

Court Interpreting in England: what works? (and for whom)?

How Interpreted Prison Video Link impacts upon courtroom interaction¹

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Abstract. *All defendants who do not speak the language of the court are at a disadvantage. This article considers how the impact of two factors upon the quality of interpreting in our courts might confer additional disadvantage. Firstly it considers the contracting out of interpreting services to private companies, whose main consideration is profit rather than competent interpreting or justice for the defendant, a political dimension often ignored by interpreting scholars. Secondly it explores differing viewpoints and perceptions of interpreted court hearings by five groups of participating court actors where prisoners appear in court via video link from prison. Using in-depth interviews, audio-recordings of court hearings and ethnographic observation, these differing perceptions will be used to provide vignettes of court hearings and prisoners as they appear remotely, dependent upon the interpreter's renditions to orientate themselves to court proceedings. Finally, training and a best practice protocol for court actors and interpreters is suggested.*

Keywords: *Court interpreting, prison video link, videoconferencing, whispered simultaneous interpreting, chuchotage, consecutive interpreting.*

Resumo. *Todos os constituintes que não falam a mesma língua que o tribunal se encontram em desvantagem. Este artigo investiga de que modo o impacto de dois fatores na qualidade da interpretação nos nossos tribunais poderá contribuir para uma desvantagem adicional. Considera-se, em primeiro lugar, a contratação de serviços de interpretação a empresas privadas, cujo principal enfoque são os lucros, em detrimento de uma interpretação competente ou da justiça para o constituinte, uma dimensão política tantas vezes ignorada pelos investigadores em estudos de interpretação. Em segundo lugar, este artigo explora as perspetivas e as perceções divergentes de cinco grupos de atores intervenientes no tribunal relativamente à audiência com recurso à interpretação, em casos nos quais os detidos são presentes a tribunal a partir da prisão, através de "video link". Com recurso a entrevistas estruturadas, a gravações de áudio de audiências e a observação etnográfica, estas diferentes perceções serão utilizadas para fornecer vinhetas das audiências e dos*

detidos de acordo com a sua apresentação, remotamente, apoiando-se no trabalho de orientação pessoal do/a intérprete na audiência. O presente trabalho termina com uma proposta de atividades de formação e um protocolo de boas práticas para intervenientes judiciais e intérpretes.

Palavras-chave: *Interpretação jurídica, “prison video link”, videoconferência, interpretação simultânea sussurrada, chuchotage, interpretação consecutiva.*

Introduction

There are two dimensions which are often ignored or sidelined in court interpreting research. Firstly there is sometimes a failure to take into account the wider geopolitical context within which the criminal justice system operates (notable exceptions are Barsky, 2000; Camayd-Freixas, 2013; Blasco Mayor and Pozo Triviño, 2015; and Wallace, 2015). Changes in criminal justice are frequently political ones; politicians and governments respond to media rhetoric, make decisions based on perceived economic circumstances and act according to the prevailing political ideology. The negative attitude of successive governments in the UK towards adequate funding provision for criminal defence services, public alarm about the rising cost of legal interpreting services as a result of increased migration, media rhetoric concerning super-diversity (a term coined by Vertovec, 2007) and the impact of outsourcing public services to commercial companies, are bound to exert an influence upon the quality of interpreted communication within our court system. If we want to study prison video link technology and its effect upon interpreters, defendants and court personnel, then, these court actors need to be seen as firmly situated within these wider contexts. Such considerations will tend to show more clearly how these decisions affect the quality of interpreting and will highlight the wider complexity of the interaction in court.

Secondly, interpreting where there are three people present in the room (interpreter, service user, service provider) means that there are at least three different perceptions of the interpreting process (Wadensjö, 1998). However, in a typical courtroom there could be as many as nine or more participating court actors, all of whom use institutional language in different ways to achieve different goals. Add to this various members of the public, relatives of the defendant in the public gallery and other advocates and defendants awaiting the hearing of their cases and it is easy to see how complex courtroom communication can be. This article attempts to show how experiences of the court process will depend upon the seating position of different court actors relative to the “well” of the court, their status, their audibility, and whether they are present in court in person or appearing remotely via video link. Rather than three different perceptions of the same interpreted event, then, there are at least six (defendants, whether remote or present in court, defence advocates (DA), crown prosecutors (CP), magistrates, legal advisers/court clerks, interpreters). If these different perceptions are not taken into account, we are in danger of ignoring some of the most important actors in the criminal justice process: the defendants, and “what works best” for them in terms of communication rather than “what works best” for the court.

This article is a distillation of a much longer study (Fowler, 2012) which considers the viewpoints of five of the above categories of court actors, using in-depth interviews and ethnographic observation, and with the aim of devising a best practice protocol and training programmes for court personnel and interpreters, so that the particular

needs of non-English speaking defendants can be best served. I first describe the background to the current crisis, then provide a short introduction to the criminal justice system in England and Wales, then explain briefly how and why prison video link (PVL) was implemented by the government of the day in 1999, and then survey the literature about proceedings where defendants use PVL and about how the architecture of the court can influence communicative relationships and interaction within the bilingual court. Finally, I describe how defendants can appear remotely in court for interpreted interim non-evidential hearings in magistrates courts, provide a best practice protocol for interpreters and the judiciary (see appendix 11), and consider whether or not non-English-speaking defendants are disadvantaged by not appearing in person in court. The article does not provide contrastive analyses of speaker utterances and their renditions by interpreters into a target language or vice versa, as this area of interpreting studies has been extensively explored (Berk-Seligson, 1990; Wadensjö, 1998; Hale and Gibbons, 1999) amongst many others. The focus in this paper will rather be upon a selection of the evidence provided by audio-recordings and ethnographic observations of 10 face-to-face cases and 11 prison video link cases (see Fowler, 2012 for the original study, including accounts of in-depth interviews with court actors). The research upon which this article is based focuses only on magistrates courts, and not on crown courts, since the majority of criminal cases start and end there (see appendix 1 for a brief overview of the Criminal Justice System in England and Wales).

The impact of the outsourcing of court services

As a result of the deficit reduction programme which the United Kingdom government has in place, a series of deep cuts to public spending have been implemented, intended to shrink the welfare state. The legal system has been particularly badly affected; courts are being closed, and entitlement to Legal Aid reduced (many defendants now have to represent themselves). More cuts are promised. In 2012 as part of this austerity programme, the Ministry of Justice handed over control of the supply and management of court interpreters to a global for-profit organisation, Capita – purportedly to save on costs, although evidence for this has not been forthcoming (Parliament Public Accounts Committee/Interpreters for Justice 2014). This has resulted in an immediate decline in the quality of interpreting; many experienced, trained and qualified interpreters have boycotted the company because of the low rates of pay. Many of those who are now mediating justice in our courtrooms up and down the country are untrained (or poorly trained) non-professionals. Evidence of the consequent poor quality of service comes, on an almost daily basis, from legal professionals, members of the judiciary and interpreters themselves (see Linguist Lounge, nd, and Unite the Union, nd).

The demand for quality public service interpreters has always outstripped the supply, but advances made in PSI, in the UK, over the past twenty years or so, such as the National Agreement – a voluntary agreement entered into by the courts, the Law Society, the Probation Service and the Police in 1997 to use only interpreters appearing on the National Register of Public Service Interpreters – seem to have been swept away overnight, because of the contracting-out of interpreting services. The National Register of Public Service Interpreters (2016), although still in existence, has been bypassed and the number of registered interpreters is dwindling. Anti-migrant rhetoric in the media has increased, too (Nagarajan, nd). It is against this unremitting ideological and geo-

political backdrop that interpreters, campaigners, academics and interpreter educators are struggling to promote the benefits of quality public service interpreting.

The introduction of Prison Video Link in the UK

In 1999, as a result of Section 57 of the Crime and Disorder Act (1998), the UK government installed PVL in Magistrates and Crown Courts, and, more recently, in all Immigration Detention Centres. Remand prisoners, who are awaiting disposal of their cases, now frequently appear in the courtroom not in person, but from prison via PVL, a very common procedure which takes place almost daily. The main reason for the use of PVL is (purportedly) cost, as it is considered unnecessarily expensive to transport prisoners to court for short remand and such non-evidential hearings as are permitted to be held via prison video link. Not much thought was given to the interpreters, nor even indeed whether they should sit with defendants in prison or remain in the courtroom, although on the whole, the latter practice prevails.

The relative status of court and conference interpreters

When comparing diplomatic, business escort or conference interpreters with public service interpreters, there is no doubt that the latter occupy a much lower status, a fact which is reflected by low pay, often difficult working conditions and particularly lack of equipment. By contrast, conference interpreters generally work from sound-proof booths, often in teams to prevent fatigue, with electronic simultaneous interpreting equipment. Conference interpreters often have prior access to the speeches of the presenters, and are able to prepare material to anticipate vocabulary and other discourse problems (considered pre-requisites for quality interpreting by Kirchhoff (1976) Gile (1995) and Chernov (1979)), whereas court interpreters are often denied, or at best have restricted access to, documents before a case hearing. Conference interpreters tend to interpret unilaterally, whereas court and other public service interpreters interpret bilaterally. Morris, an experienced conference and public service interpreter, attests to the “denigratory way in which the court treats foreigners” where the interpreter is seen as a necessary evil (Morris, 1995: 28).

