

## **Interpreted Prison Video Link:**

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### **The Prisoner's Eye View**

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Inghilleri (2007, 207) notes that interpreters are always “socially and politically situated,” and scholarly references to social attitudes and decisions driven by political ideologies that have negative repercussions upon interpreter-mediated communication are rightly beginning to be the object of research (Inghilleri, 2007, 2010, 2012; Camayd-Freixas, 2013, Blasco Mayor & del Pozo Triviño, 2015; Wallace, 2015; Dong & Napier, 2016; Barsky, 2016). However, any exploration of courtroom interpreting via video link would be incomplete without reference to the sociopolitical framework within which interpreters operate.

The criminal justice system in England and Wales is at the mercy of political whim; politicians driven by media rhetoric about migrants and public dismay about the cost of interpreting services cite so-called “economic austerity” as reasons for public service cuts. For example, drastic cuts to Legal Aid over the past few years have already severely affected the access of ordinary people in the United Kingdom (UK) to criminal, civil, immigration, and family law, resulting in an increase in the number of defendants representing themselves in magistrates courts (Easton, Dowell, & Hutchinson, 2015). In addition, following the current political trend for outsourcing, the contract for court interpreting services was awarded by the UK Ministry of Justice in 2012 to a multinational commercial company. Outsourcing is responsible for actively hindering the development of public service interpreting as a profession, because, as Corsellis (2015, 110) notes, “Professional accountability is weakened. Conflicts of interest abound where a commercial company takes on a multiplicity of roles, such as being both employer and regulatory body.” Since 2012, those who now interpret in courts in England and Wales are often untrained bilinguals. A boycott of the company in question by many trained/qualified interpreters resulted from a refusal to work for the low rates of pay offered. Miscarriages of justice, wasted costs, and

aborted trials because of poor (or no) interpreting are legion (Linguist Lounge, 2016). The consequences of these political decisions are already having a direct effect upon the competence of the interpreters who operate within them. As the succeeding literature survey shows, there are well-known problems associated with the use of video technology in courts. When these problems are combined with the effects of poorly trained interpreters due to outsourcing, we might surmise that the delivery of justice is bound to be adversely affected.

## **OVERVIEW, RATIONALE AND AIMS OF THE STUDY**

For a period of 23 years, I have been an educator of court and police interpreters, devising training courses for the Diploma in Public Service Interpreting, Law Option.<sup>1</sup> During this time, I developed strong working relationships with advocates, magistrates, and court legal advisers, who, in turn, voluntarily provided 20 hours of work-based training for interpreters in a fully staffed Birmingham magistrates courtroom. Role plays were based on real cases, and all were video-recorded for analysis back in the classroom. Some 10 years ago, I was approached by a Home Office official, who asked my opinion about the feasibility of using video link in the courtroom. After conducting a brief preliminary survey, I found that, to date, there had been very little useful research that might serve to inform interpreter educators about the challenges of remote interpreting and certainly no useful guidelines for court personnel or for interpreter trainees. It was only more recently that I had the opportunity to undertake doctoral research on this topic. The fact that I was well known in the Birmingham magistrates courts both as a long-standing trainer of interpreters and as a researcher made gaining the court's consent to audio-record cases comparatively straightforward, less so in the London courts where I also recorded cases.<sup>2</sup> In my capacity as a legal interpreter trainer,

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1. This qualification is validated by the Chartered Institute of Linguists in the UK.

2. A formal application to record cases was made to the Senior Presiding Judge Lord Justice Goldring in 2010. The SPJ subsequently invited me to attend an interview at the Royal Courts of Justice in London. After consulting his fellow senior judges, permission to record cases was given in the form of a letter to be shown to courts.

I was already conversant with the institutional language and working relationships within the magistrates courts. This engendered respect from court personnel, which smoothed my entry into the ethnographic field.

Video link was then, and is still, the primary procedure for dealing with defendants on remand in prison, both interpreted and noninterpreted, and the fact that there was little guidance and no training materials to assist my interpreter trainees formed the rationale for the study. This chapter, then, is based upon that study (see Fowler, 2013). It compares face-to-face and prison video link (PVL) interpreter-mediated court hearings using authentic audio-recorded data.

In the UK, PVL remand prisoners/defendants are located in a prison courtroom, and other court actors (including the interpreters) are situated in the main courtroom at a considerable distance from the prison, corresponding to Braun and Taylor's "videoconferencing A" configuration (Braun & Taylor, 2012b, 40).<sup>3</sup> Bearing in mind that courtrooms are set up to accommodate monolingual communication, the first aim of this study was to compare interpreter-mediated face-to-face court hearings with those where they appear remotely, in order to identify differences, similarities, and challenges.<sup>4</sup> The second aim was to discover the extent of any possible additional disadvantage for remote non-English-speaking defendants where interpreters are not co-present. The third aim was to use the findings to consider how court personnel and interpreters can best work together to effect good communication with remote defendants and to devise a best practice protocol.

## LITERATURE REVIEW

In the last ten years, the number of foreign nationals in UK prisons has doubled and now represents more than 14% of the total prison population in England and Wales (Prison Reform Trust 2016), although this does not, of course, imply that they are all non-English-speakers. As Baixauli-Olmos (2013) points out, in some European countries, such as Germany, Greece, Italy, and Spain, more than 25% of the prison

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3. At present, prison video link in magistrates courts is limited to remand extensions and nonevidential and sentencing hearings. It cannot be used for trials.

