Courtroom Language and Discourse

Le Cheng and King Kui Sin

In this paper, we conduct a comprehensive survey of previous studies on courtroom discourse. Courtroom language provides a rich source of data for sociology, applied linguistics, sociolinguistics and other related disciplines. The macro studies investigate the general features of courtroom language from the broader perspectives of language, legal communication, law, society and culture while the micro studies examine the internal structures of courtroom language in relation to specific issues. The two kinds of studies suffice to give us an overview of the various aspects and multi-faceted problems of courtroom discourse studied by sociologists and linguists. An overview of the issues concerning and approaches to the studies of courtroom language will shed light on the nature of courtroom discourse, which are an important aspect of legal discourse.

Keywords: courtroom discourse, macro studies, micro studies, law, society, language

1 Introduction

The study of the interface between law, language and discourse has been variously labeled “forensic linguistics” (e.g. Svartvik, 1968; Kniffka et al., 1996; McMenamin, 2002; Gibbons, 1994a, 2003; Olsson, 2004; Coulthard & Johnson, 2007, 2010), “language and law” (e.g. Gibbons, 1994b; Kredens & Gozdz-Roszkowski, 2007; Kniffka, 2007; Philbrick, 1949; Levi, 1994; Schane, 2006), or “law and language” (Conley & O’Barr, 1998, 2005), “legal language” (Tiersma, 1999), “legal linguistics” (Mattila, 2006), “jurilinguistics” (Cornu, 2000; Gémar & Kasirer, 2004), and “legal discourse” (Bhatia et al., 2003,

2004; Gotti & Williams, 2010). It has also been further divided into three categories: the language of the law, the language of the judicial process, and language as evidence (Coulthard & Johnson, 2007; Turell, 2008). The most influential works in the area of the language of the law include Alcaraz and Hughes (2002), Bhatia et al. (2005), Kniffka (2007), Levi (1994), Mellinkoff (1963, 1982), Tiersma (1999) and Schane (2006). Notable publications in the area of the language of the judicial process include Berk-Seligson (1990), Conley and O'Barr (1998, 2005), Cotterill (2003), Heffer (2005), Eades (2008), Edwards (1995), Kurzon (1997), Mead (1985), O'Barr (1982), Philips (1998), Posner (2008), Shuy (1993, 1998, 2005, 2006), Solan (1993), Solan and Tiersma (2005), Stygall (1995), Rock (2007), and Wagner and Cheng (2011). Studies on language as evidence include Nolan (1983), McMenamin (1994), Eades (1995), Foster (2000), Ehrlich (2001), Hollien (2001), Rose (2002) and Shuy (2002, 2007, 2010). According to Bhatia et al. (2008, p. 3), "although legal language has long been the focus of attention for legal philosophers and sociologists, its attraction for linguistics and discourse analysts has been of relatively recent origin".

This study surveys an important aspect of language and law, namely, language in the courtroom, a subfield within the area of the language of the judicial process. Courtroom language provides a rich source of data for sociology, applied linguistics, sociolinguistics and other related disciplines. Considerable and extensive studies of courtroom language have been carried out over the past decades, especially in common law jurisdictions. An overview of the issues concerning and approaches to the studies of courtroom language will shed light on the nature of courtroom discourse, which are an important aspect of legal discourse. In what follows, we will divide such studies into macro and micro studies. Of course the distinction is by no means intended to be a clear-cut one as many of the studies fall into both categories.

2 Macro studies

The macro studies investigate the general features of courtroom language from the broader perspectives of language, legal

communication, law, society and culture while the micro studies examine the internal structures of courtroom language in relation to specific issues.