The ECHR and the European Directive 2010/64/EU

Article 6 of the European Convention on Human Rights guarantees the right to an interpreter in legal proceedings (European Court of Human Rights, 2002), but since the use of the title of “interpreter” is not legally protected (or even defined) in English/Welsh, or indeed, European law, there is no legal impediment to anyone trading as a public service interpreter. According to Hertog “it is difficult to overestimate the importance of Directive 2010/64/EU on the right to interpretation and translation in criminal proceedings” (2015: 73). By October 2013, all member states were supposed to show the EU how they had implemented the Directive. However, one of the ways in which the UK government claims to have complied with the Directive is by the very outsourcing of the supply and management of court interpreters, which, as mentioned above, has resulted in the decline in quality interpreting. Outsourcing is common in many other European and non-European countries such as Spain, Denmark, Ireland and the US (Blasco Mayor and Pozo Triviño, 2015; Angelelli, 2015). Indeed a few EU member countries have not implemented the Directive at all.

Interpreting via video link: a review of the literature

The evaluation of video conferencing (VC) in the courtroom has been undertaken in two main academic disciplines: interpreting studies and law (but these studies are mostly in the US where PVL is used for a wider range of proceedings than in the UK, and do not involve interpreters).

The recommendations of the Assessment of Video-Mediated Interpreting in Criminal and Civil Justice (AVIDICUS), a project funded by the European Commission, are based upon a comprehensive review of video-mediated interpreted legal events in Europe and other parts of the world, and include a survey of interpreters to determine their views of VC, a survey of judicial institutions to determine the extent of the use of VC, as well as field observations of VC in practice in the courtroom.

Comparative simulated studies were carried out to determine the quality and viability of the interpreting (Braun and Taylor, 2011b). Braun's early studies of interpreters using video conferencing in business settings (Braun, 2004, 2007) showed how interlocutors were observed to speak more loudly, to overelaborate and to seem less coherent than in traditional face-to-face communication. These findings are backed up by Miler-Cassino and Rybinska (2011) and a study by Braun and Taylor (2011a) which also showed that VC sessions required greater concentration, were longer, and that miscommunication problems took longer to resolve. Listening comprehension problems due to poor sound quality created difficulties, as did the two-dimensional view of the site provided by the screen and the consequent loss of visual signals from participants, including eye contact. VC interpreting was found to be more tiring, with more turn-taking problems arising than in face-to-face communication. Interpreting errors increased after a twenty-minute period, a finding which coincides with that of Moser Mercer's (2003) study (see below). Braun (2011) recommends that VC interpreting should be introduced incrementally, with pilot phases leading to adjustments, before moving on to the next stage and that it be used solely for low-impact crime and short hearings employing trained, qualified and experienced interpreters. The AVIDICUS recommendations are targeted at three groups: public/judicial services, interpreters and legal practitioners/police officers. They are necessarily generic in their application, with only one set of recommendations and guidelines, whatever the camera configuration, jurisdiction, numbers of interlocutors, camera positions, settings or contexts. The report refers to "legal practitioners" as a group (Braun, 2011: 265) and includes police officers, prosecutors, solicitors and judges. It is important to note that all the findings in these studies are based on simulated, rather than authentic data. However, in the English and Welsh court context, different interlocutors have different legal, communicative and practical goals, and these goals determine particular views of the role of the court interpreter, which in turn affect the behaviour of all court actors in a PVL court. The aim of my study was to avoid considering court actors as an undifferentiated group, which might imply a misleading unanimity of perspective. My objective was to discover the extent to which the non-English-speaking *defendant* might be disadvantaged, or even advantaged, by appearing in court remotely via PVL.

Research into video conferencing in conference interpreting

Moser Mercer's (2003) study into non-verbal cues in the conference interpreting context is a useful guide to the part played by these cues in message comprehension. Moser

Mercer asserts that information from the face improves the comprehension of the message and that non-verbal behaviour complements auditory information. This appears to have a crucial relevance for PVL, and what she discovered is backed up by the interview responses of the court interpreters in my original study. In PVL interpreting the courtroom-based interpreter is deprived of many of the sensory cues considered necessary by Moser Mercer – cues which would normally be available, if the non-English speaking prisoner were sitting beside her. The applicability of Moser Mercer's research to court interpreting has only partial relevance, however. The speakers whose utterances are being interpreted for the remote defendant are co-present in the courtroom with the interpreter. The court interpreter does not sit in a soundproof booth, and competes with the distractions and extraneous noise of the courtroom. PVL hearings are relatively short and sometimes time-limited (lasting from a few to thirty minutes), whereas conference interpreters usually work in pairs for stretches of 20 or 30 minutes at a time. The person at whom the interpreting is being directed, the remote defendant in custody, rarely speaks, and is mostly an observer of the court proceedings. Worryingly, the defendant is dependent upon pre-selected video shots, and if the court clerk/legal adviser, whose task it is to track the speakers, fails to track accurately, the defendant may be looking, for example, at an image of the magistrates, when it is the advocate who is actually speaking.

Napier's Australian study

Included in the AVIDICUS report is an article by Napier (2011: 207–211) based on data obtained from Deaf “defendants” through simulated hearings in a courtroom in Australia. Five different configurations were tested for this study. A series of scripts based on actual transcripts of court hearings were used in the five different configurations. Participants were interviewed about the experience, and the data was analysed resulting in a summary of the issues, which were grouped together under the headings of technological, linguistic, environmental and logistical. The issues were then incorporated into a series of six recommendations, a summary of which follows:

1. The system as it is should not be used for Auslan/English interpreting services as there are too many technological, linguistic, environmental and logistical issues to ensure equitable access to good communication. This recommendation was rejected but the following four were accepted by the authorities who commissioned the report.
2. If it has to be used, it should only be used for certain procedures, and with provisos.
3. If the system has to be used, hearing should last no longer than 30 minutes.
4. If the system has to be used then technological guidelines must be developed to ensure that technological constraints are addressed.
5. If the current technology were ever to be upgraded, the findings of the research should be considered in determining the best course of action.
6. If the current system has to be used, guidelines must be developed for all court personnel who encounter the system. (Napier, 2011: 207–211)

(See appendix 2).

Research into courtroom interpreting in the wider field of interpreting studies

There is a small number of studies of the use of VC by conference interpreters, which shed some light on the VC process. Research undertaken by the European Parliament (2001) and the European Commission (2000) in the field of RCI has resulted in the AIIC (Association Internationale des Interprètes de Conférence), devising minimum standards of audio-visual quality (2002), and in their placing limits upon the duration of the conference interpreter's time in the interpreting booth. Mouzourakis (2003) sums up the research to date, which appears to show that, despite an excellent quality of vision and sound, conference interpreters involved in remote conference interpreting (RCI) experience greater levels of stress, physical discomfort and fatigue, together with a concomitant drop in the self-perceived quality of their output. Citing the work of Dennett (1992), Marr (1982), Zeki (1999) and Solomon (2002), Mouzourakis highlights the crucial role of vision in the interpreting process; the eye does not merely reflect what it sees, but actively searches for aspects of objects which are relevant to the viewer at the time. Thus vision is not passive, but active; it is this individualised, selective activity which is denied to the interpreter because the framing of the speaker and its subsequent transmission is beyond her control.

Critiques of prison video link: non-interpreter-mediated cases

Studies which have been very critical of PVL in the US courts have mostly been conducted by legal academics and others at the Federal Judicial Center in Washington. Thaxton (1993) sees electronic production of a defendant as a clear violation of both the Fifth and Sixth Amendments of the US Constitution (the right to due process, and the right to confront witnesses and to have the assistance of counsel respectively). Johnson and Wiggins (2006) claim that the right of a defendant to confront witnesses is "arguably compromised" (2006: 218). Poulin (2004), like Thaxton, claims that VC may violate the Sixth Amendment, since it separates defender from defendant and may inhibit counsel's ability to fully grasp the details of the case, thus potentially interfering with the taking of instructions before, during and after the proceedings. When defendants are physically present they are no longer under the control of prison officials, but of the judge in the courtroom as a neutral convenor, and defendants need to be aware of this (Borman, 2001). Because of the limits of the technology a judge may have fewer opportunities to observe non-verbal behaviour on which s/he may have to base decisions about the immediate future of the prisoner (Poulin, 2004: 10). Although not from the field of law, Scherer's (1986) psychological study, demonstrating how the higher acoustic frequencies carry information about the emotional state of the speaker, is cited by Johnson and Wiggins. They claim that the low and high frequencies of the voice are cut off in VC, and that this may affect the court's perception of the emotional state of the speaker. Poulin (2004), Johnson and Wiggins (2006) and Raburn-Remfry (1994) all see an urgent need for the evaluation of the technology and recommend that information obtained should be made available to the courts, and that until this information is available VC should be used with caution. No reference is made to interpreting or to other court actors in interpreter-mediated hearings in these studies.