4. Note on pronoun use: For clarity throughout the chapter, defendants are referred to as *he* and interpreters as *she*.

population are foreign nationals. Although there has been some research into interpreter-mediated communication in prisons, it has been confined to the methods used by foreign national prisoners to communicate with prison authorities, because, on the whole, professional interpreting services are rarely available there (see Rossato, 2017, and Martínez Gómez, 2014). Baixauli-Olmos (2013) interviewed professional prison interpreters in England and identified elements that are context-specific in terms of domain, process, particular obstacles to communication, ethical dilemmas, and role that, in his view, make prison interpreting particularly demanding. None of the three studies cited above explored communication via PVL.

Research into interpreter-mediated video links in legal settings has been recently carried out by the European Commission-funded AVIDICUS (Assessment of Video-Mediated Interpreting in the Criminal Justice System) projects (see Braun & Taylor, 2012a; Braun, Davitti, & Dicerto, this volume). The most recent and comprehensive research to date, the AVIDICUS projects are a valuable and ground-breaking set of studies. The first publication resulting from these projects distinguishes four possible permutations of primary participants, interpreters, and locations for video-mediated interpreting and explores their impact on the quality of interpreting and the communicative dynamics using role-play simulations (Braun & Taylor, 2012a). The volume also includes, for example, comparisons of face-to-face and video-mediated interpreting in police interviews in England and Belgium (Braun & Taylor, 2012c; Balogh & Hertog, 2012, respectively), discussion of prosecution interviews in Poland (Miler-Cassino & Rybinska, 2012), and one video link courtroom study by Napier (2012). Napier's study features video-mediated signed language interpreting in the courtroom with five different configurations of primary participants, interpreters, and locations using Deaf actors, interpreters, and employees from the New South Wales Department of Justice and Attorney General in Australia. Napier makes six recommendations to the New South Wales court authorities, the first being that video remote signed language interpreting should not be used at all for Auslan/English in the courts, as the risk of communication breakdowns would be too great (a recommendation that was subsequently rejected by the authorities).<sup>5</sup> The volume also refers to arrangements and challenges

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5. *Auslan* is the name given to Australian Sign Language; the other five recommendations were accepted.

in PVL courts in the UK (Braun & Taylor, 2012b) and includes a set of generic recommendations for users of video link (Braun, 2012).

Some research has emerged from the relatively well-resourced world of conference interpreting. The European Commission (2000) and the European Parliament (2001) commissioned research that led to a set of minimum standards for audio-visual quality being adopted by AIIC (Association Internationale des Interprètes de Conférence, 2000), as well as restrictions upon the length of time that a conference interpreter can interpret. Mouzourakis (2003) refers to work by Moser-Mercer (2003) that shows how conference interpreters experience high levels of stress, fatigue, and discomfort, resulting in a decline in interpreting quality as perceived by the interpreters themselves. He highlights the role of vision, citing the work of Marr (1982), Dennett (1992), Zeki (1999), and Solomon (2002), who show how vision is active and selective rather than passive. He claims that this individualized activity is not available to the interpreter, because she cannot control the framing of the speaker. Moser-Mercer, in her 2003 study, highlights the importance of nonverbal cues and especially how information from the face can enhance comprehension of a message and support auditory information. The relatively controlled environment of conference interpreters, who work from soundproof booths with electronic equipment, interpret unilaterally and for relatively short periods at a time, means that their working conditions are much more favorable than those of court interpreters who do not have any equipment and have to compete with the noise and distractions of the courtroom, and where video link technology is often, according to Braun and Taylor, “obsolete” (2012b, 62).

Apart from the field of interpreting studies, there are many critiques of the use of PVL in the courtroom, and these have emerged primarily from legal academics and practitioners at the Federal Judicial Center in Washington, DC. PVL is used for a greater range of proceedings in the United States (U.S.) than it is in the UK. It has been criticized on a range of grounds, however: Electronic production of a defendant is a violation of the Fifth and Sixth Amendments to the U.S. constitution (right to due process, right to confront witnesses, and the right to counsel; Thaxton, 1993); the separation by distance of defender from defendant interferes with the right to take instructions before, during, and after proceedings and provides fewer opportunities to observe the defendant (Poulin, 2004; Haas, 2006); the defendant is under the control of prison officials, not of the court, violating the precept of the judge as a neutral convener

(Proposed Amendments to the Federal Rules of Criminal Procedure, 2001); high and low frequencies are attenuated, and this may distort the court's perception of the defendant's emotional state (Scherer, 1986); there is the difficulty of achieving mutual gaze (Bailenson, Blascovich, Beall, & Noveck, 2006).

It can be seen from this short literature review that communication via video link, whether interpreted or not, is considered problematic from many perspectives, both legal and practical, and it will be seen later in the chapter that these challenges are not necessarily associated with the quality of the technology, nor are they easily overcome.

