

# *Interpreting as Cultural Mediation in the Courtroom: Navigating Ethical Dilemmas*

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**Keywords:** Court Interpreting, Cultural Mediation, Ethical Dilemmas, AUSIT Code of Ethics, Power Imbalance, Impartiality, Professional Boundaries

**Abstract:** This paper examines the complex role of the court interpreter as a cultural mediator and the ensuing ethical dilemmas. While professional codes of ethics, such as those from the Australian Institute of Interpreters and Translators (AUSIT), emphasise neutrality and accuracy, power imbalances, emotional bias, and the challenges of legal terminology and nonverbal information often compel interpreters to transcend mere linguistic conversion. Using the AUSIT Code of Ethics as its primary theoretical framework, this paper analyses how interpreters should make professional and just choices when confronting three primary ethical dilemmas: power dynamics among trial participants, interpreter emotional bias, and the handling of legal terminology and nonverbal cues. The study concludes that effective court interpreting is not merely an act of linguistic precision but a profound process of cultural mediation. By strictly adhering to core ethical principles of accuracy, neutrality, and professional boundaries, interpreters are instrumental in upholding procedural justice and fostering a more inclusive and equitable legal environment. This contribution is particularly vital in increasingly multicultural societies, where the courtroom often represents a critical intersection of diverse worldviews and legal traditions.

## **1. Introduction**

Ethnographers of language behaviour posit that the role of a speaker is a key variable in determining speech content and style within a given context (BerkSeligson, 1990). In the specific context of legal proceedings, the interpreter's role thus extends beyond that of a linguistic conduit to that of a cultural mediator. This function becomes particularly critical in situations marked by power imbalances, divergent social identities, and significant cultural and economic disparities between the parties involved. The courtroom is not a neutral, culturefree zone; it is a culturally specific environment with its own rituals, jargon, and power structures. A defendant, witness, or victim from a different cultural and linguistic background is thus at a double disadvantage: they do not speak the language, and they often do not understand the underlying cultural and procedural codes governing the interaction. To provide effective cultural mediation, interpreters must possess a deep understanding of the clients' social backgrounds and exercise rational, professional judgement to navigate the frequent moral dilemmas that arise. This paper will analyse interpreting cases in

courtroom settings, utilising the AUSIT Code of Ethics as its primary theoretical framework. It aims to investigate how interpreters can balance their responsibilities, maintain appropriate professional boundaries, make just choices in the face of ethical conflicts, and ultimately contribute to a more inclusive and fair judicial system. The discussion will delve into the nuanced application of ethical principles, demonstrating that professional interpreting is an active, decisionmaking process rather than a passive, mechanical one.<sup>[1]</sup>

## **2. Theoretical Framework: The AUSIT Code of Ethics and Cultural Mediation**

The prerequisite for discussing cultural mediation in interpreting is to define its scope and efficacy. Cultural mediation occurs not only across languages and cultures but also between different social groups; it bridges gaps in values, social status, beliefs, and even emotions. Cultural mediators transmit more than words; they transmit meaning and ideas. Their sensitivity to subtle expressive nuances makes them alert to the potential effects of miscommunication. Therefore, cultural mediation cannot be considered an ancillary function; rather, it is a fundamental component of fruitful communication and mutual understanding. In the legal context, this mediation is not about advocating for one party but about ensuring that communication is as complete and comprehensible as possible, given the cultural chasm that may exist between the court and the nonnative speaker. It involves making conscious choices about how to render culturally bound concepts, speech styles, and pragmatic norms so that the speaker's intended meaning and the listener's interpretation align as closely as possible within the legal framework.<sup>[2]</sup>

The AUSIT Code of Ethics provides a robust framework for navigating this complex terrain. Its core principles directly inform the interpreter's practice as a mediator:

**Accuracy:** Fidelity to the source message, including all its elements (hesitations, emotions, etc.). This principle demands more than literal translation; it requires the conveyance of the full pragmatic force and illocutionary intent of the original utterance.

**Impartiality:** Maintaining neutrality and avoiding conflicts of interest. The interpreter must be a neutral linguistic instrument for the court, resisting any pressure, whether internal or external, to align with any party's interests.

**Confidentiality:** Preserving the privacy of all parties. This builds trust and is essential for the integrity of the legal process.

**Professionalism:** Understanding the limits of one's role and maintaining appropriate boundaries. This includes recognising when a situation falls outside one's professional competence and refraining from offering legal advice, personal opinion, or undue reassurance.

This framework will be applied to analyse the specific ethical dilemmas outlined below, demonstrating how theoretical principles guide practice in highstakes environments. The AUSIT code, while not exhaustive, offers a principled foundation upon which interpreters can build their professional reasoning when faced with situational complexities that are not explicitly covered by the rules.

## **3. Ethical Dilemmas in Courtroom Interpreting**

In the courtroom, the interpreter's primary function is to remove communication barriers arising from a nonnative speaker's unfamiliarity with legal systems and protocols. However, in practice, this involves navigating profound ethical challenges, which this paper categorises into three interconnected types. These dilemmas are not merely theoretical; they arise consistently in practice and test the interpreter's adherence to their ethical code.