2.1 Language, power and control in courtroom

Language and power has been a major theme of exploration in the works of social philosophers such as Foucault (1971, 1977, 1980) and Habermas (1984, 1992) and sociolinguists such as Gumperz (1982) and Fairclough (1989). Language has been identified as the "primary medium of social control and power" (Fairclough, 1989, p. 3), most notably in legal settings (Coulthard & Johnson, 2007, p. 37) where the use of language is structured in such a way as to facilitate control through the exercise of power (O'Barr, 1982; Conley & O'Barr, 1998, 2005; Cotterill, 2003).

A salient feature of the common law court is that participants' narrative styles have a direct bearing on the outcome of a trial. Many studies (Conley et al., 1978; O'Barr, 1982; Berk-Seligson, 1990; Conley & O'Barr, 1990, 1998, 2005) have shown that a witness's credibility is determined to a large extent by his/her narrative style, which falls into two main categories, namely, powerful style and powerless style. In their 1970s study, Conley and O'Barr observed that women tend to use powerless language more frequently than men, which is partially due to the fact that women generally occupy relatively powerless social positions (O'Barr & Atkins, 1980, p. 104). O'Barr (1982, pp. 71-74) found that a witness speaking in a powerful style tends to make a better impression on his/her audience while one speaking in a powerless style tends to be perceived less favorably. And having investigated the manner in which about a hundred self-represented litigants in small claims courts organized and presented their cases, Conley and O'Barr noted that those whose accounts were received more favorably by the court had "exposure to the source of social power, in particular the literate and rule-based cultures of business and law" (1990, p. 194). According to these studies, powerlessness, generally regarded as typical of female speech (Lakoff, 1975, 1990), is in fact related not so much to gender as to social status and situational power. Wodak-Engel also noted that middle-class defendants "are able to build up an image valued by the court" (1984, p.

97) because they have acquired the implicit speech norms of the courtroom in the process of socialization during childhood. Wodak-Engel therefore concluded that "defendants not socialized in these norms of language are discriminated against, and only MC defendants succeed, as a rule, in good image management before the judge" (1984, p. 97).

Building on their earlier empirical research, Conley and O'Barr (1998, 2005) further analyzed courtroom language at the micro-linguistic level, showing how powerlessness arises as a result of the process of the law. As the legal system gives less credence to those who speak in a powerless style, and as men are more likely to have learned a powerful speech style than women, the law, they argued, manifests "patriarchy at the most elemental linguistic level" (1998, p. 75). Thus for them, the study of courtroom has "important implications for understanding the subtle workings of the law's patriarchy" (1998, p. 65).

In a somewhat different light, Maynard (1985) examined the exploitation of a defendant's attributes, such as his race, class and sex as mitigating factors in plea bargaining, and showed how the structure of the language affects his sentencing. He urged that "increased attention must be paid to the structure of language in institutional settings, such as the court, for discourse is the medium by which decisions are made and through which organized discriminatory or nondiscriminatory reasoning practices are sustained" (1985, pp. 174-175).

In a more recent study, Trinch and Berk-Seligson (2002) examined the types of interactional problem that arise from narrative variation in institutional interviews. The factors found most likely to influence narrative outcomes are contextual ones, related to the social roles of participants, the type of communicative activity interlocutors perceive themselves to be engaged in, and their interactional goals. An additional finding is that when expectations of what constitutes appropriate speech behavior differ, the interlocutor with greater institutional power will try to constrain the speech of the other. Thus, the idea of justice as equal treatment before the law has been shown by a great number of studies not to be upheld by many courts, even though in many cases this did not result from deliberate manipulation on the

part of those who made judicial decisions, but rather from the subtle influence of social values through the working of language. As participants' linguistic behavior is to a great extent a reflection of their social classes, the close relationship between social class and justice cannot be more obvious. It is only natural that the power structure of an institutionalized setting is reflected in the use of language. As Goodrich (1984, p. 91) remarked, legal discourse is "pre-eminently the discourse of power". While the exercise of power is often disguised in covert language form, the control of what is said in the courtroom by means of overt linguistic manipulation is another salient feature characteristic of the adversarial system of the common law.