## **METHODOLOGY**

In England and Wales, interpreter-mediated PVL appearances are part of a linear chain of interpreted events that take place over a period of time, beginning with arrest, subsequent questioning of a suspect at the police station, remand of the (then) defendant in prison if denied bail, pre-court consultation with the defense advocate, appearance of the defendant in court via PVL, and post-court consultation with the defense advocate. Defendants then go on to appear in court in person, and their cases are heard prior to disposal. In this chapter, I occupy four different vantage points in four separate locations for observation purposes. The four locations are as follows: first, the private pre- and post-court consultation booths immediately outside the courtroom, where defendants appear on a screen for pre-court consultations with their defense advocates, who are on court premises (the court consultation booth vantage point); second, the magistrates courtroom, where defendants appear in person or by PVL (the courtroom vantage point); third, the pre- and post-court prison consultation booths, where prisoners consult their defense advocates via video link (the prison consultation booth vantage point); and fourth, the prison courtroom where the remand prisoner sits (the prison courtroom vantage point). I was not able to observe face-to-face lawyer-client interpreted consultations, because, unlike interpreted PVL consultations, they often take place in noisy corridors outside courtrooms, and due to the unpredictable nature of the magistrates court listing process, it would have been very difficult to identify the research subjects. The court actors observed are magistrates, legal advisers (LAs), Crown Prosecutors (CPs), defense

advocates (DAs), interpreters (I) and defendants. They were observed in a total of seven English magistrates courts in London and Birmingham, England. In order to generate some comparative data, I observed interpreted hearings in two modalities: 11 hearings face to face and 10 hearings via PVL.

From a legal procedural point of view, however, face-to-face hearings and PVL hearings are not strictly comparable at all. The kinds of procedures in face-to-face courts are very wide-ranging, from first appearances after arrest to adjournments, trials, committals for both trial and sentence, and transfers to the Crown Court. PVL courts hear a narrow range of procedures: second and subsequent remands, committals and Crown Court transfers, and sentencing with the defendant's consent. However, the intention was not to make a comparison between these different modalities from a legal perspective or to explore issues of semantic transfer, but to observe interpreter behaviors from a dialogical and proxemic perspective in order to devise a best-practice protocol for all court users. These limitations should be borne in mind when reading this chapter.

The data were obtained through ethnographic observation, field notes, and audio recordings of 11 face-to-face hearings and 10 PVL remand hearings taking place in 7 English magistrates courts between 2011 and 2013. All 21 of the recordings and all of the ethnographic observations were different and separate from one another, and were carried out by one researcher, the author. Recordings of PVL hearings at the prison vantage point were not made for practical reasons due to the impossibility of gaining the formal consent of court actors in the main courtroom from the remote site at the prison. Recordings at the prison were thus replaced by ethnographic observation of the court from the prison vantage point. The author's unpublished original study (Fowler, 2013) included detailed analyses of 27 in-depth interviews about the experience of using PVL with representatives from each of the 5 five groups above; however, this chapter does not permit an extensive discussion of the interview data. The chapter does, however, seek to explore what the experience of being in a prison courtroom appearing by video link might be like for non-English-speaking defendants, and whether it confers any additional disadvantage, bearing in mind that most legal interpreters are inadequately trained (Braun et al., 2012, 233–234).

Although the original intention was to interview defendants on remand in custody in person before and after their cases were heard,

this proved to be too problematic for both practical and ethical reasons. Magistrates courts operate on a short time frame that does not allow researchers to engage interpreters of the appropriate language with sufficient notice. Moreover, Wormwood Scrubs Prison in London (the site where the prison observations were carried out) does not routinely record the foreign/preferred languages of defendants on remand in custody. From an ethical standpoint, foreign national defendants in custody are known to be particularly vulnerable, being linguistically, as well as geographically, isolated. The incidence of mental health problems in defendants in custody is also well known to be disproportionately high (Prison Reform Trust, 2016). Interviews would have to be conducted with prison officers present, and defendants might have associated a researcher with the prison establishment, both factors that could inhibit their answers. Ellis (2004) in his report to the Canadian Immigrant and Refugee Board on the use of video conferencing technology in refugee hearings, comes to the same conclusion but for different reasons, the primary one being that refugee claimants' views might be colored by whether they win or lose their cases, and that they would thus be unable to provide an unbiased evaluation of the video conference experience itself. Rossato (2017) comments on the distribution of questionnaires to prisoners for her study on language-brokering by prison inmates and highlights "asymmetrical power relations between the respondents of the questionnaire [the prisoners] and the administrators [of the prison]" and how this could "influence the contents and interpretations of some of the answers given." By this, I assume Rossato means that prisoners may misconstrue the motivation behind the questionnaire and provide answers that they thought would be acceptable to the authorities rather than answers about their actual practice as language brokers in prison. In other words, research involving questionnaires with prisoners always runs this risk.

## **DESCRIPTIONS OF VANTAGE POINTS AND OBSERVATIONS**

### **Vantage Point I: The Court Consultation Booth**

The data obtained from this vantage point consist of field notes gained from ethnographic observations of a 20-minute pre-court consultation in the magistrate's court booth with a defendant via PVL and a subsequent in-depth interview with the DA who conducted the consultation.

The consultation that takes place in the booth outside the magistrates courtroom is one of two interpreted events where DAs and interpreters communicate with remote defendants. This event has not been explored at all in the research and deserves greater attention, as it is a critical moment in the PVL experience of defendants, forming part of the chain of interpreted events leading to the final disposal of court cases.