### 3.1 Power Imbalance and the 'Ally' Expectation

The first issue stems from the inherent power imbalance in courtroom litigation, where nonnative speakers are often in a vulnerable position. They are facing an intimidating, formal system, often with limited resources and a potentially lifealtering outcome at stake. As the only participant who shares their language and possibly their cultural background, the interpreter is frequently perceived as an ally (Hale, 2004) or even a "saviour" (Morris, 1995). The nonnative speaker may expect the interpreter to be on their side, to explain the system in a reassuring way, or to soften the harshness of legal language. They may prefer to communicate with the interpreter directly, seeking guidance or empathy, rather than viewing them as a neutral mediator. This expectation creates significant moral pressure on the interpreter, directly conflicting with the interpreter's ethical mandate of impartiality as stipulated in the AUSIT Code. The interpreter may feel a human urge to help the vulnerable individual beyond the strict confines of their role, but succumbing to this urge compromises their neutrality and can ultimately harm the judicial process. Furthermore, this dynamic can be misinterpreted by the court, potentially leading the judge or jury to view the interpreter as part of the nonnative speaker's "team," thereby undermining the interpreter's credibility and the perceived fairness of the proceeding.<sup>[3]</sup>

### 3.2 Emotional Bias and Impartiality

A widespread moral dilemma arises when the content of the case, often involving victims of violent crime, sexual assault, or persecution, triggers the interpreter's emotional resonance. Maintaining an unbiased, neutral stance is challenging for any individual confronted with harrowing testimony. Within an adversarial legal system, interpreters face the risk of being perceived as representatives of one side, particularly if they are consistently interpreting for a single party, such as a defendant or a victim. This is particularly acute if the interpreter has a personal history resembling the crime being tried, creating a potential conflict of interest and severely compromising the principle of impartiality. For instance, an interpreter who is a survivor of domestic violence may find it extraordinarily difficult to remain dispassionate while interpreting for a perpetrator. Conversely, an interpreter might unconsciously develop antipathy towards a defendant based on the nature of the charges. These emotional responses, if not managed and disclosed where necessary, can subtly influence the interpretation—through tone, register, or even slight lexical choices—potentially prejudicing the outcome. The ethical challenge is to recognise these personal triggers and either manage them through rigorous selfdiscipline or, in cases of significant conflict, recuse oneself from the assignment.

### 3.3 The Handling of Legal Terminology and Nonverbal Information

The third category of dilemmas concerns the intricate linguistic and paralinguistic challenges that lie at the heart of the interpreter's task.

One of the crucial representation in this area is the translation for legal terminologies. The highly specialised language of the law presents two fundamental problems. First, the interpreter may not immediately recall the corresponding targetlanguage equivalent under the pressure of realtime interpreting, leading to pauses or approximations that can be misconstrued as uncertainty or evasion by the witness. Second, and more profoundly, the sourcelanguage legal term may lack a direct conceptual equivalent in the target language, necessitating an explanation or a cultural analogue. For example, concepts like "due process," "bail," or "plea bargaining" may not exist in the same form in other legal traditions. Providing an explanation, however, risks the interpreter being seen to exceed their role by providing legal instruction. Furthermore, even with a technically accurate

translation, lesseducated trial participants may struggle to comprehend the abstract and complex terms, resulting in persistent communication barriers that a literal interpretation does not resolve. The dilemma is whether to interpret words strictly or meanings effectively, and where the line between mediation and explanation lies.<sup>[4]</sup>

The nonverbal communication is also pivotal. Communication is multimodal. Nonnative speakers, like all people, use body language, tone, volume, pace, and other paralinguistic cues to convey meaning. A sigh, an averted gaze, a nervous laugh, or a prolonged silence can be highly significant. If these cues carry specific cultural meaning (e.g., downcast eyes signifying respect in one culture but dishonesty in another) or reflect the speaker's psychological state (e.g., traumainduced flat affect), they constitute influential trial information. The dilemma lies in whether and how the interpreter should convey these nonverbal elements.<sup>[5]</sup> The AUSIT principle of accuracy suggests that meaningful paralinguistic elements are part of the "source message." Should the interpreter verbally note, "The witness let out a long sigh before answering"? Should they attempt to mimic the tone of voice? Failure to convey these elements may strip the communication of its full context, while attempting to convey them can be intrusive, unnatural, and again, risk overstepping the role.<sup>[6]</sup>

#### **4. Analysis: Navigating Dilemmas through the AUSIT Framework**

In light of these pervasive dilemmas, a comprehensive analysis grounded in the AUSIT framework suggests that court interpreters must strictly adhere to its core principles, applying them with intellectual rigour and professional courage. The following analysis provides a roadmap for this application.