Language in the courtroom may be described as an asymmetrical discourse between court officials and parties to a case, and the language used in asymmetrical encounters may also have different functions from those of the language used in symmetrical situations (Coates, 1995, p. 16). In asymmetrical discourse the more powerful participants have control over the topic while the powerless participants can only display varying degrees of resistance (Danet et al., 1980; Harris, 1984, 1988; Lakoff, 1989, 1990). For Conley and O'Barr (1998, 2005), an important goal of sociolinguistics is to investigate "the most important theoretical issue in law and language: the use of linguistic methods to understand the nature of law and legal power" (1998, p. 6). How lawyers acquire and amass power by means of legal tactics and presentation styles has been examined thoroughly by O'Barr (1982) and Conley and O'Barr (1998, 2005).

Based on his study of some court cases, Philips (1998) argued that the behavior, and particularly the language practices, of United States trial judges, is ideological in nature; in other words, judges are not free of political influence. He remarked that "it is a mistake and a misinterpretation to think of trial court judges as mere implementers of law made by others" (ibid, p. 123). In discussing judges' use of language in legal interpretation, Solan (1993) demonstrated how judges disingenuously employ linguistic analysis to mask their result-driven legal arguments.

How exercise of control and power in the courtroom is achieved by various means of linguistic manipulation is a central question of a

great number of macro studies, which is often noted in the genre analysis and textual analysis of legal discourse.

2.2 Courtroom language as a special discourse type

Another category of macro study takes courtroom language as a special discourse type or discourse within a specific community. Atkinson and Drew (1979), Penman (1987) and Lakoff (1989) used ordinary conversation as a reference point and highlighted the aspects in which courtroom discourse differs from ordinary conversation. Applying ethnomethodology to specific areas such as examination and cross-examination, Atkinson and Drew (1979) showed how courtroom discourse is both similar to and different from ordinary conversation in terms of turn-taking. Penman (1987) equated the rules of courtroom discourse with Grice's Cooperative Principle (1975, 1989). Lakoff (1990, pp. 129-134) listed thirteen shared properties and nine pairs of contrastive features between courtroom and ordinary discourse. Lakoff alerted us to the potential danger of abuse subsisting in any type of discourse and sensitizes us to the need for understanding whatever form of discourse in which we are engaged so that we can "assume responsibility for our communication" (1990, p. 140). Her study is not purely linguistic in nature but cuts deep into the root of the abuse of power in human verbal communication.

Rather than contrasting courtroom discourse with ordinary conversation, Mead (1985) treated courtroom discourse as a highly controlled variety of English discourse. In his study of Malaysian magistrates' court proceedings, Mead (1985) compared courtroom discourse with classroom language on which Sinclair and Coulthard (1975) built their model (hierarchical ranks consisting of act, move, exchange, transaction and lesson) of discourse analysis. According to Mead (1985, p. 21), classroom and courtroom discourse are both controlled by a participant who has institutionalized authority over other participants, but while the former aims to disseminate known information, the latter is concerned with "the collection and evaluation of new information". More concerned with theoretical considerations, Harris (1988) contended that an analysis of complex discourse such as courtroom discourse requires a more complex model than simplistic ones such as Hasan's (1978) linear model built upon Halliday's (1978)

concepts of field, tenor and mode, and Martin's (1985) networks. She suggested that courtroom discourse could be analyzed by means of a "rank scale" similar to Sinclair and Coulthard's (1975) hierarchical ranks designed for the analysis of classroom discourse.

2.3 Courtroom language and discourse community

Courtroom language as discourse also entails an exploration of the relationship between language and social structure, especially between language and social structure in a particular discourse community. This is a mutual operation: on the one hand, communication is shaped and often constrained by the structure and dynamics of the social institutions; on the other hand, these social institutions and the roles and relationships of their members are molded by a particular language use (Candlin, 1994, p. x).