A DA sits in a small private booth equipped with a telephone handset and a small screen (at the magistrates court, but outside the courtroom). More modern equipment has been installed in some newer courts, where open microphones replace telephone handsets. The screen shows the prisoner/defendant and the “picture in picture” (a view of whoever is holding the handset). The defendant sits in a similar small private booth next to the prison courtroom at the prison. Both booths have closing privacy doors, and most, but not all, are designed to accommodate one person. Problems arise when an interpreter is required. Decisions have to be made about the location of the interpreter (who could be in one of two places, either in the prison booth with the defendant, or in the court booth with the DA). Although interview evidence from interpreters (see Fowler, 2013, 278–315) shows that both locations can be used, it appears that interpreters are mostly located in the court booth with the DA. A further decision is therefore necessary to determine who will sit in the booth and use the handset: the DA or the interpreter. It is usually the interpreter who takes the seat in the booth and the DA who stands behind her with the door open (thus compromising privacy). However, this configuration is to the detriment of the DA and the remote defendant, encouraging the interpreter to take the floor and become a primary participant without reference to the DA (contrary to the Interpreter’s Code of Professional Conduct: see National Register of Public Service Interpreters [NRPSI], 2016). Field notes taken during ethnographic observation testify to an example of this (see the original study for details, Fowler, 2013, 202–203). In one case, I observed an interpreter, who had been given the telephone handset by the DA (the only method of communicating with the remote defendant), initiate a lengthy conversation with the defendant of her own accord, and, using reported speech, convey what the defendant had said to the DA, who could neither speak directly to his client nor hear him (the remote defendant could only see and hear the interpreter). Interview data shows how DAs, who have the most contact with defendants over an extended period of time, and who have a professional duty to assess their mental state and their comprehension of the legal process,

accept the inherent unfairness and poor quality of communication in the booth facilities as a necessary evil (Fowler, 2013, 336–356). DAs (in common with their counterparts in the U.S., cited in the literature survey above) are the court actors most likely to view PVL negatively, with some regarding it as a dehumanizing process (see Fowler, 2013, 344). The example described above was the result of an unexpected invitation issued to me by a DA, rather than a scheduled observation. However, a different interpreter similarly assumed the role of primary participant when I was located in Vantage Point 4 (see below).

### **Vantage Point 2: The Main Courtroom**

The courtroom research data consists of audio-recordings of 11 face-to-face court hearings and 10 PVL hearings, focusing on the extent to which the interpreted interaction was affected by the 2 particular factors: the first being the modes of interpreting used (consecutive or simultaneous), and the second, the seating positions of interpreters relative to the other court actors in the courtroom. Here again, the architecture and layout of the court, proxemics, and the presence of the video screens appear to affect interpreted interaction.

The first factor to be considered is mode of interpreting. In face-to-face court interpreting, there is a crucial difference between two types of talk, namely, defendant focused (in which the defendant is being directly addressed by a court actor) or non-defendant focused (in which the defendant is being spoken about and not directly addressed). Normal practice for a trained interpreter would be to use consecutive interpreting at full voice volume for defendant-focused talk and whispered simultaneous into the ear of the defendant (also called *chuchotage*) for non-defendant-focused talk (no electronic equipment is provided). Chuchotage (which is largely inaudible to the court) saves the court time but requires special training. Moreover, considerable skill is needed to switch unpredictably between the two interpreting modes, adjusting voice volume accordingly.

The second factor in these interpreted events is the position of the interpreter in relation to other court actors. The most important and privileged area in the courtroom in England and Wales is the “well” of the court, the area immediately in front of the LA’s desk, across which all the major protagonists face each other. The three lay magistrates (or one district judge) sit at a raised dais facing other court actors, while immediately in front of them (but at a lower level) sits the court’s LA

(who advises lay magistrates about the law).<sup>6</sup> Facing the magistrates and the LAs are the advocates (the CP and the DA), usually at ground level. In face-to-face hearings, the defendant sits in an enclosed area called the *dock*. Sometimes the dock is completely enclosed by thick transparent Perspex slats. It may be situated at the back or the side of the court, neither of which enjoys good audibility, and which may be relatively distant from the well of the court. Depending on the position of the dock, advocates will sometimes speak with their backs to the interpreter. Members of the public may be screened off by a glass partition or may simply sit at the side or back of the courtroom in the public gallery.

There are two possible places where an interpreter may sit in a face-to-face court when interpreting for a defendant, and both can be problematic. As already stated, the court interpreter works without electronic equipment, sitting either *inside* the enclosed dock, whispering into the ear of the defendant (where there is a risk of not hearing the talk of other court actors) or *outside* the dock, whispering to the defendant through the slats of the secure dock (where there is a risk of the defendant not being able to hear her). The study showed that few interpreters intervened for repetition or clarification as permitted by the NRPSI code of conduct (2016).

In a PVL courtroom the first obvious change is the position of the interpreter. Since the defendant now appears remotely, the dock is empty, and the interpreter, in order to access a microphone and be in camera shot, sits in one of two positions at the privileged well of the court, a clear advantage in terms of visibility and audibility both for the interpreter and for other court actors. Beside the advocated, sharing his/her microphone, is the most commonly used PVL interpreter position; the second, beside the LA, less so. I have also witnessed interpreters who have been asked to stand at the side of the court and use the telephone link to the prison that is normally reserved for private in-court consultations between DAs and remote defendants. This position is the least desirable, because remote defendants have no view of the interpreter.