Poulin is by far the most comprehensive study of VC in criminal proceedings to date. She draws upon a wide range of her own experiences as a lawyer, and research

in the fields of communication studies and social psychology, which appear to demonstrate multiple negative effects of VC in court. She cites studies which demonstrate how camera shots and the angles at which defendants appear in the frame, are likely to influence decision makers in the courtroom and believes that non-verbal cues such as eye contact, gesture and facial expression cannot be fully captured and may become subject to misinterpretation. She posits that viewer expectations of what they might see on the screen might affect decision makers and their perception of the defendant's credibility and demeanour. No reference is made to interpreting in her article.

Haas (2006) carried out a study into the use of videoconferencing in immigration proceedings in the US. He deplores the separation by distance of interpreters from defendants and worse, the fact that many non-English speaking defendants do not have access to an interpreter. His conclusions about the use of VC in court are negative; like Poulin (2004) and Johnson and Wiggins (2006) he views the physical absence of the accused and his/her right to confront his/her accuser as a violation of the defendant's constitutional right to due process.

By contrast, Bailenson *et al.* (2006) favour the use of VC in court and point to the way in which images can enhance the feeling of presence and provide a better understanding of the presentation of evidence to jurors. However, they admit the difficulty of achieving mutual gaze in the courtroom because of the relative positions of the camera and the monitor for the defendant. The defendant has only two options: either to look at the screen and thus appear to the court with gaze averted, or to gaze directly at the camera and not at what is going on in the courtroom. The defendant's unwitting averted gaze is a feature which I have commonly observed in the PVL courtroom; courtroom personnel in England are indeed acutely aware of the phenomenon and have highlighted this in interviews with me.

To summarize then, lawyers, conference and public service interpreting researchers have problematized video conference interpreting on grounds of audibility, fatigue, mutual gaze, the effect of VC upon the demeanour of the defendant, and the separation of defender from defendant. A more detailed survey of the literature on interpreting and videoconferencing can be found in my original study (Fowler, 2012).

Interpreting styles in the face-to-face bilingual courtroom

Usually court interpreters are trained (insofar as they are trained at all), to deploy two main interpreting techniques in the courtroom: consecutive interpreting, when a defendant is being directly addressed by one of the court actors (which can be heard by the whole court), or *chuchotage* (whispered almost simultaneously into the ear of the defendant) when a defendant is being spoken about, but not directly addressed. *Chuchotage* is largely inaudible to the court and is a time-saving technique used by interpreters in proceedings where the defendant is excluded from the interaction between the other court actors. Not only is considerable skill required by interpreters to use these two techniques, but skill is also required to be able to switch quickly and unpredictably from one technique to the other: from consecutive (at high volume) to *chuchotage* (low volume) and back again to consecutive.

The architecture of the court and its impact upon communication

The only difference between the appearance of a normal courtroom and a PVL courtroom is the presence of screens, usually two, one on each side of the Bench, in plain view of

those occupying the well of the court. Below are two contrasting diagrams of a typical magistrates courtroom in England and Wales, one showing two possible positions for the interpreter in a face-to-face case, and the second showing three possible positions for the interpreter in a PVL case, although there are variations on this model. The importance of the “well” of the court cannot be overemphasised, as it is the privileged area where the most important court actors face each other, and where there is maximum audibility and visibility.

In a non-PVL court (see Figure 1), the interpreter occupies a relatively obscure part of the courtroom away from the well of the court. She is positioned near, or next to, the defendant and by or inside the secure dock (a glass-fronted enclosed area where the defendant sits – sometimes with a security officer if appearing from custody). The main mode of interpreting for face-to-face cases is simultaneous, with consecutive interpreting only being used when the defendant is being directly addressed. However, in a PVL court case, interpreters have to change position (see Figure 2) and sit in the privileged area of the “well” of the court where the protagonists sit. The reason for this is to access the microphone connected to the sound system in the prison and to appear on camera. There is no dedicated microphone for the interpreter (which would be the ideal situation), so the microphone of the DA is usually shared by the interpreter. This has implications for the mode of interpreting which will be discussed in the following section on interpreter behaviours. The advantages of this new position beside the DA are evident; better acoustics and privileged sight lines between those in the court, and the possibility of greater *attentiveness* (Gobo *et al.*, 2008) generated by the interpreter’s relative proximity to other court actors. In theory, it is easier for the interpreter to signal an intervention for clarification or repetition should she need to. The audibility and visibility of other speakers are greatly improved for the interpreter, but this works both ways: the interpreter herself becomes much more visible and audible to the other protagonists, since a change of interpreting mode from simultaneous whispering to consecutive mode at full volume directed into a shared microphone is required in order to be clearly heard by the remote defendant in the prison. Mistakes or hesitations by the interpreter will be noticed by other court actors as she occupies this position.

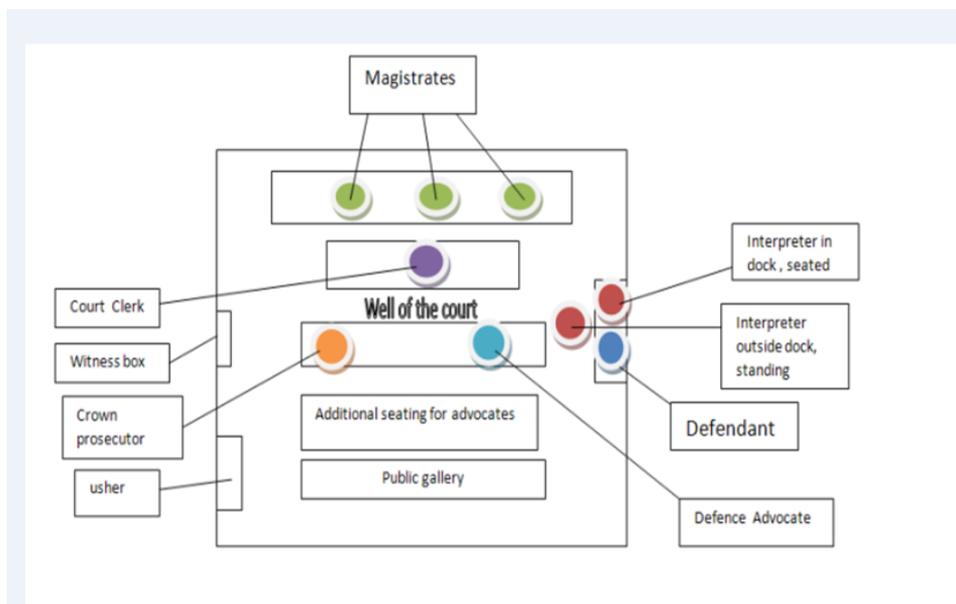


Figure 1. Two interpreter seating/standing positions in a typical face-to-face Magistrates Court.

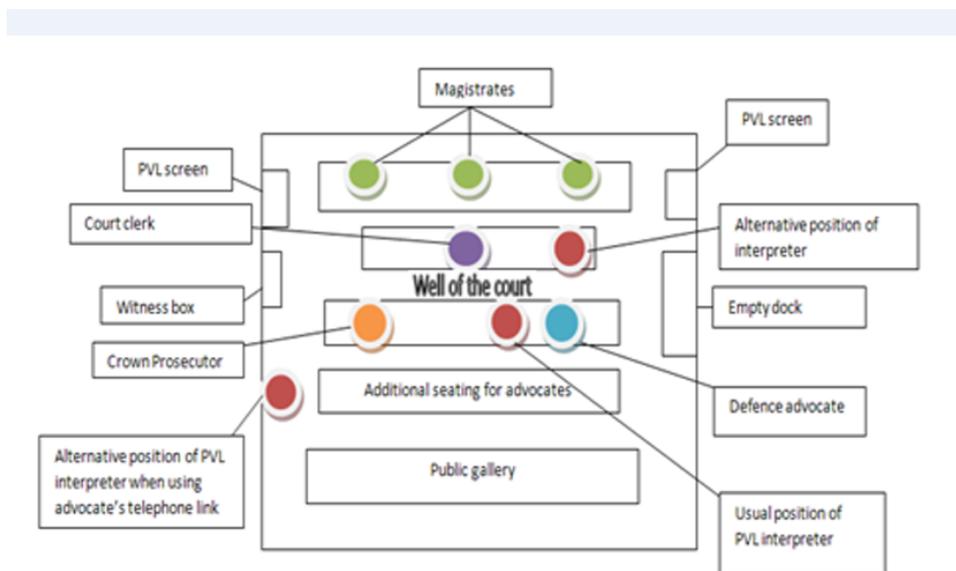


Figure 2. Three interpreter seating/standing positions in a typical PVL Magistrates Court.

