, 1999, 2001, 2002; Hale, 2004; Rigney, 1999) have all used court transcripts for the base of their research. They were able to do this because in the American, Australian, and New Zealand court systems the courtroom proceedings are recorded and

transcribed. However, this is not the case in the Thai court system where audio and video recording are strictly prohibited.

Thus, in order to conduct this study using a methodology similar to that used by Burn and Crezee (2017) and (2020), the first step in the methodology was for the author with the assistance of a practicing trial lawyer to develop a mock criminal trial scenario. The author had two main criteria for this scenario. First, the witness under examination had to be an individual who was not proficient in Thai (NPT) that would require an interpreter in court. Second, the case had to be realistic and creditable. The nature and complexity of the examination questions are directly related to the nature and complexity of the criminal case. Several more complex scenarios were proposed by the trial lawyer but had to be rejected as they didn't meet the first criteria. In the end the mock trial scenario was based on an actual case of a foreigner who was accused of stealing a bottle of liquor from a supermarket during the day that both the trial lawyer and author had been involved with. A police search of the home the man rented found a single unopened bottle of liquor matching the description of liquor stolen from the supermarket. The accused told police that he had received that bottle of liquor from a friend at his friend's pub the night before the incident. He also told the police that on the day of the incident, he had gone to the supermarket to buy a replacement bottle of liquor for his friend. There was video evidence of him picking up a bottle of liquor in the supermarket. He told police that he had picked up a bottle but had put it back on the shelf when he learned that it was during the time that the supermarket could not sell liquor. Based on how this case would likely have played out in court, a script was developed with seventeen question-in-chief, twenty-two cross-examination, and two re-cross-examination questions by the trial lawyer. It's important to note here that the seventeen question-in-chief questions would be asked by the defendant's lawyer and were designed to present a narrative supporting defendant's case to the court. To the contrary, the twenty-two cross-examination questions would be asked by the public prosecutor and were designed to damage the credibility of the witness' previous testimony, and the narrative associated with it. Finally, the two re-cross-examination questions would again be asked by the defendant's lawyer with the hope of correcting any damage done to the witness' credibility during cross-examination.

Next, we video recorded the mock criminal trial scenario. The goal was to develop a simulation that was as realistic possible. To this end two practicing trial lawyer acted out the parts of the defendant's lawyer and the public prosecutor respectively while the author acted the part of the witness. The examination questions were presented to the witness in the exact manner they would be presented in the courtroom. Additionally, the opposing lawyers positioned themselves just as they would in the courtroom with the public prosecutor asking his questions from the witness' left side and the defendant's lawyer asking from the witness' right side. The video was filmed from the perspective of the interpreter and changed based on where the lawyers would be standing in the Thai court. Besides the witness examination

questions, the video also included the witness' responses to the questions in order to provide the context for the follow up examination questions.

Finally, the video was edited to provide a blank black screen for twenty seconds between the time the examination question was asked in Thai and the witness gave an answer in English. The twenty seconds was given for the interpreter to render their interpretation of the examination question. Most of the examination questions were short lasting approximately six seconds long. However, there were some longer examination questions that were approximately fifteen seconds long in Thai. Hence, the author provided twenty seconds for all interpretations.

### **3.2.2 Step #2: Video recording the nine interpreters interpreting the examination questions from Thai into English**

The second step of the methodology was to meet individually with each of the nine participating interpreters using the Zoom meeting software. Each participant was briefed as to the nature of the case they would be interpreting and informed that the meeting would be recorded using the Zoom software for the purpose of transcribing the interpretations they gave. Each participant was also asked to interpret only the examination questions and to just listen to the witness' responses. Finally, each person was told that once the video had been started, they were to interpret the examination questions to the best of their ability directly through to the end of the video. This was stated in order to simulate the pressure of an actual court interpretation.

### **3.2.3 Step #3: Transcription of all interpretation responses**

After each meeting the author uploaded the audio file generated by Zoom into the Otter.ai transcription software. This software then autogenerated transcriptions of the Zoom meeting and the witness examination question interpretation. The author then double checked the transcriptions against the audio file and made corrections where necessary. The responses were then recorded for later analysis.

### **3.2.4 Step #4: Analyze all responses looking for omissions, additions, and errors of interpretation**

After the interpreted witness examination questions had been transcribed, they were analyzed based on the method presented by Barik (1994) which suggested focusing on omissions, additions, and errors in interpretation. Omissions, additions, and errors were noted only if they effected the pragmatic intention of the interpreted question i.e., if the pragmatic intention of the English version differed from that of the original Thai version.