While many critics have endeavored to lay bare the socio-political forces underlying courtroom language, claiming that "legal institutions adopt rules which serve the dominant interest groups in society (Gordon & Nelson, 1988, p. 161), a few scholars have approached it from the more positive perspective of the institutional context in which the court communicates as legitimate. The linguistic features of courtroom discourse, such as "the cats and dogs of law language" (Mellinkoff, 1963, p. 385), are to "preserve the judge's distance and sense of objectivity" (Tiersma, 1999, p. 194), as Halliday (1994) has pointed out, language is the way it is because of what it has to do.

Topf (1992) studied opinions of the United States Supreme Court and showed, along the same line of thinking in light of which Kuhn (1962) investigated the dynamic interaction between paradigm and revolution in the history of science, that their legitimacy is grounded in "the assent of the relevant community" (Kuhn, 1962, p. 93). Similarly, Topf (1992, pp. 26-27) argued that a judicial opinion, couched in a language typical of the adversarial system of the common law, must be perceived as conforming to the established and accepted norms of the legal system and gain the consent of its discourse community. Coulthard and Johnson (2007, p. 37) also dealt with the duality of courtroom discourse as institutional:

On the one hand we can argue that such language is difficult to understand and therefore distances and disadvantages the lay

participant, but an alternative functional perspective is that the formulaic formality is part of the way the participants orient to what is going on.

What a discourse community expects of its professionals is well explicated in the works of Benjamin T. M. Liu (Liu, 2000), a former appeal judge who served both on and off the Bench for over 40 years. He discussed the mindsets and modes of operation of lawyers, judges and court personnel from a professional perspective. In contrasting American and French judicial opinions, Wells (1994) argued that critical insights into the nature of one's own legal system can be gleaned by understanding what one's system is not and such task can only be realized by a comparative analysis, which in fact stresses the awareness of the differences of sub-communities in understanding the same type of legal discourse across jurisdictions.

Similarly, Cheng and Sin (2007), in their corpus-based contrastive study of court judgments, took court judgments not only as a special discourse type but also as a genre within a professional discourse community. Moreover, the sensitiveness to the differences between discourse sub-communities is stressed in the understanding of the discourse variation across jurisdictions. Their studies, though linguistically oriented, took speech acts as manifestations of social and cultural behaviors. This line of research has drawn our attention to the social basis of judicial opinions (or court judgments) and has far-reaching implications for the pragmatic study of legal communication. The mutuality between discourse and community is therefore another salient feature of legal discourse.

3 Micro studies

Micro studies of courtroom language may include stylistic features, rhetoric and language functions, psycholinguistic studies (Charrow & Charrow, 1979; Gibbons, 2003; Loftus, 1979; Mellinkoff, 1963; Schwarzer, 1981; Tiersma, 1999), communication problems of non-native speakers (e.g. Berk-Seligson, 1990), and problems of court interpretation (e.g. Berk-Seligson, 1990; Sin & Djung, 1994).

3.1 Stylistic features

Stylistic features in the present context include lexical and syntactic features. What Mellikoff (1963, pp. 24-35) described as "mannerisms of the language of the law" (wordiness, unclarity, pomposity and dullness, pomposity in particular) are also features of courtroom language. The ground-breaking research on language variation in the speaking style of witnesses was conducted by O'Barr (e.g. 1982). He identified four varieties of courtroom language, namely, formal spoken legal language, formal standard English, colloquial English and sub-cultural varieties. As we have noted, O'Barr also examined the features of powerful and powerless styles, adopting Lakoff's characterization of female speech as parameters. In addition, he investigated three other styles, namely, narrative style, fragmented style and hypercorrect style. The main purpose of his study was to ascertain how the speech style of a witness would affect his/her credibility. He designed a number of experiments to establish the correlation and found that speakers of the powerful and/or the narrative style tended to be more convincing than those of the other styles. In addition, sociolinguistic studies of male and female language or speech styles were mainly based on microlinguistic analysis (Holmes, 1997), which used micro linguistic analysis to show "the diverse realizations of the dynamic dimensions of masculinity and femininity" (Holmes, 1997, p. 217).