##### **4.1 The Principle of Accuracy: Beyond Verbatim Translation**

Regulations such as those from the California Judicial Council require interpreters to "preserve all elements in the source language information" (Gonzalez, Vasquez & Mikkelson, 1991, p. 16). This includes "all pauses, ambiguities, selfcorrections, hesitations, and emotions." However, this so-called verbatim requirement is often misunderstood as a mandate for a literal, wordforword approach. As Obenaus (1994) notes, such a literal approach can produce poor, unnatural, and even misleading translations. The precision required, which aligns with AUSIT's "accuracy," means ensuring the target language rendition closely matches the tone, register, manner, and emotional intent of the source speaker. It is about semantic and pragmatic equivalence, not lexical substitution. For instance, a witness's response of "I, uh, I don't know... I guess... yes, I think I saw him there," must be rendered with all its inherent uncertainty and hesitation, not simplified to a clear "I think I saw him there." The former conveys doubt and possible unreliability, which is crucial information for the trier of fact. The interpreter's words become the official record, demanding this high standard of accuracy. In cases of culturespecific terms or metaphors, accuracy may require a brief, unobtrusive explanation within the rendition (e.g., interpreting "I swear on the Gita" as "I swear on the Gita [a Hindu holy scripture]") to ensure the court understands the gravity of the statement, thereby fulfilling the deeper purpose of accurate communication.<sup>[7]</sup>

##### **4.2 The Principle of Impartiality and Neutrality: The Foundation of Trust**

"The interpreter's role is that of a court officer, serving the court in the litigation process" (Hewitt, 1995, p. 202). Consequently, judicial interpreters must strive to maintain neutrality and objectivity, both in appearance and in fact. This requires proactive measures, such as disclosing any real or apparent conflicts of interest prior to an assignment. These conflicts may be direct links to a party in the case or a more subtle, vested interest in the case's outcome. Upholding this principle is the

primary defence against the "ally expectation" and the management of emotional bias. When a vulnerable party looks to the interpreter for support, the interpreter must, with professional detachment, reaffirm their neutral role through their actions and, if necessary, a brief, polite explanation of their function. To combat emotional bias, interpreters must engage in constant self-reflection, monitoring their internal reactions to testimony. Professional training should include strategies for compartmentalisation and emotional resilience. If an interpreter finds their impartiality compromised, the ethical course is to seek clarification from the court or withdraw from the assignment. This unwavering commitment to neutrality is what allows all parties to trust the interpreted channel of communication, which is the bedrock of a fair trial.<sup>[8]</sup>

#### 4.3 Maintaining Professional Boundaries: Clarifying the Role

When faced with the vulnerable position of nonnative speakers or inappropriate expectations from legal professionals (e.g., a lawyer asking for the interpreter's opinion on the witness's credibility), interpreters must ensure their relationships with all parties remain professional and fair. This requires a full and confident understanding of their professional role and a refusal to perform functions outside their duties, such as acting as a cultural bridge in a way that offers opinion, an information gatekeeper who filters content, or a defender of the vulnerable who advocates for them. The interpreter's mediation is linguistic and cultural in service of comprehension, not advocacy. When other trial participants misunderstand the interpreter's role, it is the interpreter's professional responsibility to clarify the distinction between professional and social interaction and to establish and maintain appropriate boundaries. This might involve explaining to a defendant that the interpreter cannot give legal advice or informing the court that a question posed is based on a cultural misunderstanding that the interpreter can help clarify for the purpose of accurate communication. By firmly maintaining these boundaries, the interpreter protects the integrity of the proceeding, their own professional standing, and ultimately, the rights of the non-English speaking participant.<sup>[9]</sup>

#### 5. Conclusion

The interpreting process in a courtroom is far more complex than the simple transposition of words from one language to another. Interpreters inevitably act as cultural mediators, playing a crucial role in facilitating understanding across legal systems, cultures, and backgrounds. They are active participants in the construction of legal reality within the multilingual courtroom. The ethical dilemmas they face—from navigating power relations and emotional biases to tackling specialised legal terminology and meaningful nonverbal cues—only underscore the ethical complexity and immense responsibility of this profession. These are not anomalies but constitutive elements of the role. Interpretive professionalism, guided by codes of ethics like that of AUSIT, demands strict adherence to neutrality, accuracy, and fairness. This adherence is not a passive following of rules but an active, ongoing process of ethical decisionmaking. By doing so, interpreters ensure that while justice is served, they also contribute to an inclusive and equitable legal environment where linguistic and cultural differences do not become barriers to a fair hearing. As the global legal landscape grows increasingly diverse, the demand for skilled interpreters who can adeptly handle both linguistic and cultural differences will only intensify. Therefore, it is imperative that interpreter training programs move beyond language transfer skills to include rigorous ethical training, case studies on dilemma resolution, and psychological preparation for the emotional toll of the work. Interpreters must be trained to become self-aware, ethical practitioners who continuously hone their skills in effective cultural mediation while steadfastly upholding the principles of justice and fairness in all their professional conduct. The integrity of the judicial process in a globalised world

depends on it.

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