Interpreter behaviours observed in the courtroom

The observations and audio-recordings of the ten face-to-face and the eleven PVL court cases referred to earlier provide interesting evidence of the use of a number of elaborations and refinements of the two techniques usually practised by interpreters in court (consecutive and simultaneous/*chuchotage*). Interpreter behaviours appeared to fall roughly into five different categories (see Figure below) which form part of a continuum with low visibility and audibility at one end and high visibility and audibility at

the other. In other words, the continuum is based upon the premise that the greater the voice volume of the interpreter, the more she draws attention to herself (Berk-Seligson, 1990) and the more prominent she becomes, and conversely, the lower her volume, the more invisible she becomes.

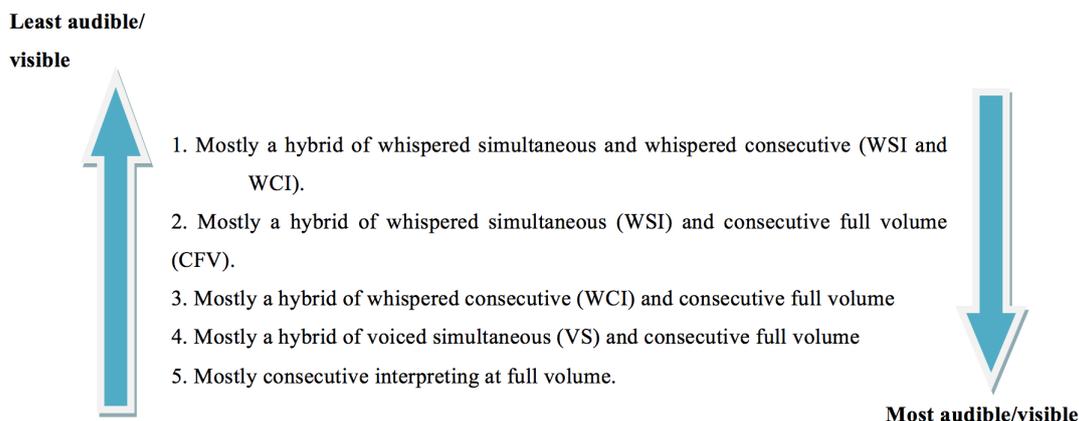


Figure 3. Court interpreter audibility and visibility continuum.

One possible reason why an interpreter might choose to whisper in court (category 1) is to minimise her presence and to avoid drawing attention to herself, either because she feels intimidated by the court, or because of a conception of her role as an “invisible” interpreter. Category 2, where simultaneous/*chuchotage* is normally used for non-defendant-focused interaction and consecutive for defendant-focused interaction, is the recommended and appropriate combination for face-to-face cases. As we move further along the continuum, we can see that the interpreter increases her audibility and visibility until at category 5 she is interpreting mostly at full volume, a phenomenon I observed in PVL cases. I queried this rather idiosyncratic permutation of interpreting techniques with interpreters themselves during the in-depth interviews I conducted with them. However, their responses (see appendix 3) appeared to demonstrate that these strategies were deployed randomly and unreflectively, without appreciating the communicative significance of those interactions that are defendant-focused (when the defendant is being directly addressed by the court) and those that are non-defendant-focused (when the defendant is not being directly addressed by the court). The strategies from 1 to 3 offer the interpreter some opportunity to keep a low profile and maintain low visibility in the courtroom. But, what about the range of strategies available to PVL interpreters? Because of the need to avoid overlapping speech in court, the only strategy available to them is category 5, since in theory at least, any overlapping speech (and this includes *chuchotage*) has to be avoided for the sake of the audibility and comprehension of the remote defendant.

In short then, PVL court interpreters have fewer choices of interpreting strategy than PVL court interpreters, and this difference is directly attributable to the fact that the defendant appears via video link. This in turn makes the PVL court interpreter more visible and audible to the other court actors and her change of seating position from relative obscurity to relative prominence (see figs. 1 and 2) means that her presence cannot be ignored.

Before and after interpreted court cases

Observers of court interpreters may not realise that there are crucial points of pre- and post-court contact for non-English-speaking defendants, DAs and court interpreters in PVL cases immediately outside as well as inside the courtroom itself. Pre-court video linked consultations are necessary for a number of reasons. There may have been too short a time gap between the arrest of the defendant and his/her first appearance in court. It may be that the defendant has previously given instructions to another member of the same law firm and the new advocate needs to confirm those instructions. There may also have been developments in the case since the original instructions were taken, and the advocate may need to take new instructions. In post-court contact an advocate will debrief the defendant as to the consequences of what has transpired during the hearing, and as to its acceptability in law; if appropriate the defendant will be advised as to any available remedies such as a review of a refusal of bail or the terms of the bail. The defendant may also be sentenced via video link without his/her consent and will need to be warned about this.

Throughout these interpreted pre- and post-court contact events, the advocate will want to assess how far the defendant has comprehended what has transpired in court and will have regard to any mental health problems the defendant may be experiencing. However, these interpreter-mediated events are often (but not always) conducted in cramped booths designed to accommodate only one person, the DA. Because there is usually no room in the booth for two people, one of the two is forced to remain outside with the door of the booth open, meaning that confidentiality is compromised, and that the main interlocutors (DAs and their clients), cannot see or hear each other and at worst can only communicate by dint of the advocate passing a simple telephone handset back and forth to the interpreter. My field notes attest to this (see appendix 4), and clearly show how technology, proxemics and layout combine to transmute the interpreter's role to that of an advocate (contrary to the interpreter's code of practice, 2016) with the interpreter communicating at length by herself with the remote prisoner and with the DA partly excluded from the interaction. The question arises of the fairness of such an encounter, and whether advocates who make use of these facilities are able to communicate with, and act appropriately on behalf of, their clients. (See a defence advocate's commentary in the following article).

Camera configurations and how they influence interaction

In a PVL courtroom it is the court clerk (also a legal adviser to the lay magistrates) who controls the camera and tracks the speakers by pressing a button on a remote control. There is a range of six possible shots: one is of the two/three magistrates sitting at the Bench, the second is of the court clerk, the third and fourth of the DA and the CP respectively, the fifth shows a wide shot of the courtroom, and the sixth shows the official crest behind the magistrates (used when there is a break in proceedings or for privacy).

In Figures 2 and 3 above it is possible to see the positions of the interpreter in two contrasting contexts, the face-to-face court and the PVL court. The diagrams highlight the change of the interpreter's position from the obscurity of the dock, for face-to-face interpreted proceedings, to the privileged area known as the well of the court, for PVL hearings; this is done to enable the interpreter to access the microphone of the DA – court personnel explained the questionable logic of this decision to me by saying that

the interpreter should not be seen to be aligned with the CP, but rather with the DA (see Appendix 5). The camera configurations described in the previous paragraph can work reasonably well for non-interpreted cases, provided that the operator is observant and alert, but when two people share a microphone, one of whom, the interpreter, is consecutively interpreting every court actor's turn, a dilemma arises. Should the camera operator focus on the speaker or the interpreter? Later in the article I will address recommendations for good practice, but for the moment, let us take a specific example to illustrate the problems of camera configurations in an interpreted case.

The impact of camera shots on communication in court

Imagine that the CP is explaining the background to the case for the court. As I have already emphasised, in a face-to-face courtroom during a non-defendant-focused Move (i.e. when the defendant is not being directly addressed, but being spoken about) the interpreter would normally use the whispered simultaneous mode of interpreting, as she sits beside or near the defendant in the dock. When the defendant is in a remote location and appears via PVL, the interpreter is forced to change from whispered simultaneous to consecutive full volume mode. The change is necessary because the remote defendant hears every sound in court indiscriminately and at a similar volume, including the interpreter, the rustling and movement of papers, coughing, and occasional electronic interference from mobile phones. If the interpreter were to use whispered simultaneous mode via PVL whilst other court actors are speaking, the remote defendant would receive an undifferentiated stream of sound which would make it difficult for him/her to follow proceedings (and court actors realise this). The result of the necessity to use consecutive at full volume is that court actors (in particular, CPs, magistrates and court clerks) fragment their speech in the belief that they are helping the interpreter.

At this point it might be useful to explore the phenomenon of speech fragmentation a little further. Hale considers that there are three possible approaches taken by interpreters depending on whether they consider the interpreting process to be a top-down (discourse) level or a bottom-up (word or sentence) level. Hale maintains that interpreting at discourse level is the most pragmatically accurate way of rendering utterances. Most interpreters, claims Hale, do not interpret "literally" (word level) or at discourse level, but take a middle approach, producing a rendition that may well be semantically and grammatically accurate, and may even appear to be superficially correct when taken out of context, but which "fails to capture the original intention, its illocutionary point and force" (Hale, 2007: 23). The practice of fragmenting speech by court actors is thus indicative of how court actors themselves perceive language, as words or sentences to be translated verbatim (Morris, 1995).

