

DOCTOR OF PHILOSOPHY

Non-English-speaking defendants in the
magistrates court

*a comparative study of face-to-face and prison video link interpreter-mediated
hearings in England*

Yvonne Fowler

2013

Aston University

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March 31st 2012

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Thesis summary

This study compares interpreter-mediated face-to-face Magistrates Court hearings with those conducted through prison video link in which interpreters are located in court and non-English-speaking defendants in prison. It seeks to examine the impact that the presence of video link has on court actors in terms of interaction and behaviour. The data comprises 11 audio-recordings of face-to-face hearings, 10 recordings of prison video link hearings, semi-structured interviews with 27 court actors, and ethnographic observation of hearings as viewed by defendants in Wormwood Scrubs prison in London. The over-arching theme is the pervasive influence of the ecology of the courtroom upon all court actors in interpreter-mediated hearings and thus on the communication process. Close analysis of the court transcripts shows that their relative proximity to one another can be a determinant of status, interpreting role, mode and volume. The very few legal protocols which apply to interpreter-mediated cases (acknowledging and ratifying the interpreter, for example), are often forgotten or dispensed with. Court interpreters lack proper training in the specific challenges of court interpreting, whether they are co-present with the defendant or not. Other court actors often misunderstand the interpreter's role. This has probably come about because courts have adjusted their perceptions of what they think interpreters are supposed to do based on their own experiences of working with them, and have gradually come to accept poor practice (the inability to perform simultaneous interpreting, for example) as the norm. In video link courts, mismatches of sound and image due to court clerks' failure to adequately track current speakers, poor image and sound quality and the fact that non-English-speaking defendants in pre-and post-court consultations can see and hear interpreters but not their defence advocates are just some of the additional layers of disadvantage and confusion already suffered by non-English-speaking defendants. These factors make it less likely that justice will be done.

Key words: Interpreting studies, courtroom interaction, prison video link, forensic linguistics, court interpreting.

Dedication

This thesis is dedicated to Rafael, Malcolm and all court interpreters everywhere

Acknowledgements

A thesis is never the work of a single person but the result of the advice, support, encouragement, motivation and inspiration provided by many others. I am extremely grateful for the interest and practical support of the Senior Presiding Judge at the Royal Courts of Justice, Lord Justice Goldring, without whose help I could not have completed this study. I owe a tremendous debt of gratitude to the University of Aston for a bursary enabling me to undertake and complete the thesis. Sarah Hayes and Dave Pollard provided invaluable technical support throughout and I am grateful to them. Grateful thanks go to Bente Jacobsen for her critical reading of this thesis and her support and encouragement. Jane Straker taught me most of what I know about interpreting; I am indebted to her for her unstinting support for my endeavours over twenty years. Infinite thanks too, to my two wonderful daughters Corinne and Naomi, and to my fantastic sons-in-law Jairo and Edy. Their support services, technical, academic and emotional, are far too numerous to mention in detail. Warm and grateful thanks go to my supervisor, Dr. Krzysztof Kredens, for his insightful criticism, patience and understanding of my work, and for keeping up my spirits when the self-doubt crept in. Finally, without Malcolm Fowler, whose passionate interest in the education of the court interpreter and whose tireless promotion of the rights of the non-English-speaking defendant in our criminal justice system, this thesis would never have been written.

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Chapter 1: Literature Review

1.1 An overview of the study

1.1.1 Introduction

This study aims to discover how Prison Video Link courtrooms are different from face-to-face hearings, and how these differences impact upon the communication process involving defendants on remand in custody. I draw upon studies from a wide range of disciplines and sub-disciplines in order to answer the research questions together with relevant material from the fields of interpreting studies, law and linguistics and I make use of theoretical frameworks in ethnography and genre analysis.

1.1.2 Rationale for the research

This study originates in a 2006 request to me from a Home Office official about the feasibility of using interpreters for PVL (Prison Video Link) court hearings. In 31 Crown Courts and 149 Magistrates Courts in England and Wales, remand prisoners who are awaiting disposal of their cases for one reason or another appear in the courtroom not in person, but from the prison via PVL. This is a common procedure which takes place almost every day of the week in Magistrates and Crown Courts where PVL facilities exist. As a result of Section 57 of the Crime and Disorder Act (1998)¹, the UK government installed PVL in many Magistrates and Crown Courts, and, more recently, in all ten Immigration Detention Centres. The main reason for the use of PVL is cost, as it is expensive to transport prisoners to court.

In response to the above request, I undertook a brief exploratory study in that same year involving observation of PVL proceedings in Crown and Magistrates Courts, both from

¹ Section 57 of the Crime and Disorder Act 1997 governs the use of live television links at preliminary hearings. It states:

(1) In any proceedings for an offence, a court may, after hearing representations from the parties, direct that the accused shall be treated as being present in the court for any particular hearing before the start of the trial if, during that hearing—

(a) he is held in custody in a prison or other institution; and

(b) whether by means of a live television link or otherwise, he is able to see and hear the court and to be seen and heard by it.