#### 4. Results and Discussion

The fundamental criteria used in examining the results of this study was to assess whether the English interpretation of the witness examination questions expressed the pragmatic intention of the original question in Thai. Birner (2012, p. 2) defines pragmatics “as the study of language use in context – as compared with semantics, which is the study of literal meaning independent of context.” Hale (2004, p. 5) states that pragmatics “refers to the intended meaning behind the surface, semantic meaning” and that understanding the pragmatic meaning of an utterance implies that the listener also understands the purpose of the utterance. Both Hale (2004) and Rigney (1999) focused on the pragmatic equivalence of the witness examination question interpretations, which requires maintaining the level of control, tone, and illocutionary point and force of the question in its original Thai form. Achieving pragmatic equivalence is the ideal that court interpreters should strive for. This study, however, was more focused on whether the participating interpreters understood the pragmatic meaning of the examination question and the intention for asking it and were then able to render an interpretation that captured both the pragmatic meaning and intention of the original.

As most of the witness examination questions were relatively straightforward and short, the author was concerned that there might be little in the way of results. However, three of the seventeen question-in-chief examination questions and five of the twenty-two cross-examination questions saw at least four of the nine interpreters make errors that changed the pragmatic intention of the question in Thai when translated into English. This suggests that Thai interpreters do experience problems when interpreting even less complex criminal case examination questions from Thai into English. Following is a discussion of the types of errors encountered and the potential reasons for their occurrence.

##### 4.1 Question-in-Chief Examination Question Interpretation Errors

Table 4.1 shows the interpretation results for the question-in-chief examination question #8. The question “คืนวันก่อนเกิดเหตุพยานได้ไปที่ผับหรือไม่” (Kheuun<sup>M</sup> wan<sup>M</sup> gaawn<sup>L</sup> geert<sup>L</sup> haecht<sup>L</sup> pha<sup>H</sup>yaan<sup>M</sup> dai<sup>F</sup> bpai<sup>M</sup> thee<sup>F</sup> phap<sup>L</sup> reuu<sup>R</sup> mai<sup>F</sup>) or “On the night before the incident did you go to the pub or not?” was asked by the witness’ lawyer to develop a timeline and narrative for the court that supported the defendant’s claim that he had received the bottle of liquor from his friend at his pub. Yet, this question saw five interpreters make errors regarding the right time designation. The author suspects that the interpreters who made these errors did not understand that the defendant’s lawyer was asking this question in part to build a timeline for the court and were therefore not paying close attention to the time markers. This clearly shows the importance of understanding the role of the question-in-chief examination questions.

Table 4.1 Question-in-Chief Examination Question #8 Results		Analysis		
	คืนวันก่อนเกิดเหตุพยานได้ไปที่ผับหรือไม่	Omission	Addition	Error
Student #1	The night before the incident did the witness go to the pub?			
Student #2	Were you in a pub the night of the incident?			†
Student #3	On the night of the incident were you at the pub?			†
Student #4	Where you at the pub the night before the incident?			
Student #5	The night before the incident did you go to that club?			
Professional #1	Before the incident did you go to the pub?	†		†
Professional #2	Before the night of the incident, were you at the pub?			†
Professional #3	The day before the incident you went to the pubs or not?	†		†
Professional #4	So, had you been at the pub before the incident occurred?			†

Table 4.2 shows the interpretation results for the question-in-chief examination question #10. Four interpreters made significant errors translating the

Table 4.2 Question-in-Chief Examination Question #10 Results		Analysis		
	พยานจำได้ว่ามีเครื่องดื่มอะไรบ้าง	Omission	Addition	Error
Student #1	Do you remember what kinds of drinks were there?			
Student #2	Do you recall what drinks did you have?			
Student #3	Do you remember what types of drinks were there?			
Student #4	Can you remember exactly what were the drinks?			
Student #5	Do you remember how many types of drinks there were?			†
Professional #1	Did you remember what kinds of liquors did you have?			
Professional #2	Do you recall what kind of drinks did you order?			†
Professional #3	Do you remember what beverage did you order?			†
Professional #4	Do you remember what kinds of drink in that day?			†

question “พยานจำได้ว่ามีเครื่องดื่มอะไรบ้าง” (pha<sup>H</sup>yaan<sup>M</sup> jam<sup>M</sup> dai<sup>F</sup> waa<sup>F</sup> mee<sup>M</sup>)