Contrasting the Chinese judgments of Hong Kong and Mainland China, Wong and Sin (Wong, 2006; Wong & Sin, 2003) noted that while judgments in both jurisdictions share the same style of formality, Hong Kong judgments have the following features: (1) inconsistent in respect of vocabulary and legal terminology: (2) frequent use of vernacular Cantonese words and expressions on the one hand and frequent use of classical Chinese words on the other; (3) adoption of Cantonese and Westernized syntax; (4) elaborate in respect of ratio decidendi, which accounts for 50.36% of the total number of characters in the corpus (as opposed to only 28.9% in Mainland China's judgments). Wong and Sin (2003) also identified seven stylist features of Chinese court judgments in Hong Kong in comparison with common written Chinese: (1) more removed from oral discourse; (2) more classical in style; (3) more precise in diction; (4) greater in sentence length; (5) more complex in structure; (6) more condensed in

information; and (7) a lower degree of engagement. However, the stylistic features such as the choice of self-reference are not simply the indicators of formality but also representative of and constrained by the power structure of a particular discourse community.

3.2 Rhetoric and language functions

The interrelationship between rhetoric and language functions is also a central theme in the study of courtroom language. As an essential part of a court hearing consists in adducing evidence by questioning witnesses, researchers have always been interested to study the various forms and functions of questioning in the courtroom (Harris, 1984; Philips, 1987; Walker, 1987). What should count as a question has therefore become one of the central issues in recent studies of courtroom language. Harris contended that previous definitions were "unhelpful in illuminating the functions of questions in court discourse" (1984, p. 9). She put forward a functional definition that yields a detailed classification of questions. Likewise Walker (1987, p. 69) classified question forms into four formal categories and identified three functional classes, namely, "field," "fence" and "corral," which represent the ways in which the lawyer controls his/her witness.

The majority of linguistic studies of courtroom interaction focus on the restrictive and controlling nature of questions in examination (Philips, 1987, pp. 85-86), such as questioning strategies by legal professionals (Conley & O'Barr, 1998, 2005; Danet et al., 1980), or implicature (Grice, p. 1975) as a rhetorical strategy during question sequences in cross-examination. In what they called "an ethnography of questioning", Danet et al. (1980, pp. 226-227) identified six features of questions which effected coerciveness, worked out a typology of question forms, and charted the distribution of question forms in direct and cross-examination. An interesting finding of their study was that coercive forms seem more effective in direct examination than in cross examination, which, if proved to be conclusive, would have a direct bearing on questioning techniques.

In pre-trial discovery, lawyers have effectively collected a considerable amount of evidence for the case in question, so that in the trial proper they ask questions not just for information but for other purposes. The function of questioning in direct examination is more of

information-checking than of information-seeking (Schiffrin, 1994, pp. 165-169). Questioning witnesses from the same side is to present before the court/ jury all that the witness knows which is relevant and material. The evidence should be presented in such a way as to be clearly understood and persuasive. Direct examination is therefore the phase in a court trial for the co-construction of testimony between advocate and witness, with the former in complete control over the interaction. The dual aim of this type of questioning is to provide the jury with a clear outline of the witness contribution to the narrative, and also to construct a persuasive account (Boon, 1993, p. 100). In cross-examination, questions are mainly used to challenge the credibility of the witness and to deconstruct the narrative of the opponent.