Court actors in interpreter-mediated cases often appear to fragment their speech to a greater or lesser degree. This phenomenon can be observed in both types of courts, but appears to be occasioned by the greater visibility of the interpreter, because of her prominent seating position in the well of the court for PVL. When face-to-face interpreting, which takes place

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6. A district judge presides in a magistrates court by him/herself.

inside a secure dock, interpreters sit next to the defendant and are less visible to the rest of the court. In this situation, court actors often forget or ignore their presence and tend to speak in monologic mode. In a PVL court, overlapping speech (always a potential problem for an interpreter in a face-to-face court) is formally discouraged, because court actors know that a remote defendant will not be able to hear two or more people speaking simultaneously. This includes chuchotage. (See the author's original study (Fowler, 2013) for further potentially negative effects of speech fragmentation.)

Although my observations show that speech fragmentation occurs in both types of courts, the following extracts illustrate how an interpreter-mediated submission can be delivered in two ways, monologic and dialogic (see Wadensjö, 1998; Russell, 2000). Both are CP submissions, and both are narratives of how a particular offence has occurred. Extract 1 is from a face-to-face court hearing where the interpreter is seated inside the enclosed dock with the defendant, away from the well of the court, using chuchotage. The CP delivers the submission monologically. One can only speculate that this is either because he has forgotten the presence of the interpreter, finds it tedious to wait for the interpreter to catch up, or because he trusts the interpreter's ability to convey his message using simultaneous mode.

CP: /(-) seven pm (.) victim left her home at (*number*) (.) (*address*)(.) from the (.) residential dwelling (.) to go on holiday (.) for a few days (.) she returned on the fifteenth of June (.) ten pm (.) she found a man (.) in her front garden (.) the front garden madam being (.) behind tall railings (.) secured (.) padlocked gate (.) and she also found another man (.) who was standing (.) in the alleyway between her (.) and her neighbours (-) next to her neighbour's home next to the back garden (.) she unlocked the door (.) to the garden told the man to leave or she'd call the police (.) as she saw (.) the two men leave (.) the man in the front garden had a rucksack which she recognised (.) she unlocked the side door to her house discovered that her home had been burgled (.) she ran outside but the two men had gone (.) er police were called (.) she gave a description (.) and erm (.) two men appeared similar to the men stopped by the police a short distance from her home in (*location name*) (.) and er one of the men (.) was Mister X (.) he's erm (.) he was searched but none of the property taken from the home was found (.) the side gate to the garden er was unsecured the victim noticed that er

all the other front doors and windows still remained locked but that the side (.) garden (.) door had been pushed open (.) access gate by a fire escape that runs (.) from the ground floor to the top floor of the rear of the home (.) and she noticed that jewellery (.) cash and similar items to the value of about twelve thousand pounds (.) were missing (--) mister X was arrested (.) . . .

In Extract 2, which takes place in a PVL court and where the interpreter is sitting at the well of the court next to the DA, this submission is delivered in short turns, with the CP pausing frequently and deliberately for each interpreter's (I) turn.

CP: /Thank you (.) ma'am (.) could I (.) set out the er Crown representations (.) as to bail er just (.) very (.) briefly (.) the matter (.) concerns (.) er (.) the importation of (.) approximately (.) one kilogram (.) of cocaine (.) between the two defendants (.)

I: /*Latvian*

CP: /These drugs have an estimated street level value of forty thousand pounds (.)

I: /*Latvian*

CP: /The (.) defendants were travelling together (.) and intercepted at Heathrow (.)

I: /*Latvian*

CP: /They were returning from Port of Spain (.) in Trinidad and Tobago (.)

I: /*Latvian*

CP: /(-)Their luggage was searched (.)

I: /*Latvian*

CP: /But nothing was found (.)

I: /*Latvian*

CP: /They were both subjected to compass (.) x-ray scans (.)

CP: /In which internal concealments were observed (.)

I: /*Latvian*

CP: /Both were (.) arrested and cautioned (.)

I: /*Latvian*

CP: /(-) And both were later interviewed madam (.)

I: /*Latvian*

CP: /Apparently both defendants (.) are (.) remanded on (*sic*) custody (.)

- I: /*Latvian*  
 CP: /On one ground (.)  
 I: /*Latvian*  
 CP: /And that is for fear they would fail to surrender (.)  
 I: /*Latvian*  
 CP: /The reasons for that fear madam (.)  
 I: /*Latvian*  
 CP: /Are (.) due to the nature and seriousness (.) [of the matter  
 I: [*Latvian*]  
 CP: /The strength of the evidence (.)  
 I: /*Latvian*  
 CP: /The likely sentence if convicted (.)  
 I: /*Latvian*  
 CP: /And the lack of community ties in the UK (.)  
 I: /*Latvian*

Fragmented speech by court actors seems to be a consequence of the interpreter's presence in both types of court; however, the phenomenon becomes much more problematic in a PVL court, where the interpreter has to use consecutive mode at full voice volume, because of the video link. As already stated, the interpreter usually shares a microphone with the DA, and it is always the LA who sits at the well of the court (across from the interpreter) who has the task of tracking speakers. Because camera shots are fixed and focus on pre-set positions, only those who have microphones can be in shot, and interpreters have no dedicated microphones. For procedural reasons, DAs often have comparatively little to say in court during the formalities of these remand hearings; their main task is to confer with their clients before and after the hearing, back in the consultation booth outside the courtroom.