But the practice of fragmentation can present problems for the discourse level interpreter. It can be seen from the examples below that speakers fragment their speech in two ways; firstly by inserting unnatural pauses after short phrases, and secondly by inserting longer pauses as a signal to the interpreter that the speaker's turn is about to end and the interpreter's turn is to begin. In order to capture the pragmatic force of the speaker, an interpreter working at discourse level might find these pauses unhelpful, as, in order to provide a discourse level rendition, a longer stretch of speech is necessary in order to be able to orientate to the context and the pragmatic meaning of the utterance. It could be said that such fragmentation disorients the interpreter and provides fewer opportunities for anticipating and predicting meaning. Anticipation (Kirchhoff, 1976)

and redundancy (Chernov, 1979) are essential cognitive processes in interpreting and the shorter and more fragmented the text, the more difficult it will be for the discourse level interpreter to operate effectively. The practice of speech fragmentation (whether conscious or unconscious), may be the result of habitually working with poorly trained interpreters, who cannot cope with long stretches of discourse (none of the interpreters I observed had an interpreter's notebook or pen, essential for accuracy in the rendition of longer turns).

Here are some examples of fragmentation²; more can be found in appendix 6. Short pauses are shown as (.) and slightly longer pauses (-). Interpreter's turns are identified by language only.

Transcript 1:

CP sir (.) this case concerns the importation (-)
I (.) *Latvian*
CP of two point four four kilograms (.)
INT (.) *Latvian*
CP of total powder (.)
INT (.)*Latvian*
CP with (.) one point zero seven kilograms(.)
INT (.)*Latvian*
CP of diamorphine at a hundred per cent(.)
INT *Latvian*
CP with an estimated street value(-)
INT *Latvian*
CP of ninety two thousand seven hundred and fifty one(.)pounds(.)
INT *Latvian*
CP the crown are in a position to commit the case today(.)
INT *Latvian*
CP and have handed up the original witness statements(.)
INT *Latvian*
CP we also make the application to retain(.)
INT *Latvian*
CP the original exhibits until trial(.)
INT *Latvian*
1CP and produce them at trial(.)

What follows are two examples where a long number is split into two turns, which could be confusing for the defendant (and of course, for the interpreter):

Transcript 2:

CP (-)these drugs have a street level value (.) of one hundred and forty thousand(.)
I *Igbo*
CP five hundred and fifteen pounds(.)fifteen pence
I five hundred and fifteen pence [rendered incorrectly in English]

Transcript 3:

CP these drugs have an estimated street level value(.)
INT *Russian*
CP of(.)two hundred (.) and forty four thousand(.)
INT *Russian*
CP two hundred and nine pounds(.)
INT *Russian*

Fragmented speech results in semantically odd or incomplete renditions for remote defendants (for example, the splitting of a number in transcripts 2 and 3 above appeared to result in interpreter confusion, since he went on to repeat the number incorrectly in English, probably because he could not think quickly enough to compose such a large number in Igbo and knew that the defendant could understand some English. Fragmentation can also have a knock-on effect on the defendant's visual perception of the courtroom. As each interlocutor takes a turn in the examples above, should the video camera track each speaker at each turn? Or should the camera operator focus solely on the court actor who is speaking or focus solely on the interpreter who is rendering those turns? Recommendations about camera configurations will be made later, but for the moment let us imagine the defendant sitting in the prison facing a screen showing firstly a shot of the CP as he speaks, then a shot of the interpreter who then renders that turn. From one of my vantage points in the prison courtroom, sitting next to prisoners, I observed the camera to veer from CP to interpreter and back to the CP as each fragmented turn was tracked. On other occasions the camera operator tracked only the CP, or only the interpreter. In the latter two cases the defendant and myself could see and hear – but not understand – the CP and only hear the interpreter, or see and hear the interpreter, but only hear the CP. If the CP and the interpreter were to share the same microphone, this problem could be somewhat alleviated, since there is little for the DA to say in an interim non-evidential hearing where the floor is occupied primarily by the CP. The constraints of the present outdated PVL technology do not allow for split screens in prison. Interestingly, DAs are aware that their lack of participation means that they do not appear on camera. In interview, one told me how she would say something merely to gain “camera time” (appendix 7). If the interpreter were to sit next to the CP then they would both appear in the same shot, at least for some of the time, and the defendant would have some kind of visual continuity.

My observations from the prison courtroom showed that visual continuity is vital to be able to orientate oneself to the architecture and layout of the main courtroom from a remote location. This visual continuity is usually initiated by the court clerk, who is supposed to conduct a virtual tour of the courtroom. In other words, court actors are supposed to be formally introduced to the remote defendant one by one, their status and role described as they are introduced, and each is supposed to greet the defendant and gaze at the camera as they do so. But, many court clerks/legal advisers omit this procedure, with the result that defendants are often confronted by a group of people most of whom they have never met or heard before and whose roles and functions they have to guess. Although it would be preferable for each court actor to look at the screen and greet the defendant as they are introduced (and occasionally when speaking) many

do not. It is even possible that defendants may not even have met their own defence lawyers prior to the hearing and so will not know who they are or what they look like.

One of the major findings, then, is that there are several possible configurations of camera shots in relation to the interpreter, all of them with negative consequences or disadvantages of one kind or another for either interpreters or defendants. In the following section, I shall briefly describe the view from the prison courtroom itself, from my vantage point sitting next to the remand prisoner, but out of shot of the main courtroom (extracts from field notes can be found at appendix 8).

The view from the prison

Contemporaneous field notes made by the author constitute a series of seven “vignettes” (a term used by Miles and Huberman (1994: 81)) of seven court hearings observed at Wormwood Scrubs prison whilst seated next to the prisoner (extracts from four of the vignettes can be found at appendix 8). Erickson suggests that vignettes are a “portrayal of the conduct of an event of everyday life in which the sights and sounds of what was being done are described in the natural sequence of their occurrence in real time” (1986: 149). The vignettes link up with other parts of the original study, and fill in some of the gaps left by the court recordings, the observations and the court actor interviews.

One of the greatest barriers to effective interpreter-mediated communication in the PVL court seems to be the out-dated technology. Image quality is sometimes poor, and audibility variable. The system seems to be prone to electronic interference, time delays and poor synchronisation of sound and image. Screens in the courts are often too small to be useful to an interpreter, and the Picture in Picture (showing the magistrates what the defendant can see) often obscures part of the defendant’s face. Inadequate lighting may mean that the features of dark-skinned defendants cannot be made out at all (Ellis, 2004 also makes the same observation). My field note extract below describes how the system captures all sounds indiscriminately:

At present when the microphones are switched on, the movements of the whole court can be heard.... movements of court actors...are magnified to an unacceptable level. These movements include writing and crossing things out, moving books and files, looking through large bundles of papers, standing up, sitting down and whispering.

The problem of tracking speakers at the expense of the interpreter is another source of confusion for an observer. If the camera remains on the crown prosecutor throughout a submission while the interpreter makes her renditions, the defendant is prevented from making use of any of her non-verbal signals to aid comprehension. Whatever the size of the screen, the defendant’s head is often partially obscured by the picture in picture (PIP). Were the camera to focus on the interpreter throughout, defendants would be prevented from identifying speakers and where they sit in relation to the rest of the court. Allowing the camera to veer from crown prosecutors (when they are speaking) to interpreters (when they are making their renditions) is likely to be confusing and distracting for those watching, especially as the outdated technology means that images are jerky and blurred. Not allowing the defendant to choose where to look means that he can only look at the speaker that is chosen for him by the court clerk/legal adviser. However, defendants may not always want to gaze at speakers, but may rather wish to look at those whom they are addressing to see what effect their words are having on

them. The failure to track speakers accurately was highlighted as long ago as 2000 by Plotnikoff and Woolfson even though there is no reference to interpreters in their report.

My subjective perception of the PVL process from the prison end is that there is very little sense of being present in a courtroom. The fact that the camera focuses mostly on individuals in close-up and only rarely on the court as a whole means that the significance of different seating levels and the status and positions of various court actors relative to each other and which help to create the formality of the atmosphere are not apparent.

The factors described above, then, combine to produce a rather confusing picture for ethnographic observers (and by extension for defendants). In short, researchers who have not entered a prison courtroom to gain a non-English-speaking defendant's eye view of the court, are unlikely to be aware of the distractions which can interfere and distort communication between the remote defendant and the interpreter.