Apart from question form and question-answer sequence, co-speech has also been studied, though not as extensively. Walker (1982) examined the patterns of co-speech in depositions and explored their implications. She observed that co-speech can be structurally divided into mid-clause and end-clause intervention which can in turn be functionally divided into disruptive and non-disruptive co-speech. Her study revealed that disruptive mid-clause intervention of speech initiated by a witness was viewed by counsel as "role encroachment", an encroachment of the power base from which he/she operated (Walker, 1982, p. 109). Another structure of courtroom discourse, namely, the narrative structure in plea bargaining, was studied by Maynard (1984, 1990). Maynard (1990, p. 92-93) noted that discourse in plea bargaining and trial discourse belong to distinctive types: while trial stories are elicited through question-answer sequences and told by direct participants, plea bargaining stories are told "more spontaneously and uninterruptedly" by "parties at some remove from the original event". Along a similar line, Cotterill (2003) described how story-telling, framing, cross examination, and reframing work in a trial.

Judicial thinking underlying court judgments is an integrated part of human action and behaviour and turns out to be a dialogic challenge (Weigand, 2000, 2002). Cheng and Sin (2008) argued that dialogue is of cardinal importance to maintaining the interpersonal relationship between judges and facilitating judgment drafting as a collaborative problem-solving. It is also important for the check and balance between courts and the legislature. A court judgment can therefore be taken as

the dialogue between judges as well as one between courts and the legislature. Based on the analysis of some judgments in Hong Kong, they exemplified rhetorical preferences of the dialogue (cf. Weigand & Dascal, 2001), unraveled the underlying pragmatic rationale, and identified rhetorical strategies such as modality and intertextuality for creating space for dialogue.

The functions of judicial documents are also widely discussed in previous works (e.g. Bhatia, 1993; Maley, 1994). In a similar vein, Cheng and Sin (2007, p. 351) argued:

> Legal documents can serve a variety of functions, including eliciting information, persuading, memorializing events such as reciprocal communications, or accomplishing performative goals, such as creating or revoking legal relationships. Court judgments, as a special genre of legal discourse community, typically have a performative objective: they are intended to decide or alter legal relationships relevant to some controversy before the court. In fact, more exactly, we should say the decision/disposition part of a court judgment serve the performative function; the other parts of a court judgment have their own functions.

3.3 Communicating and managing meaning

As courtroom discourse involves participants who are not well equipped with the language and knowledge required in the courtroom situation, there have been studies which aim to investigate how those participants cope with communication in the courtroom. Pollner (1979) approached the courtroom as a semantically explicative setting where participants without prior knowledge of what to say and how to behave can perceive and manipulate meanings by observing the behaviour of other participants. He showed how court transactions may provide participants semantic clues and information sufficient to enable them to fully participate in the proceedings. In contrast to non-explicative transactions in which the meaning of an act or utterance is so well-defined and well-established that it remains unchanged "regardless of what others do with, about, or in response to it" (p. 246), the meaning of an act or utterance in the courtroom is, he noted, constituted by a subsequent act or utterance in the proceedings. Viewing the courtroom

as an explicative setting, the study has drawn our attention to the constitutive nature of courtroom discourse as well as to the more general issues in semantics.

Thus, participants' awareness of the context plays an important role in courtroom discourse. Drew (1985, 1990) explored participants' orientation to context by examining how they organized and designed their question-answer sequences in cross examinations. As a general principle, he noted, "questions are understood in the light of what has gone before (prompting, prior testimony) as well as anticipated lines of questioning (p. 136). He analysed a number of ways in which counsel designed his questions to cast doubt in a witness's testimony and in which a witness engineered his answers to combat counsel's questioning. Though context-specific, Drew's analysis of competing accounts in cross examination sheds light on "how disagreements are managed in ordinary conversation" (p. 145), an interesting question in discourse semantics.