The fact that DAs say little means they do not occupy much "camera time." This poses a problem for LAs. Should they track the speaker or the interpreter? There are consequences for both configurations, and these decisions are taken by court officials without consulting interpreters. If speakers in court are tracked at the expense of interpreters, then remote defendants will be able to hear, but not see, the interpreter. If court actors fragment their speech into short turns and if both speaker's and interpreter's turns are tracked one after another, each speaker will be seen by the remote defendant, but the camera will veer rapidly from one speaker to another from one moment to the next, a potential source of distraction

for a remote defendant. This was an experience I discovered for myself when sitting next to prisoners in a prison PVL courtroom (see Vantage Point 4).

### **Vantage Point 3: The Prison Consultation Booth**

The data obtained from this vantage point consist of field notes composed immediately after five interpreted encounters during which I sat in the prison consultation booth with the defendant. This interpreted encounter was not a lawyer–client consultation, but an attempt by myself as researcher to gain the formal consent of a defendant by using the interpreter who was remotely located in the courtroom. Next to the courtroom at Wormwood Scrubs Prison there are two pre-court booths for defendants’ private consultations with advocates, similar to the ones in the magistrates courts, but smaller and without handsets. There is a small table, a video screen, a microphone, and one chair. Along the corridor is a holding room with benches where all defendants are locked in together to await their cases.

The process of gaining the formal consent of prisoners may provide further interesting evidence of how interpreters may be tempted to use the telephone handset to take the floor and act as primary participants, reinforcing the observations made at Vantage Point 1. The procedure I adopted to gain defendants’ consent to my observation was to stand next to them in the private booth before the hearings took place. A field note resonates with the experience of the author at Vantage Point 1 and shows how on neither occasion was it possible to see the prisoner’s DA, who was actually present in the court consultation booth.

I stood next to the defendant in the prison court booth with the door open. From my vantage point I could see the interpreter sitting at the far-left side of the screen. I could hear, but not see, the defense advocate, who was out of sight on the interpreter’s left. The interpreter greeted the defendant in Vietnamese and I approached the screen but had to bend down to be seen by the interpreter. The interpreter spoke to me through a handset like a telephone, but there was no similar mechanism at the prison end. I asked to speak to the defendant’s lawyer first, so the handset was passed to her. I explained to the lawyer that I was a researcher and sketched out the nature and the purpose of the research. I then spoke to the interpreter, to whom the handset

had been passed by the lawyer, to ask her if she would mind interpreting the consent form to the defendant. She readily agreed. The lawyer took the opportunity to leave the booth to perform some administrative task. The interpreter . . . began to speak directly to the defendant about the purpose of my visit before I could even start to read out the consent form. I waited for her to pause, then began to read out the consent form to the interpreter in English. Before I had even completed the reading out, and without reference to the prisoner, the interpreter said in English “Yes, he doesn’t mind.” I insisted on completing the reading out. The defendant then signed the consent form in full view of the interpreter and myself. I left the booth; the defendant then closed the door of the booth for a private consultation with his lawyer.

(Fowler, 2013, 365)

This is another example from the data that shows an interpreter acting as primary participant, the first being described in the “Vantage Point 1: The Court Consultation Booth” section. From Vantage Point 3, I could see only the interpreter, and could neither see nor hear any of the seven DAs throughout the consent procedures (although one of them was absent for part of the time). This corroborates the data from Vantage Point 1, showing how defendants using remote interpreters do not have visual contact with their DAs prior to the hearing. The cramped space, the use of the handset, and the lack of interpreter awareness of interpreting norms (an assertion that is equally valid for face-to-face and PVL interpreting) seemed to be contributory factors to these two interpreters becoming primary participants and conducting conversations by themselves without reference to DAs.

#### **Vantage Point 4: The Prison Courtroom**

This final vantage point afforded opportunities to observe defendants in the prison and interpreters and court actors from a distance, to gain a subjective impression of general audibility and the quality of the images on the screen, and to match the images with the sounds together with all the other distracting phenomena I had observed during my time in the main courtroom. The data consisted of field notes of seven interpreted remand hearings. The aim was to gain a prisoner’s eye view of the process that would result in a fuller understanding that would plug gaps left from

the court observations and interview data, and more importantly, inform findings and conclusions.