Conclusions

What emerges from the observations and the interviews is that interpreter-mediated PVL “works” much more effectively for those court actors who remain in the courtroom than it does for the remote PVL defendant. The goals of court actors are different from those of the defendant, since magistrates, CPs and court clerks/legal advisers want to process and dispose of cases quickly. Quality interpreted communication with PVL defendants often takes second place to these considerations. This is partly because of the type of hearing (defendants have little to say at this stage of the case and court actors do not need to interact with them very much) and partly because the technology seems out-dated and in some cases, obsolete (see Braun and Taylor, 2011a). The court, then, can honestly believe it is successfully carrying out its legal duty and progressing cases through the system, without having recourse to any feedback from defendants as to the audibility, comprehensibility or the coherence of the proceedings. Unless court actors or researchers go to a prison and sit next to defendants, they are, of course, unlikely ever to experience what it is like to be on the receiving end of PVL. Interviews with court actors show clearly that it is the DAs who are least likely to endorse it (Appendix 9). This finding concurs with most studies which have found that in the main court staff, magistrates, prosecutors and judges are in favour of video-conferencing but that DAs, refugee advisers and some interpreters are much less enthusiastic, sometimes even hostile (Wexler, 1993; Sontheimer, 2000; Ellis, 2004; Haas, 2006; Harvard Law School, 2009; Braun and Taylor, 2011b).

There is an urgent need for funding so that court personnel can be trained to work through interpreters and a parallel need for a supervised period of work-based training for aspiring court interpreters. Currently there is no examination in court interpreting, only a generic “legal interpreting” Diploma option³; a specific Court Interpreting Diploma should be devised and implemented urgently. The current arrangements for interpreter-mediated pre- and post-court consultations with defence advocates must be addressed by providing larger booths with microphones instead of handsets. Out of date camera equipment in courts in England and Wales should be replaced. Prisoners must be able to choose whether to look at any speaker in the courtroom whenever they wish. Van den Hoogen and van Rotterdam recommend that a constant image of the whole courtroom must be available for the prisoners so that they can understand the

significance of its layout and be able to see their friends, relatives and supporters in the public gallery. Picture and sound must be of optimal quality if miscommunication is to be avoided. Dedicated microphones for interpreters are essential. The microphones should be direction-sensitive and fitted with automatic volume control. There should be optimal lip synchronicity in the sound system (van Rotterdam and van den Hoogen, 2011: 215–226).

Video link could work well in short interpreted interim hearings, where all court actors are trained to be aware of the need to share responsibility for communication (see appendix 11 for a best practice protocol) and where interpreters are properly trained. Where there is more at stake in terms of the seriousness of the case, there is too great a risk that justice will not be served. We are living in an age of super diversity when quality interpreting will more than ever be needed for those parties who are not familiar with the language of the court. Interpreters are increasingly expected to communicate with non-English speaking defendants via video link (particularly for asylum claimants and appellants in courts and tribunals – a topic I have not explored in this article and where there can be a great deal more at stake than in the magistrate’s courts). The interpreters working in our courts in England and Wales at present are, on the whole, poorly trained in court interpreting skills and the use of video link. It is unacceptable and discriminatory that political ideology and the fashion for outsourcing public services to large corporations should interfere with the judicial process, disadvantaging already disadvantaged defendants and putting justice in jeopardy.

Notes

¹Interpreters will be referred to as “she” and defendants will be referred to as “he”.

²Unfortunately the author does not have permission to make the court audio-recordings public.

³See the Chartered Institute of Linguists for details of the Legal Interpreting option: <https://www.ciol.org.uk/>

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Appendices

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- Appendix 2: PVL with Deaf defendants
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- Appendix 5: Further examples of fragmented speech in court
- Appendix 6: Interpreter seating positions in a PVL court: a defence advocate’s view
- Appendix 7: Extract from interview about “camera time”
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Appendix 1: The Criminal Justice System in England and Wales: a brief overview

Court procedures, layouts and proxemics play a vital part in determining communication, both monolingual and bilingual, in the courtroom. There are three levels of criminal court in England and Wales: the Magistrates Courts, the Youth Court and the Crown Court. All cases, even murder, start at the Magistrates Court and 97% of all cases are completed there. There are three categories of offences: “summary” only (can only be dealt with in the Magistrates Court), “either way” offences (can be heard in the Magistrates or the Crown Court), and “indictable only” (can only be dealt with in the Crown Court). Summary cases include less serious offences such as motoring offences, minor theft, and criminal damage. Magistrates are local unpaid volunteers who receive special training, hear each case in twos or threes, and pass sentence, or, in more serious cases, “transfer” or “send” cases to the Crown Court. Youth Courts are a branch of the Magistrates Courts also staffed by two or three specially trained magistrates sitting together. They handle alleged offences by young people aged 17 years and below. Cases in the Youth Court are heard in private, although it is possible to ask for permission to observe cases. Crown Courts are for more serious offences such as rape, burglary or

murder. These offences are heard by a judge, and a jury of twelve ordinary people will be convened if the defendant pleads not guilty. The jury decides whether the defendant is guilty or not, but the judge decides on the sentence and the punishment. In all courts described here, accused persons can be found not guilty and released without a criminal record, or they can be found guilty and sentenced.

Appendix 2: PVL with Deaf defendants

Napier’s study was conducted with Deaf “defendants” in a simulated experiment in Australia. It is included here to show the range of possible permutations of locations and cameras, an experiment which was also conducted by Braun and Taylor (2011b). Each combination proved to be challenging in some way.

| Location of deaf defendant | Location of interpreter | Court appearance |
|---|---|--|
| 1. Deaf defendant in remote location | Interpreter in separate remote location | Both appearing in court via video link |
| 2. Courtroom | Interpreter in separate remote location | Interpreter appears in courtroom via video link |
| 3. Deaf defendant and interpreter together in remote location | | Both appearing in court via video link |
| 4. Deaf defendant in courtroom | Interpreter in courtroom | Both appearing in person in court with no video link |
| 5. Deaf defendant in remote location | Interpreter in courtroom | Only defendant appears in court via video link |

Table 1. Permutations of location, court and Deaf defendant (Napier, 2011).

Interestingly Napier recommends that the system should not be used at all for Auslan/English interpreting services in the courts. Napier claims that the system is not flexible enough for this unique form of communication, with breakdowns being a significant risk (2011). Although the recommendation was rejected by the authorities, it was agreed that it should be used only where it was impossible to obtain a face-to-face interpreter, and that this would be the preferred option. Interestingly configuration 5, which corresponds exactly to the PVL courtroom set-up in the UK context, is regarded as being the least suitable of all the possible permutations in the Australian/sign language court context. In line with Braun (2011) Napier further recommends that if the system is used at all, it should be for hearings of short duration, and that the technological shortcomings be addressed (such as the constraints of fixed cameras, also a problem in the Magistrates Courts where I made my own audio-recordings, see chapter 5). Napier’s final recommendation stipulates the need for judicial guidelines for court staff who have to operate the system as well as for Deaf clients. At the time of writing the recommendations are being implemented in the New South Wales courts, but as a pilot over a period

of three to six months after which guidelines will be reviewed and updated; a review of the current system will be carried out after a year to evaluate its effectiveness. Like Braun then, Napier urges caution, but does point out some major weaknesses of her findings, linked to the fact that the data is simulated rather than authentic. The Deaf actors used in the simulations may not have been representative of Deaf users as a group, because they were fluent, well-educated and used to working through an interpreter. In addition, there were parts of typical legal proceedings that were omitted in the simulations, such as the taking of the oath/affirmation by the interpreter, and there were unorthodox seating arrangements for the Deaf defendant and interpreter necessitated by the angles of the fixed cameras, both issues that the author of this article have identified as significant.

Appendix 3: Extracts from interviews with interpreters

I wanted to find out from interpreters themselves how they justify using different interpreting techniques for the two different court interpreting settings (face-to-face cases and PVL cases). In extract 1 interpreter 1 (INT (i)) claims that the technique she uses depends on the clarity and audibility of the speakers rather than on the particular context in which she finds herself. It is not clear from her response which techniques she uses in the two different contexts nor why she uses them. If the interpreter were to use simultaneous technique for PVL, the implications of overlapping speech would present audibility problems for the defendant. All these extracts show the need for proper training for interpreters.

Transcript 4:

- INT(i) So this [simultaneous interpreting] is what I do, if I am sitting near the defendant
- YF And so when you're sitting at the front [for a PVL hearing] then, is that different?
- INT(i) Er, yes because all of them are actually silent, not talking
- YF Who, who are they?
- INT(i) The defence, the barrister, the, the prosecution
- YF Yes
- INT(i) They only ask the question and they are waiting for the answer
- YF Right, okay. So you tend to use consecutive when you're doing prison video link then?
- INT(i) I wouldn't say as a rule but it is like er yes, because it's they are expecting the...answer to finish from the- from the defend- defendant. So I interpret what he says. But what happens when I talk to the defendant, it's about the dialogue which is happening between, like telling him, what are they saying and what they are doing, then I use the simultaneous, because I can't say to the judge or to the, or to the barrister, talk, stop, hold on, every two three sentences, for five minutes long. Of course if, if they are, if- they go on at very high speed, you know...