(2) A court shall not give a direction under subsection (1) above unless—

(a) it has been notified by the Secretary of State that facilities are available for enabling persons held in custody in the institution in which the accused is or is to be so held to see and hear the court and to be seen and heard by it; and

(b) the notice has not been withdrawn.

(3) If in a case where it has power to do so a magistrates' court decides not to give a direction under subsection (1) above, it shall give its reasons for not doing so.

(4) In this section "the start of the trial" has the meaning given by subsection (11A) or (11B) of section 22 of the 1985 Act.

Retrieved from: <http://www.legislation.gov.uk/ukpga/1998/37/section/57>

within the court and from HM Winson Green Prison, brief interviews with courtroom participants, including interpreters, and a short literature survey. My preliminary findings showed that little research had been carried out in this area, and that PVL affects everyone who uses it in a variety of different ways, particularly the interpreter.

1.1.3 Definitions

For the purposes of brevity and definitional clarity, the use of videoconferencing between the prison and the courtroom in England and Wales will be referred to as **Prison Video Link** (PVL) and *interpreted* Prison Video Link proceedings will be referred to as **IPVL**. I will use the term **videoconferencing** (VC) for all other jurisdictions where video link between prison and court is used. **Video conferencing** (VC) will also be used when referring to conference and liaison interpreting settings, but I will use **remote conference interpreting** (RCI) where this involves interpreters working in settings which are distant from that of the other participants in the process². RCI will also be used as an abbreviation of **remote conference interpreter**. I hope that the context will enable the reader to work out which meaning is implied. **Magistrates Court** and **Crown Court** refer to England and Wales only, as Scotland and Northern Ireland have their own judicial systems. This study does *not* include literature about the use of VC for witnesses, child witnesses or defendants in trials. **Plea bargaining** in this study refers only to US courts, even though the procedure is common to English, Welsh and US courts. The term **picture in picture** (PIP) refers to the frame which is superimposed upon the video monitor; thus defendants on remand in custody can view the courtroom but they also see themselves on the PIP. The court participants' view is of the prisoner, with a PIP of the prisoner's view of the courtroom. The PIP can be moved by the operator to one of four different fixed positions on the monitor. The term **bench legal adviser** is the new name for what used to be called a **court clerk** in a Magistrates Court. Bench legal advisers not only advise magistrates of the law (they are legally qualified and lay magistrates are not), but are also responsible for the smooth running of the court, the initiation of the computer video link with the prisons, tracking speakers, dealing with paperwork and putting into practical effect the decisions of the magistrates. The term **court clerk** persists in the Crown Court, and they have the same responsibilities as bench legal advisers in Magistrates Courts with one crucial difference: they do not necessarily have legal qualifications, as this is the sole province of the

² In the only other major study of VC in criminal proceedings (the AVIDICUS report, 2011) slightly different terminology is used; however, VC is the term the authors use to denote videolinks between courts and prisons.

judge. I have chosen to use the old term of **court clerk** because of possible confusion with **defence advocates** and **paralegals**, also called legal advisers, who attend police stations to give advice to suspects.

1.1.4 The Criminal Justice System in England and Wales: a brief overview

There are three types 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 there³. There are three categories of offences: summary only (can only be dealt with in the Magistrates Court), either way, (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 threes, and pass sentence, or, in more serious cases, “transfer” or “send” cases to the Crown Court. The specialised legal meanings of these two terms will be explained at greater length in chapter 4 together with explanations of the roles of court actors in the Magistrates Courts.

Youth Courts are a branch of the Magistrates Courts also staffed by three specially trained magistrates sitting together. They handle offences by young people aged 17 years and below. Cases 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, the accused can be found not guilty and released without a criminal record, or they can be found guilty and sentenced.

1.1.5 The aims of the research

The first aim is to investigate the effect, if any, that PVL has upon court interaction in interpreted proceedings. Although the technology was first installed as long ago as 1999 in

³ Source: <http://www.hmcourts-service.gov.uk>, last accessed January 31st 2012

Manchester Crown Court⁴, England, there appears to have been little academic interest here in the UK in researching its effects upon the behaviour and interaction of court actors, PVL defendants or the interpreters whose task it is to relay the decisions of the court to limited-English speaking defendants. This is probably because the technology is relatively new. As a court interpreter trainer of fifteen years' experience, I was unable to draw upon *any* research which could be disseminated to trainees and which would guide them in their careers as interpreting practitioners, despite the fact that I had incorporated into the curriculum a work experience training module in a fully-staffed courtroom.