**khreuang<sup>F</sup> deuum<sup>L</sup> a<sup>L</sup>rai<sup>M</sup> baang<sup>F</sup>)** or “Do you remember what types of drinks you had?” The defendant had previously testified that his friend normally brings him out bottles of whiskey. Again, this question was asked to build the narrative that the defendant had been at his friend’s pub the night before the incident took place leading to him taking liquor home. The problem here seems to be a general misunderstanding of the question that author believes was caused by not following the narrative that the defense lawyer was trying to tell through the questions she was asking. Once again this points to the importance of understanding the context in

which question-in-chief examination questions are nested. Interpreters need to understand that these examination questions are used to present the narrative to the court that supports the witness’ claim and credibility.

Table 4.3 shows the interpretation results for the question-in-chief examination question #16. Unbelievably, eight out of nine of the interpreters made errors in their English interpretation that changed the pragmatic intention from the original Thai version. The question “แล้วพยานได้หยิบขวดวิสกี้มาหรือไม่” (**Laeo<sup>H</sup> pha<sup>H</sup>yaan<sup>M</sup> dai<sup>F</sup> yip<sup>L</sup> khaat<sup>L</sup> wit<sup>H</sup>sa<sup>L</sup>gee<sup>F</sup> maa<sup>M</sup> reuu<sup>R</sup> mai<sup>F</sup>)** or “And did you pick up a bottle of whiskey or not?” is framed by the fact that the defendant has been charged with stealing a bottle of whiskey during the day. Each interpreter was briefed of this fact before starting the mock criminal trial simulation. Yet, the interpreters used words like “take” and “grab” that imply a sense of theft which is totally inappropriate for the context. Interpreters cannot properly translate questions they don’t understand. Moreover, part of the necessary understanding is based in the context that question is being asked. Why would a defendant’s lawyer ask his witness a question that might implicate that his client is guilty? Instead, the intention of the

	แล้วพยานได้หยิบขวดวิสกี้มาหรือไม่	Analysis		
		Omission	Addition	Error
Student #1	Did you also <u>take</u> the <u>bottle</u> of the whiskey?			†
Student #2	Did you <u>purchase a bottle</u> of whiskey there from there?			†
Student #3	And did you also <u>grab</u> the <u>bottle</u> of the whiskey?			†
Student #4	Did you also <u>take a bottle</u> of whiskey?			†
Student #5	Did you <u>bring the bottle</u> of whiskey with you?			†
Professional #1	Did you <u>take the bottle</u> of whiskey with you?			†
Professional #2	And did you <u>take the bottle</u> of whiskey around?			†
Professional #3	And you <u>picked up</u> the whiskey bottle with you, or not?			
Professional #4	Did you <u>take any whiskey bottles</u> ?			†



question was to provide the defendant an opportunity to explain that he had picked up a bottle of whiskey but had not stolen it.

#### 4.2 Cross-Examination Question Interpretation Errors

Table 4.4 shows the interpretation results for the cross-examination question

Table 4.4 Cross-Examination Question #2 Results		Analysis		
	แล้วเดินทางไปผับอย่างไรในคืนก่อนวันเกิดเหตุ	Omission	Addition	Error
Student #1	How did you travel to the pub on the night before the incident?			
Student #2	How did you travel to the pub the night before the incident?			
Student #3	How did you go to the pub on the <u>night of the incident?</u>			†
Student #4	How did you travel to the pub the night before the incident?			
Student #5	How did you go to the club <u>before the day of the incident?</u>			†
Professional #1	And how did you go to the pub <u>before the day of the incident?</u>			†
Professional #2	How did you travel to the pub before the <u>night of the incident?</u>			†
Professional #3	And the nights before the incident how have you been to the club? How?			
Professional #4	How did you go to the pub?	†		†

#2. Cross-examination questions are designed to undermine both the credibility of the witness being examined and the testimony they have given during the question-in-chief examination. Because of this, they have a tendency to be confusing. Yet, cross-examination question #2 “แล้วเดินทางไปผับอย่างไรในคืนก่อนวันเกิดเหตุ” (Laao<sup>H</sup> deern<sup>M</sup> thaang<sup>M</sup> bpai<sup>M</sup> phap<sup>L</sup> yaang<sup>L</sup> rai<sup>M</sup> nai<sup>M</sup> kheun<sup>M</sup> gaawn<sup>L</sup> wan<sup>M</sup> geert<sup>L</sup> haeht<sup>L</sup>) or “And, how did you travel to the pub on the night before the incident?” is a very straightforward question. Its intention is to question the veracity of the defendant’s previous testimony that he went to his friend’s pub the night before the incident and was given a bottle of whiskey while there. Nevertheless, five interpreters made significant mistakes in translating it by misstating the time designation. Similar to the results seen in the interpretations of question-in-chief question #8, the interpreters failed to understand the importance of the case timeline and that this question was referring back to previous testimony. Understanding this fact helps clarify the question and the pragmatic intention for asking it.