In Extract 2 interpreter 5 (INT(v)) claims that the reason she uses consecutive technique for PVL is because more precision is required, when in fact the real reason is to avoid overlapping speech:

Transcript 5:

- YF So what mode of interpreting did you use during this [PVL] hearing?
INT(v) Erm not simultaneous much I don't think there was any simultaneous
YF Why is that ?
INT(v) Erm there was no need for it
YF So if you had a live defendant and you were interpreting for a live
 defendant which mode of interpreting would you use then
INT(v) The same as I did at that time
YF And what was that
INT(v) Every question that was asked I er translated as far as possible word
 for word idea for idea the idea counts not the words
YF And so what mode did you use then
INT(v) Consecutive, consecutive
YF Was there any particular reason why you used consecutive and not
 simultaneous ?
INT(v) Because usually in this kind of court of appeal the er things that are
 said are very precise and they have to be you know short ideas short
 sentences and they have to be perfectly understood by each side that's
 why
YF OK and-
INT(v) I think it was the preferred mode in that kind of court

In extract 3, it becomes alarmingly evident that the interpreter does not understand basic terms such as “interpreting techniques” and “simultaneous interpreting”:

Transcript 6:

- YF Okay so, if you, you usually sit next to the defence advocate for a
 prison video link and you just talked about being, interpreting for a
 live defendant in an open dock, like when I saw you that time, you were
 doing that. Could you compare the two techniques that you use? when
 you're interpreting for a live defendant in an open dock, what kind of
 interpreting technique do you usually use?
INT(i) right, what I do is, that I take it on my shoulder, that it's my
 responsibility to make sure that I deliver every word the defendant's
 saying and interpret every word I hear
YF yes, so interpret in terms of technique, what would that involve?
INT(i) what do you mean by technique?
YF er
INT(i) the language?
YF well, I saw you use a particular interpreting technique when you were
 working with the defendant

- INT(i) right, right
YF when I sat behind you, when you were working with the defendant
INT(i) yeah- what was it- I don't-because I haven't seen other interpreters working (laughter)
YF well you seemed to be, you seemed to be using simultaneous
INT(i) yes, oh I see what you mean, what I do, it depends on the clarity-yeah ? of the sound
YF yeah
INT(i) and if the clarity of the sound is clear, and you know, and I'm getting it all straight away, I do it all actually, er, er, simultaneously. Like while, while the person telling the defendant for example in the conference- yeah
YF yes
INT(i) -room, when you have a conference before the case starts, yeah, and if it's very clear and you know, I, I actually, I actually got distinguished in simultaneous [referring to her examination result], you know er
YF yes
INT(i) is it simultaneous is while one is talking you are interpreting?
YF yes

Appendix 4: Extracts from field notes made in consultation booths

This extract shows how the architecture of the court affects communication through an interpreter with a non-English-speaking defendant. The booths are too small to hold two people, so a decision has to be made as to who will use the telephone handset, who will take the floor and how communication is to be effected. Extract from field notes taken in the consultation booths (May 2012) show how this was done and what was the result:

Extract 1:

The interpreter was invited to take the only seat and given the telephone handset by the advocate, who remained standing. She (the interpreter) initiated the conversation with the prisoner herself. Because the only way of communicating with prisoners is through a single telephone handset, anyone *without* a handset cannot hear what the prisoner is saying or speak to him/her. The male Vietnamese defendant, on seeing the interpreter with the handset, began to speak animatedly to her, and appeared to be in some considerable distress. The interpreter conducted a conversation with him of her own accord, and, after some minutes and using reported speech, explained the reason for his distress to the defence advocate. It appeared that he had been unable to communicate with his family in Vietnam, since the telephone prepayment card the prison had given him did not work. He maintained (so the interpreter said) that his family did not know what had happened to him or where he was. Unfortunately for the defendant, his defence advocate told him there was little he could do to help. Not only could the defence advocate not speak directly to his client but he could not *hear* his client either. This meant that all communication with his client was conducted by directly addressing the interpreter. The only other way the defence advocate would have been able to hear the defendant would be to pass the handset between himself and the interpreter for each turn.

In 2012 I obtained permission to observe court cases from the courtroom at Wormwood Scrubs prison. The first defendant I was to observe was, once again, of Vietnamese nationality. A translation of the consent form into the Vietnamese language at such short notice had been impossible to obtain. On the advice of the prison officer in charge of the video link suite I obtained the assistance of the court interpreter to gain the prisoner's consent. The interpreter was sitting in a similar private consultation booth in an Outer London Magistrates Court together with the defendant's defence advocate, who was getting ready for his client's pre-court briefing. My field notes describe a rarely observed event which was the opposite of the one described above. My vantage point was the same as the prisoner's. I spoke to the interpreter via video link. Field notes how the interpreter conducts the conversation by herself without reference to the prisoner (in violation of the Interpreter's Code of Practice):

Extract 2:

I stood next to the defendant in the cramped prison court booth. 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 defence 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 conducting research and sketched out its nature and purpose. 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 (who had overheard my conversation with the lawyer) 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, the interpreter said in English "Yes, he doesn't mind". I insisted on completing the reading out. The defendant then agreed and 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.

Appendix 5: Further examples of fragmented speech in court

Short pauses are shown thus (.) and longer pauses thus (-).

Transcript 7:

CP on the twenty fourth of May two thousand and ten(.)
INT *Bulgarian*
CP at terminal five Heathrow(.)
INT *Bulgarian*
CP the defendant was intercepted(.)
INT *Bulgarian*
CP arriving on a flight (.) from Buenos Aires Argentina(.)

Transcript 8:

CP he later admitted to swallowing ninety five packages of cocaine (.)
I (.)Igbo
CP (.) he gave a no comment interview
I /Igbo
CP (.) currently the defendant is remanded in custody(.)
I Igbo
CP on one ground (.)
I Igbo
CP (-) that there are fears that he may (.) fail to surrender
I Igbo
CP (.) the reasons for these fears (.)
INT Igbo(.)
CP (.) are due to the nature and seriousness of the offence
INT Igbo(.)
CP (.) the strength of the evidence
INT Igbo
CP (.) the likely custodial sentence if convicted
INT (.) Igbo
CP (.) And the lack of community ties (.)

Appendix 6: Interpreter seating positions in a PVL court: a defence advocate's view

Why are interpreters asked to sit next to DAs in PVL hearings? In these interim hearings DAs do not need to speak much, and therefore gain little “camera time”. If the interpreter sits by the CP (who gets more camera time because she/e has more to say) it would be easier for the camera operator to track the CP and the interpreter within a single frame. Although I observed other seating positions for court interpreters in a PVL court (notably next to the legal adviser/court clerk) sharing the microphone of the DA was by far the most common. One defence advocate explored this idea with me in interview, but there seems to be no formal guidance in the matter:

Transcript 9:

YF it's usually been the arrangement whereby the interpreter sit next, sits next to you [emphasis], the defence advocate, and shares your microphone. Is there a particular reason why they put them there ?
DA(i) er I don't know. I suppose it's the perception that they're part of the defence team, aren't they really, rather than being completely independent. Because they've got to use somebody's microphone, there isn't one for an interpreter, maybe there should be.
YF I have seen an interpreter sitting next to the court clerk, in (*name of court*). Do you think that's a better place for the interpreter to sit?
DA(i) er, I don't think it matters. Does it matter?
YF this is your, entirely your perception, that's an interesting-

DA(i) Er, be best not to sit next to the prosecutor because most defendants would identify anybody sitting next to the prosecutor as being against them. Er, I mean the legal adviser's fine because she's neutral, he's neutral. Er, defence advocate obviously would be perceived by the defendant to be on their side so they wouldn't be alarmed by the interpreter being next to them. I presume that's why.

Appendix 7: Extract from interview with a DA about “camera time”

DA(ii) is well aware that if she does not say anything in court, the camera will not focus on her and the defendant may well think that his advocate has not turned up to court for his case. Although she herself has not conducted an *interpreter-mediated* case through video link, she says she would be concerned if the interpreter were not within the view of the defendant at all times. This is difficult to achieve and I did not witness this during any of my ethnographic observations.

Transcript 10:

DA(ii) Er, you're trying, you, I, I strive even when I don't actually have to say anything, I'm striving to say something just to reassure the client I actually understand what's going on, because he's seeing it in such a detached way, he's going what the hell's my solicitor doing, she hasn't said anything. Now sometimes I don't need to say anything, it's a foregone conclusion what's going, you know what is happening, and I've already told him that. But I, I feel that sometimes you say, Yes I agree with, it's a remand for seven days or fourteen, just to, just emphasise for him I know what's happening and I know that that's what's required. It's kind of reassurance

YF How would you do that?

DA(ii) well, some, sometimes it's, like the video I had there this morning. He's sitting there miles away; it's a foregone conclusion it's going to be adjourned, there's no bail application. So the prosecutor purely says er, Your Worships it's an adjournment for, till the 9th of February, the Clerk says yes, that's, that's fine. They look at me, I, I would normally, if it wasn't a videolink say nothing, but I actually said, I've got no observations on that, and looked at him so he understood that I was in the room, I knew who he was and I was actually his representative, it just has to be emphasised a bit more.