Turning from the overall context of the courtroom to a narrower domain, Philips (1984) investigated both the linguistic and the nonlinguistic differences in nominal reference to crimes in two different procedures of the American court, namely, the Initial Appearance and the Change of Plea. She found that in the former there is an "absence of sentential framing of noun phrases," a "shorter length of noun phrases," and a "smaller amount of postnominal modification" while in the latter reference to crimes is more elaborate and specific (pp. 40-48). The differences in nominal reference to crimes reflect the varying degrees of formality of the two procedures (p. 47) and display two aspects of the communicative competence of participants, namely, a general linguistic knowledge possessed by all participants as displayed in the syntactic variation and a specialized knowledge possessed by lawyers and judges as displayed in the more elaborate forms of reference to crimes (pp. 47-48).

3.4 Psycholinguistic studies

While the studies of question form and speech style in courtroom discourse often offer sociolinguistic interpretations of their data, they are partly psycholinguistic in nature as they are concerned with people's reactions to testimony of different speech styles. One reason

why these studies are marked by the lack of conclusive evidence is that no experiment has been conducted to test the hypothesis that different forms of question and different speech styles affect a witness psychologically in different manners resulting in different verbal reactions.

A most well-known psycholinguistic study of courtroom discourse is Charrow and Charrow's (1979) experiments on the comprehensibility of jury instructions. They were designed to test three hypotheses. First, jurors do not adequately understand typical jury instructions. Second, low comprehensibility is caused by certain linguistic constructions. Third, by replacing those problematic constructions while keeping the informational contents unchanged, understanding can be enhanced. The study has enabled us to find out not only the types of linguistic construction that affect comprehensibility but also those that can enhance it.

Another well-known psycholinguistic study was conducted by Loftus (1979) which explored how witnesses' belief about what they had actually witnessed was affected by the wording of questions. The experiments show that beliefs someone acquires as an eyewitness can to a certain extent be modified by ideas smuggled into his mind by means of various linguistic formulation. A witness receives information through perception of the incident. He may also receive what Loftus called "external" information after the incident. Memory is the product of the integration of information from these two sources (p. 78) Loftus's study is relevant to courtroom discourse in that it shows how some of the component words of a question may affect someone's belief about a certain event to which he is a witness. As the use of questions is frequent and inevitable in the courtroom, the witness seems vulnerable to linguistic manipulation by those questioning him.

3.5 Communication problems of non-native speakers

Obviously enough, non-native speakers of the court language suffer an enormous disadvantage when giving evidence in that language. Many scholars have made contribution to this critical issue (Adams, 1973; Berk-Seligson, 1987, 1990; Bresnahan, 1979, 1991). In a pilot study, Bresnahan (1979) attempted to investigate the ability of the non-native English defendant to testify in his/her behalf and whether such

defendants should be given "special language considerations in the courtroom" (p. 565). She discovered that there is a clear correlation between the level of coerciveness of a question and the degree of responsiveness of its answer given by a non-native speaker of English, which is not necessarily the case with a native speaker (p. 571). She also discovered that negative yes/no questions were a source of difficulty for a non-native speaker, thus impairing his credibility when not handled skillfully (p. 571). In a similar vein, Gumperz (1982) examined the extent to which the linguistic and cultural background of a non-native speaker may affect communication in the courtroom. Through the study of a perjury case he observed that the non-native speaker is likely to be misunderstood and that language differences may affect a non-native speaker's treatment in court.

3.6 Problems of court interpretation

Interpreters are now used with increasing frequency in courts throughout the USA, the Commonwealth and Hong Kong. Court interpreters are necessary to ensure that judges and/or jurors can understand the testimony of defendants, witnesses, and other participants in order to render fair verdicts and decisions. They also serve to protect the rights of parties with limited ability to speak or to understand court language and to facilitate the fair and efficient administration of justice. However, court interpreters must adhere to strict codes of appropriate behavior. Interpreters shall be impartial and unbiased and shall refrain from conduct that may give an appearance of bias. It is important to understand the functions of interpreting because, in some settings, more than one interpreter may be required, depending on how many interpreting functions need to be carried out during the same proceeding. In some circumstances, two or more interpreters may be required during one trial in order to perform all of the required interpreting functions. The most frequent settings of interpretation include proceeding interpretation, witness interpretation, and interview interpretation.