Table 4.5 shows the interpretation results for the cross-examination question #6. Cross-examination question #6 is one of the most important cross-examination

questions that was asked by the prosecutor in this mock criminal trial simulation. Six of the interpreters blatantly missed the pragmatic intention of this question while the remaining three interpreters barely captured the intention. Again, the author believes that the reason for the errors here is due to a lack of understanding of the intention and importance of this question. At this point in the scenario, the witness has testified that his friend John gave him the bottle of whiskey that was found at his home. Thus, John is a person that could verify the veracity of the witness' testimony. The question “จอห์น ไม่ได้มาเบิกความเป็นพยานในคดีนี้ใช่ไหม” (Jaawn<sup>M</sup> mai<sup>F</sup> dai<sup>F</sup> maa<sup>M</sup> beerk<sup>L</sup> khwaam<sup>M</sup> bpen<sup>M</sup> pha<sup>H</sup>yaan<sup>M</sup> nai<sup>M</sup> kha<sup>M</sup>dee<sup>M</sup> nee<sup>H</sup>

chai<sup>F</sup> mai<sup>M</sup>) or “John isn't here to testify in this case, isn't that right?” is pointing out to the court that this person is not in court to support the witness' claims. The fact that John is not testifying on the defendant's behalf undermines the defendant's claims and the credibility of his narrative. If the interpreters had understood this

Table 4.5 Cross-Examination Question #6 Results		Analysis		
	จอห์น ไม่ได้มาเบิกความเป็นพยานในคดีนี้ใช่ไหม	Omission	Addition	Error
Student #1	Is John testify in this case as well?			†
Student #2	Is John one of the witnesses in this case?			†
Student #3	And John did not come for this case?	†		†
Student #4	Is John also summoned as one of the witnesses here?		†	†
Student #5	And John has not come here today to testify, correct?			
Professional #1	Did John come to testify for this case?			†
Professional #2	And John doesn't come here to give him his testimony in this case?			
Professional #3	So, he did not present as a witness today before the court, is that right?			
Professional #4	Isn't John here today as a witness?			†

context, there would not have been as many errors.

Table 4.6 shows the interpretation results for the cross-examination question #8. Again, the question “แล้วที่ผับขายวิสกี้ให้กับลูกค้าเป็นแก้วใช่ไหม” (Laeo<sup>H</sup> thee<sup>F</sup> phap<sup>L</sup> khaai<sup>R</sup> wit<sup>H</sup>sa<sup>L</sup>gee<sup>F</sup> hai<sup>F</sup> gap<sup>L</sup> luuk<sup>F</sup> khaa<sup>H</sup> bpen<sup>M</sup> gaao<sup>F</sup> chai<sup>F</sup> mai<sup>M</sup>) or “And, the pub sells whiskey to its customers by the glass, is that correct?” is very straightforward. The pragmatic intention is to ask whether the pub sold alcohol to its patrons by the glass or not. And if yes, it begs the question why they would bring out bottles of alcohol and thereby questions the

truthfulness of the defendant’s testimony. The reason six of the interpreters erred in translating this question was due to a lack of English sales terminology. In English we sell drinks “by the glass” and “by the bottle.” Using the wrong preposition changes the meaning. “In a glass” and “by the glass” have different meanings. An important take away from this is that inaccurate questions generate inaccurate answers. Thus, an inaccurate interpretation denies the questioner the opportunity to

Table 4.6 Cross-Examination Question #8 Results		Analysis		
	แล้วที่ผับขายวิสกี้ให้กับลูกค้าเป็นแก้วใช่ไหม	Omission	Addition	Error
Student #1	Did the pub sell whiskey <u>in</u> glasses?			†
Student #2	Does the pub sell whiskeys to customers like <u>in</u> glasses?			†
Student #3	At the pub do they sell whiskey as <u>in</u> glasses?			†
Student #4	Do they sell whiskey at the pub by glass?			
Student #5	And at the club they sell whiskey by glasses, is that right?			
Professional #1	And at the pub when they sell the whiskey to the client did they serve in a glass or did they sell <u>by the bottle</u> ?		†	†
Professional #2	At the pub do they sells the whiskey to their customer <u>in</u> glass or <u>in</u> bottle?		†	†
Professional #3	So normally they brought the whiskey <u>into</u> the glass, is that right? And depart to the client.			†
Professional #4	So, at the pub if they sell the whiskey for customers as a glass of whiskey, right?			

achieve the desired goal of asking the original question.