Once again, space permits only a summary of the field notes taken at the time of the hearings. There were problems of orientation or distraction in all 7 of the cases I observed from the prison courtroom, and these fall into 13 different categories, as follows: (1) omission of the virtual tour of the court, (2) court actors not identifying themselves by name, (3) court actors not gazing at remote defendants to provide visual continuity, (4) interpreters not taking the interpreter's oath, (5) extraneous sounds, such as papers rustling, which interfered with the audibility of the case, (6) proceedings often muffled and unintelligible, (7) mismatch of speaker image and speaker sound, (8) jerky images as the camera veered from one speaker to another, (9) overlapping speech, (10) audio feedback, (11) varying sound levels as court actors in the main courtroom leaned toward and then away from microphones, (12) no explanation given for interruptions in the proceedings, such as magistrates conferring or leaving the room, and (13) people passing in front of the camera and obscuring proceedings.<sup>7,8</sup> The result of omitting the virtual tour may mean that the defendant is confronted with a roomful of people whom he may never have seen before or whom he may not easily recognize. This disadvantage for the defendant is compounded if court actors do not identify themselves or make frequent eye contact with defendants. The fact that so few interpreters took the interpreter's oath meant that defendants were deprived of full frontal visual contact with interpreters (they take the oath in the witness box), and moreover, they were deprived of a formal statement, in the defendants' own language, of the interpreter's role. The quality of sound and the remote images of the court were often of insufficient clarity, presenting a view of the courtroom that varied from rather confusing to occasionally chaotic, with proceedings interrupted or stalled without explanation and officials passing in front of cameras during the hearings. There was little sense of being "present" in the main courtroom, and the significance of its layout and the relative

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7. The virtual tour of the court is a process conducted by the LA from the well of the court, whereby the camera focuses on each of the court actors in the main courtroom as they are introduced by name and function to the remote defendant.

8. The interpreter's oath is the primary means by which the court interpreter becomes a ratified member of the court team, but also enables the defendant to identify her by role.

status of court actors associated with the different levels of seating (e.g., the dais where the magistrates sit) was not apparent. Occasionally, it was almost impossible to hear what was happening due to poor audibility and the distractions described above.

## **DISCUSSION AND CONCLUSIONS**

This chapter aims to complement the AVIDICUS recommendations mentioned earlier by suggesting additional protocols that are context-specific and based upon audio-recordings of court hearings, interviews, and observations. In both face-to-face and PVL courts, seating positions, audibility, visibility, and sightlines appear to be crucial for both defendants and interpreters, and yet it seems that these factors are rarely considered by the court as important elements in bilingual communication. The lack of simultaneous interpreting equipment, poor acoustics, and poor sightlines are also factors that tend to militate against good quality communication, whichever interpreting mode is used, and this observation applies in both face-to-face and PVL modalities. The picture that emerges from the investigation of court interpreting in PVL contexts in particular is one of inconsistency of practice, resulting from a lack of understanding of how remote video-mediated bilingual communication functions in the courtroom, as well as a preoccupation of court staff with the smooth through-flow of court cases, to the detriment of the communicative needs of the foreign-language-speaking defendant.

The unique layout of the court tends to create unfavorable working conditions for interpreters, whether working face to face or remotely, because they do not have dedicated microphones. Evidence from observations and recordings made in court from the four different researcher vantage points paints a rather confusing picture caused by court personnel failing to identify themselves or gaze at the camera, poor acoustics, and inconsistent camera tracking by the LA occasioned by the change of interpreter seating position. Court actors who say little get little “camera time.” Because DAs often say little or nothing during remand procedures, and because the interpreter shares the DA’s microphone, she also gets little or no camera time. If the LA tracks each speaker’s turn consecutively, this results in camera shots veering unpredictably from one speaker to another in a very distracting way for remote observers in the prison courtroom. Audio-recorded data from both types of courtrooms show

how the presence of an interpreter can alter the way in which advocates deliver their submissions—monologically or in fragmented fashion—and the impact this has for interpreters, defendants, and the LA whose task it is to track the speakers.

Interviews with different court actors and court interpreters (Fowler, 2013) and my own ethnographic observations of court cases while located in prison seem to support the U.S. studies described earlier in the literature survey. Although there are a few guidelines for court personnel operating in PVL courts, including the need for the all-important virtual tour of the court, these are applied inconsistently. Interpreters are not assertive enough and are intimidated by the court; for example, they rarely intervene for clarification or insist on being ratified (sworn in) as members of the court team. This diminishes their already low status. Communication with DAs via interpreters in the cramped court and prison booths is highly unsatisfactory and encourages interpreters to act as primary participants rather than as interpreters; moreover, depriving PVL defendants of visual contact with their advocates is unfair, as they may not recognize them when in the courtroom. Overall, the present inflexible camera configurations do not allow sight of all the relevant speakers.

## **RECOMMENDATIONS**

Although there remain some challenging problems, such as the inflexible camera configurations described above, courtroom interaction (both with and without PVL) can be made to work better. My recommendations have been formulated after consideration of data from all four researcher vantage points.<sup>9</sup> These vantage points provide a richer account of the courtroom experience and enable guidelines and protocols to be tailored to a specific context, applicable to both types of court. Based on the data in this study, I concur with Napier's (2012) and Braun's (2012) recommendations that in order to minimize disadvantage and reduce risks of miscommunication, PVL should only be used for nonevidential interim case hearings and low-impact crime.