Accuracy and completeness is the primary canon for court interpretation, that is, court interpreters shall render a complete and accurate interpretation or sight translation, without altering, omitting or adding anything to what is stated or written, and without explanation.

Where interpreting services are provided for non-native speakers of the court language, problems arise from various aspects of court interpretation. Lang (1976) identified five types of problematic interpreting: (1) derogatory remarks made by the interpreter; (2) misinterpretation due to carelessness; (3) misinterpretation arising from substituting an order by the reasons for that order; (4) careless paraphrasing; and (5) misinterpreting due to auditory misperception. A more detailed study was carried out by Berk-Seligson (1987) who focused on how the speech style of a witness is changed by the interpreter. Built upon the work of O'Barr, her study showed that interpreters systematically alter the length of witnesses's testimony resulting in the weakening of their force, i.e., rendering their speech style powerless. She identified six categories of change in style: (1) adding hedges; (2) inserting elements understood in the meaning of the original utterances; (3) hypercorrect grammar due to uncontracted forms; (4) rephrasing and repeating interpretations; (5) turning a curt reply into a polite (and even an over-polite) one; and (6) omitting or adding utterance particles or hesitation forms. Rather than a neutral facilitator for court communication, the interpreter, she noted, tends to play an intrusive role affecting the speech style of the witness and consequently creating positive or negative evaluation of the credibility of his testimony.

4. Discussion

The account outlined above suffices to give us an overview of the various aspects and multi-faceted problems of courtroom discourse studied by sociologists and linguists. From a methodological point of view, their studies can be categorized into two main approaches, namely, the sociological approach and the linguistic approach. The sociological approach looks at courtroom discourse more as a social phenomenon than as a linguistic activity. It aims to shed light on certain features of a society and to make sense of an existing social order through the study of courtroom language. In contrast to the sociological approach, the linguistic approach aims to investigate the various aspects of courtroom discourse from the perspective of language. This broad categorization brings out a major difference in research focus of

the two most relevant disciplines, namely, sociology and linguistics. As has been noted, while sociologists look at the courtroom mainly as a social setting where members of a society interact in specific manners that reflect the structure of that society, linguists look at it primarily as a process displaying the various features of language. Historically speaking, the increasing interest in courtroom discourse has been inspired by sociologists rather than by linguists, but with the rapid development of discourse analysis in recent years, courtroom discourse has become a much researched area in discourse analysis and can be regarded as a special topic for discourse analysis. Naturally, different approaches yield different results.

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Le Cheng received his B.A. from China university of Political Science and Law, M.Phil. in Law from Southwest University of Political Science and Law, M.Phil. in Linguistics from Zhejiang University, and Ph.D. from City University of Hong Kong. He is now a research fellow at Hong Kong Polytechnic University, and concurrently a research professor and acting associate director at the Research Center for Legal Translation, China University of Political Science and Law and a distinguished guest professor at Zhejiang University. His research interests include language and law, legal translation, discourse analysis, corpus linguistics and semiotics.

King Kui Sin received his B.A. and M.A. from the Chinese University of Hong Kong and his Ph.D. from the Southern Illinois University. He is now Associate Professor at the Department of Chinese, Translation and Linguistics, City University of Hong Kong, teaching legal translation, translation theory, and philosophy of language. He worked in the Judiciary as a court interpreter from 1978 to 1980. From 1980 to 1987 he was engaged by a French oil corporation based in China operating training in English, translation and interpretation. He served on the Bilingual Laws Advisory Committee from 1990 to 1997 and appointed MBE (Member of the Most Excellent Order of the British Empire) by the British Government for his contribution to the translation of Hong Kong laws into Chinese. His research interest and publications are in the areas of language and law, and the philosophy of

language. Address: Department of Chinese, Translation and Linguistics. Email: ctsinkk@cityu.edu.hk.