Table 4.7 shows the interpretation results for the cross-examination question #10. This examination question “พยานตอบว่ามาจำไม่ได้ว่าดื่มอะไรไปบ้างใช่ไหม” (Pha<sup>H</sup>yaan<sup>M</sup> dtaawp<sup>L</sup> waa<sup>F</sup> mao<sup>M</sup> jam<sup>M</sup> mai<sup>F</sup> dai<sup>F</sup> waa<sup>F</sup> deuum<sup>L</sup> a<sup>L</sup>rai<sup>M</sup> bpai<sup>M</sup> baang<sup>F</sup> chai<sup>F</sup> mai<sup>M</sup>) or “You have responded that you were drunk and couldn’t remember what all you had to drink, is that correct?” was a challenge for five of the interpreters. Three of the interpreters omitted the “what all you had to drink” part of the question. The author suspects that the difficulty with this question is due to the lack of familiarity with Thai legalese as this is not the type of question that would be encountered in daily life. Additionally, the wording is a bit confusing. It is important that court interpreters gain a familiarity with legal speak.

Table 4.7 Cross-Examination Question #10 Results		Analysis		
	พยานตอบว่าเมาจำไม่ได้ว่าดื่มอะไรไปบ้าง ใช่ไหม	Omission	Addition	Error
Student #1	Did the witness say that he was drunk and could not remember <u>anything</u> ?	†		†
Student #2	Witness say you were too drunk to remember <u>anything</u> ?	†		†
Student #3	You answered that you were drunk and you did not remember what drinks did you have, correct?			
Student #4	Did you inform earlier that you could not remember the beverages you have been consuming according to you being drunk?			
Student #5	Did you say you were drunk and didn't remember what you drank that night?			
Professional #1	And you said that you were drunk and you couldn't remember what did you <u>take in</u> , correct?			†
Professional #2	You answered that you were drunk and you cannot remember, is that correct? You could not remember <u>anything</u> , is that correct?	†		†
Professional #3	So, you said that you got drunk and you cannot remember what you drank, is that right?			
Professional #4	Did you say or did you answer that you got drunk and you could not remember <u>anything</u> , correct?	†		†

Finally, Table 4.8 shows the results for the interpretations of cross-examination question #20. One of the longest examination questions put to the witness, this question “พยานตอบใจทักว่า จำไม่ได้ว่ามีอะไรบ้าง มีทั้งเปิดแล้วกินไม่หมดและยังไม่ได้เปิด แสดงว่ามีมากกว่าหนึ่งขวดใช่ไหม” (Pha<sup>H</sup>yaan<sup>M</sup> dtaawp<sup>L</sup> jo:ht<sup>L</sup> waa<sup>F</sup> jam<sup>M</sup> mai<sup>F</sup> dai<sup>F</sup> waa<sup>F</sup> mee<sup>M</sup> a<sup>L</sup>rai<sup>M</sup> baang<sup>F</sup> mee<sup>M</sup> thang<sup>H</sup> bpeert<sup>L</sup> laeo<sup>H</sup> gin<sup>M</sup> mai<sup>F</sup> moht<sup>L</sup> lae<sup>H</sup> yang<sup>M</sup> mai<sup>F</sup> dai<sup>F</sup> bpeert<sup>L</sup> sa<sup>L</sup>daeng<sup>M</sup> waa<sup>F</sup> mee<sup>M</sup> maak<sup>F</sup> waa<sup>F</sup> neung<sup>L</sup> khuaat<sup>L</sup> chai<sup>F</sup> mai<sup>M</sup>) or “You have answered that you can't remember what all there was. There was both opened and unfinished bottles and unopened bottles. This shows that there was more than one bottle, is that correct?” caused five of the participating interpreters to make errors that changed the pragmatic intention from that of the original question in Thai. Similar to that of cross-examination question #10, this question is very much presented in legalese. The long confusing introduction to the question caused four interpreters to miss interpreting the actual question posed at the end of the sentence i.e., “This shows that there was more than one bottle, is that correct?” Each language has its own form of legalese that is designed to separate lawyers and judges from the common people. It is imperative

that interpreters working in the courtroom understand the jargon and legal terminology used there. Although this question doesn't use any