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9. More detailed recommendations can be found at <http://eprints.aston.ac.uk/19442/1/Studentthesis-2013.pdf>

There is an urgent need for training, especially for magistrates and judges whose task it is to ensure fairness in the conduct of cases, for best practice to be implemented, and for the credentials of interpreters to be checked. In brief, my recommendations (see Appendix for a summary) serve to provide guidelines for court personnel in all interpreter-mediated cases and additional specific guidelines for PVL cases. Training would enable court personnel to understand how the layout of both face-to-face and PVL courtrooms determines how court actors relate to one in terms of status and behavior. The influence upon communication exerted by the layout of the court can either relegate the court interpreter to the obscurity of the dock or elevate her to prominence at the well of the court, as we have seen at Vantage Point 2. The superimposition of interpreter-mediated PVL adds a further layer of complexity and magnifies any advantages and disadvantages associated with these challenges. The defendant in prison needs a constant image of the whole courtroom, showing full frontal views of all court actors and the public gallery. This recommendation approximates the “true-to-life” requirements for using videoconferencing in legal settings, as stipulated by van den Hoogen and van Rotterdam (2012, 193). Magistrates could encourage court actors to gaze at the remote defendant from time to time in order to foster visual continuity. Advocates, in particular, need to take opportunities to gaze at the defendant, especially when being introduced by the LA during the virtual tour of the court. Interpreters require a proper training infrastructure that includes work-based training in court. This would lead to a greater awareness of the relationship between proxemics and interpreting, and practitioners would be enabled to make informed, rather than intuitive, decisions about sightlines and seating positions in both types of court. Courts should be encouraged to address qualified and properly trained interpreters respectfully, treat them as ratified members of the court team, and view the taking of the oath as part of the ratification process.

Governments, too, have a role to play. It is they who must bear the greatest responsibility for any disadvantage suffered by non-English-speaking prisoners and defendants due to inadequately trained (or untrained) interpreters. By continuing to award huge interpreting contracts to for-profit commercial companies, and by choosing to ignore evidence of the mounting chaos in our courts, they are refusing to accept the realities of multilingual society. Interpreters, situated within this sociopolitical framework, become complicit in the gradual erosion of human rights of

defendants, who do not speak the language of the court and unwittingly perpetuate discrimination and injustice in our courts.

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## A Best-Practice Protocol for Courts and Court Interpreters in England and Wales

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- (i) Ushers should *announce and introduce* interpreters to the court when calling cases. The *language* of the interpreter and the defendant should be included in this announcement. This alerts the court to the presence of the court interpreter and the need to accommodate to her professional needs.
- (ii) The court interpreter should be *formally ratified*. This ratification involves the formal-swearing-in, or affirmation, using the wording of the interpreter's oath or affirmation.
- (iii) The court should require the interpreter *to take the oath* or the affirmation in the witness box in full view of the court and of the defendant.
- (iv) The court clerk should *introduce each prominent court actor to the defendant* by name and role.
- (v) Magistrates should remind advocates *to face the interpreter* when speaking.
- (vi) All courts should require the interpreter to *sight translate the oath* or affirmation to the defendant in the relevant language, and cases should not proceed until this has been done to the satisfaction of the defendant.
- (vii) Prosecution and defense advocates should be *discouraged from fragmenting their submissions* into incomplete units of meaning. Presiding judges/magistrates and interpreters should agree on a pre-arranged nonverbal signal when enough information has been received.
- (viii) All *sound systems should be switched on* before the hearing starts. Court actors should be reminded to speak into microphones where these are provided.
- (ix) Magistrates should *watch the interpreter* and intervene if necessary to make sure that court actors are speaking at a pace that accommodates the professional needs of the interpreter. This is especially important when there are court interactions of a purely administrative nature where formulaic language is used.

- (x) Interpreters should be addressed *as Madam interpreter or Mr. interpreter*. This is part of the court interpreter's ratification process by the court.
- (xi) Like advocates, interpreters should be *thanked* by the court for their attendance at the end of the hearing. This provides a closing frame for the ratification process.
- (xii) The court should expect interpreters to perform in *consecutive mode* for defendant-focused speech and *whispered simultaneous mode* for non-defendant-focused speech.
- (xiii) Whether interpreters stand outside the dock to interpret or whether they sit inside a secure dock next to the defendant, there will be audibility problems. The court should remind court actors to *modulate their voices* accordingly to compensate for this.
- (xiv) If the dock is an open one and there is no risk of threat from the defendant, the interpreter and the defendant should *move to the well of the court* where they can clearly hear and see the faces of all court actors.

The following additional items cover interpreter-mediated *PVL hearings*:

- (i) PVL interpreters should be located *in the main courtroom* and not at the prison.
- (ii) *A virtual tour of the court* should be conducted by the court clerk, where each court actor is formally and carefully introduced to the defendant by name, and not just by role.
- (iii) During the virtual tour of the court, court actors should verbally *greet and acknowledge defendants* on screen by making eye contact with them.
- (iv) When speaking, each court actor should *look at the defendant on camera* from time to time.
- (v) If there are any interruptions to the proceedings, or if magistrates leave the bench to confer, defendants should have this explained to them by the LA.
- (vi) All PVL interpreters should be encouraged to *lean into the microphone* when interpreting to make sure the defendant hears properly.
- (vii) Court clerks should ensure that microphones are in the *correct position* and that advocates *lean into the microphone* as they speak.

- (viii) All court actors should be reminded to *avoid overlapping speech*.
- (ix) To minimize confusion for the defendant, the interpreter should *sit next to the court actor who has the most turns* (usually the Crown Prosecutor), despite the fact that this risks compromising the neutrality of the interpreter in the eyes of the court and the defendant.
- (x) Interpreters should *not use the advocates' handset facility* at the side of the court for PVL hearings; the defendant will not be able to see the interpreter.