Interestingly, when I was observing court cases from the prison, I noticed one DA gazing at the defendant (her client) on the video link from the courtroom as she made a brief submission. This seems to re-inforce the notion of “camera time” introduced by DA (ii) during interview.

Appendix 8: The view from the prison: extracts from four vignettes

Below are extracts from field notes made during and after PVL court cases whilst sitting next to four prisoners (A,B,C, and D) at the prison:

Defendant A was a Kurdish-speaking man, who had been resident in the UK for two years. It was impossible to hear clearly when the interpreter took the [interpreter's] oath. At this point the image of the magistrate appeared on the screen but not the interpreter. There was then some overlapping speech between the interpreter and another speaker, and the crown prosecutor intervened to ask the interpreter to use consecutive interpreting (the crown prosecutor actually said "wait until I've finished, then you can speak").

Defendant B, a Russian, entered the [prison] court. There was a cursory virtual tour of the actual court ("magistrates", "legal adviser", "solicitor", "interpreter", "crown prosecutor" was all that the court clerk said). As the camera jerked backwards and forwards from speaker to speaker there was a blur of images. All court actors greeted him verbally but made no visual acknowledgement [eye contact] during the virtual tour: this included the interpreter. The defendant responded verbally to each greeting. The Russian interpreter sight translated the oath unprompted but did not interpret this to the remote defendant. There were mismatches of speaker and image throughout the hearing. At one point there was an interpreter request for a repetition of the defendant's name. There was also considerable feedback that sounded like electronic interference from a mobile phone.

Defendant C: The legal adviser/court clerk looked at the defendant, but his virtual tour of the court was very perfunctory, simply switching the camera shots and saying "court clerk, magistrate, crown prosecutor, defence advocate" as he did so. In general, there was no visible or audible acknowledgement of the defendant during the virtual tour by the defence advocate or the crown prosecutor, who simply ignored the defendant and carried on what they were doing.

Defendant D: When the crown prosecutor initiated whispered exchanges with other court actors sitting close to her, she leaned forward and only the top of her head could be seen; long hair completely hid her face. The interpreter stopped interpreting after the defendant-focused parts of the hearing were over, so the defendant was left out of the crown prosecution submissions and all the subsequent interaction. There was some overlapping speech, especially as far as the crown prosecutor was concerned. There was no obvious attempt of speakers to accommodate the interpreter after the transition to non-defendant-focused Moves, probably because by that time the interpreter had stopped interpreting altogether. The magistrate's decision to adjourn the case for half an hour was interpreted. The defendant appeared to understand the interpreted rendition of the magistrate's decision because he nodded. There were other instances of back-channelling from the defendant during the hearing. The interpreter's voice seemed to be much clearer than those of other speakers. Again, this was due to the fact that the interpreter leaned towards the microphone whereas the others did not. Books being moved and papers rustling made a constant background noise which meant that it was difficult for me to hear what the case was about or to hear the crown prosecutor, who spoke very indistinctly.

Appendix 9: Interviewing prisoners

The original intention of the study was to interview defendants in prison using interpreters to obtain their perceptions of the PVL experience. For a range of different reasons, this proved too problematic. The unpredictability of cases in the Magistrates Courts meant that there would be insufficient notice to arrange interpreters of the right language. The cost would have been beyond the scope of the project, and in addition I considered that it was not desirable to interview prisoners on ethical grounds; the anxiety of defendants might interfere with the information they might give to me as a researcher, bearing in mind that they would have to be interviewed by me in the presence of prison officers. There was also a danger that they would associate me with the prison establishment rather than as an independent researcher with a genuine interest in their experience. They had been deprived of their liberty and additionally, because they did not speak English, they were linguistically isolated in the prison and unable to communicate with other inmates. I concluded that the prisoners were a vulnerable group and regretfully decided not to interview them.

Appendix 10: Extracts from interviews with DAs about PVL

These extracts from my interviews with DAs back up research by US legal practitioners and academics in the literature review of this article. Asked if they would object to the extension of PVL for trials, they said:

Transcript 11:

DA(i) trials? I wouldn't be happy with that. I think a defendant coming to court and seeing exactly everything which is happening in court, not reliant on a camera showing him what's happening ...is important ...he'd want to know who was talking to who ...what was happening, who was walking around the court, what the magistrates were doing, whether they were paying attention, etc. I think ...that is important, for them to have an idea of a fair trial and things being done properly. I think if it was on camera, they might feel ...what's not being shown? ...[that] might be in the back of their minds. And also, as we've discussed, communication is not between defendant and solicitor, it's not just verbal, it's also lots of other actions like body language and you get that face-to-face but you don't get that over a camera, there is a watering down on that, I think, personally.

Transcript 12:

DA(ii) I mean it's just a ...hugely disadvantaged situation and it's done for the convenience of the court but not the convenience of the defendant

...

YF So ...do I gather that you wouldn't like to ...have it [PVL] extended

DA(ii) ...it's not access to justice, it's just a means of making it cheaper, and there's just no way it's fair...the whole essence of video link is they're done for speed and convenience, they're not done because it's fair ...and just and anybody who tells you that wouldn't be telling the truth ...

Transcript 13:

YF Er, so, should there come a day when somebody proposes the extension of, er, prison video link to include more contentious hearings like, er, you know trials, for example, what would you feel about that as a defence advocate? In relation to your client ?

DA(iii) It would be totally unacceptable. I mean at the end of the day, you know, numerous things happen during the course of a contested hearing, or trial especially, you know, something always crops up, you need to take further instructions from your client in private and video link just isn't suitable for that at all.

I have included the following extract even though the interviewee (DA(v)) is not talking about PVL but about the Virtual Court, an experiment implemented in 2008 at a magistrates court in London with the idea of saving on prisoner transportation costs. A pilot evaluation (Terry *et al.*, 2010) has shown that the Virtual Court actually costs more than it saves. Defendants are supposed to make their first appearance in court from a room at a police station equipped with a camera. The extract illustrates the hostility of this DA towards the expansion of video link to include proceedings other than interim non-evidential ones:

Transcript 14:

DA(v) I don't like it [the virtual court] I don't like what it does to the whole professionalism of the job, the values, I think there's a dumming down generally in many many ways, and civil servants in an effort to get the policy through which they think is going to save money- might save some money in some budgets but actually overall saves nothing, because if more people are being locked up and that's our main point about people getting better outcomes, better outcomes save public money instead of somebody being locked up for four weeks at incredible expense, they don't get locked up, or they get a community order which keeps them out of trouble or they get bail, and they should always get bail, it saves the cost of putting them on remand, that budget will not have any effect on the virtual court budget, we'll never know what the overall cost of any of this is, and in the meantime we will strip away all of the dignity- solemnity of the proceedings and make justice a mockery, and make it look no better than some bar room soap opera, and that's my biggest visceral emotion about it but I also recognise that in very straightforward cases when you know the client very well where communication is not that important it can be marvellously helpful and a quick way of doing- very quick things, so there are certain areas where it could be extremely useful.... anywhere where communication is key to the outcome of that hearing, or that process, often you lose more than you gain in terms of- you lose far more in- if you're doing your job professionally than you gain in terms of convenience, and that affects justice, I think we should be worried about that...

Appendix 11: A best practice protocol

This best practice protocol which follows is based upon from the findings of the original study. It should be backed up with in-court training for all court personnel and for interpreters.

- (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) All courts should require the interpreter to sight translate the oath or affirmation to the defendant in the relevant language and should not proceed until this has been done to the satisfaction of the defendant.

- (vi) Prosecution and defence advocates should be discouraged from fragmenting their submissions into incomplete units of meaning. Presiding judges/magistrates and interpreters should agree on a pre-arranged non-verbal signal when enough information has been received.
- (vii) All sound systems should be switched on before the hearing starts. Court actors should be reminded to speak into microphones where these are provided.
- (viii) Magistrates should watch the interpreter and intervene if necessary to make sure that court actors are speaking at a pace which 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.
- (ix) Interpreters should be addressed as 'Madam Interpreter' or 'Mr Interpreter'. This is part of the court interpreter's ratification process by the court.
- (x) 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.
- (xi) The court should expect interpreters to perform in consecutive mode for defendant-focused Moves and whispered simultaneous mode for non-defendant focused Moves. Any interpreter who has obvious difficulty with simultaneous interpreting should have this pointed out and the court should make an appropriate notification and convey it to the appropriate body.
- (xii) 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.
- (xiii) 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) Procedures (i) to (ix) should be followed.
- (ii) PVL interpreters should always be located in the main courtroom and not at the prison.
- (iii) 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.
- (iv) During the virtual tour of the court, court actors should verbally greet and acknowledge defendants on screen by making eye contact with them.
- (v) When speaking, each court actor should look at the defendant on camera from time to time.
- (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 must be reminded to avoid overlapping speech.
- (ix) To minimise 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, since the defendant will have no visual contact with the interpreter.