Table 4.8 Cross-Examination Question #20 Results		Analysis		
	พยานตอบโจทก์ว่า จำไม่ได้ว่ามีอะไรบ้าง มีทั้งเปิดแล้วกินไม่หมดและยังไม่ได้เปิด แสดงว่ามีมากกว่าหนึ่งขวดใช่ไหม	Omission	Addition	Error
Student #1	You said that you could not remember what kinds they were. There were the open ones, the unopened ones, and the ones that you did not finish up.	†		†
Student #2	You said you don't remember what types of whiskey there were, but there were both an unopen and opened bottles. So, there was more than one bottle of whiskey, right?			
Student #3	You said that you did not remember what were there. You said that there were both that you did not open that it bottles that you did open. So, therefore there were more than one bottles, correct?			
Student #4	You said you could not remember and there were both opened and unopened bottles. So this refers that you have more than one bottle of whiskey, is that right?			
Student #5	You said to the plaintiff that you couldn't remember how many bottles of whiskey there were, but you said and you didn't remember if it open or unopen.	†		†
Professional #1	You said that you couldn't remember what types of the whiskey but you mentioned that you had the unopen bottle and unfinished whiskey that you couldn't finish it, is that correct?	†		†
Professional #2	So, you answer to the plaintiff's question that there are some open bottle but you cannot finish them up and some of them you finished. So, there are a lot of drinks, is that correct?	†		†
Professional #3	So, you say to the attorney of the plaintiff that there is also the whiskey which was open already, not open, and not finished. So, it means that there were a lot of bottles of whiskey, is that right?			†
Professional #4	So, you answer that you don't remember that the whiskey bottles could be some open and then some is not open. So, it means that there actually there were more than one, correct?			

specific legal jargon, its structure is one that would most likely only be used in a legal setting.

An additional point is how do interpreters cope with a legal question like this. It is clear from the interpretations rendered that four of the interpreters didn't get the gist of this question. Although it provides the context for the question and references testimony given by the defendant, the initial information presented before the actual question was asked could be dropped while still maintaining the question's pragmatic intention. Therefore, interpreters need to listen for the gist of the examination question along with the minute details. This examination question builds the framework for the final question which was about how the police only found one bottle and that bottle was unopened which in turn brought into question the defendant's earlier testimony about there being multiple bottles of liquor.

#### **4.3 The Affect of Using Zoom Towards Interpreting Errors**

There is a question of whether using the Zoom meeting application potentially affected the interpretation results of this study. Some have proposed that interpreting over the internet might cause the interpreter to feel less of a connection with the witness they are interpreting for as compared with standing next to them during the interpretation process and thereby would render poorer translations. Based on the methodology used in this study, it would be very difficult to assess this as a control group doing in-person interpreting was not set up to compare the results with. Yet, as online interpretation has become more prevalent due to the Covid-19 pandemic, this topic is worthy of future research.

### **5. Conclusion and Recommendations**

The goal of this research was to study and better understand the types of problems that interpreters have in interpreting criminal case examination questions from Thai into English. As audio recordings and transcripts of Thai court proceedings are not available due to Thai laws that restrict all audio and video recording in the courtroom, a mock criminal trial scenario was developed and video recorded. This video was then successfully used to obtain the interpretations for seventeen question-in-chief, twenty-two cross-examination, and two re-cross-examination questions from nine interpreters that participated in the study.

Although the mock criminal trial scenario that was developed for this research was not a complex one, the results showed that four or more interpreters made significant errors on three of the question-in-chief and five of the cross-examination questions. From closer analysis of these questions and the errors made interpreting them, the author was able to see that the problems in interpretation were related to a lack of understanding regarding the role and context of the three different types of

examination questions. Additionally, having a better understanding of the narrative the lawyers were trying to present with their examination questions could have helped prevent some of the interpretation errors seen in the results.

This research should be considered as a pilot study for further research going forward. The development of more complex mock criminal trial scenarios along with gaining the participation of a larger number of interpreters could provide more insightful results.

Finally, as was shown by the work of Burn and Crezee (2017) using videos for training court interpreters is very interesting and has great potential. The development of videos using mock criminal trial scenarios would provide ideal training tools for new court interpreters and would hopefully prevent a miscarriage of justice caused by the words of an untrained interpreter.



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