The second aim is to contribute to the development of a set of recommendations and protocols for the use of interpreters in PVL hearings for court staff. As a court interpreter trainer, I discovered in the course of my exploratory study that there was very little in the way of guidance for courts using interpreters in face-to-face cases, let alone in PVL cases. Bearing in mind that interpreting is a complex form of communication in which all those involved share equal responsibility, it seemed to me that this lack of guidance could lead to inconsistent procedures which could impact upon already disadvantaged limited-English speaking defendants. This group of defendants may be, as a result, unfairly discriminated against because of their reliance on court interpreters who have received no training in how to communicate via PVL, and ultimately this could prejudice their treatment by the criminal justice system.

The third aim, which arises as a consequence of the previous two, is to devise training programmes for interpreters using PVL. There is little enough meaningful training in court interpreting in the UK as it is, and although there is an examination in legal interpreting, it does not include court interpreting⁵. As the imperative to save money grows more urgent and use of VC in the criminal justice system becomes more prevalent, interpreters need training courses which prepare them for this way of working.

1.2. Interpreting studies literature

1.2.1 Preliminary comments

⁴ See the summary of the evaluation of the pilot project at 1.3.2.

⁵ The Diploma In Public Service Interpreting (Legal Option) is validated by the Chartered Institute of Linguists. See <http://www.iol.org.uk/>

The evaluation of VC communication in the courtroom has been undertaken in two main academic disciplines: those of interpreting studies (most recently by the AVIDICUS report funded by the European Commission, and by other institutions within the European Union) and law (mostly studies from the US).

1.2.2 The AVIDICUS report

The AVIDICUS (Assessment of Videoconference Interpreting in Criminal Proceedings) report phase 1 (Braun and Taylor 2011a) was produced with financial support from the Criminal Justice Programme of the European Commission, and was published in the wake of the introduction of the 2010 European Directive⁶ on the right to interpreting and translation in criminal proceedings. It is the first major study to investigate and assess the impact of interpreter-mediated VC in this context. Its remit encompasses legal proceedings in general throughout the whole of the European Union, however, and does not address itself in depth to any one country nor to any one type of proceeding. The legal proceedings investigated in the report comprise police and prosecution interviews (Braun and Taylor 2011b, Balogh and Hertog 2011) with only one major study on the impact of VC on court proceedings using sign language interpreters in Australian courts (Napier 2011).

The recommendations in the AVIDICUS report are based upon the findings of the studies and surveys but are generic in their application. This means that there is one set of recommendations and guidelines for all interpreter-mediated videoconferenced legal proceedings, whatever the configuration or numbers of interlocutors, camera positions or contexts. The report refers to “legal practitioners” as a group (for example, Braun 265:2011 and 268:2011). This includes police officers, prosecutors, solicitors and judges. It is my contention that in the court context, different interlocutors have different legal, communicative and practical goals, and that 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. To consider them together as an undifferentiated group implies a unanimity of perspective which is not borne out by my own study, although Braun and Taylor (2011a) do mention the

⁶ This can be found at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:280:0001:0007:en:PDF>

negative view of PVL taken by European Law Societies replicated by my own interviews with five defence advocates in chapter 6.

Nevertheless there are some very valuable insights, and phase 2 of the project seems to promise deeper consideration of some of the findings from phase 1. There can be no doubt that publication of the report will spark a greater interest amongst academics, interpreters (and even politicians) and a desire to consider the impact of PVL and other types of videoconferencing upon legal proceedings. The report is thus destined to be an influential one, and I will refer to aspects of it throughout this study where appropriate.

1.2.3 Findings and recommendations of the AVIDICUS report

I will first give a brief account of the findings and recommendations of the report, and will follow it with an account of Napier's (2011) article. This latter focuses specifically on court interpreting through videoconferencing, albeit in an Australian sign language interpreting context.

Braun and Taylor (2011a) are careful to point out the significance of the different configurations and distribution of participants in VC legal proceedings, and one of her findings shows that *remote* interpreting, where the interpreter is separated from all the other participants, is the most challenging for an interpreter in terms of establishing rapport.

In her previous studies (Braun 2004, 2007) of interpreters in business settings, she found interlocutors spoke more loudly, over-elaborated and seemed less coherent than in traditional face-to-face communication. These earlier findings are backed up by Miler-Cassino and Rybinska (2011) and the comparative study conducted by Braun and Taylor (2011c); these also showed that VC sessions required greater concentration, were longer, and that interpreting problems took longer to be resolved. 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.

Braun (2011) recommends that VC interpreting should be introduced incrementally with pilot phases leading to adjustments before moving on to the next stage. She recommends that it be used solely for low-impact crime and short hearings and that only trained, qualified and experienced interpreters should be used. My own view is that any errors made by less competent interpreters might be compounded when using video link.

There follows a series of recommendations for three groups: for public/judicial services, for interpreters and for legal practitioners and police officers. The recommendations are all practical ones, and are based upon the findings from the report. All the findings in the studies are based on simulations, however, and there is no authentic data available.

1.2.4 Napier's Australian study

Included in the AVIDICUS report is an article by Napier (*ibid.*) based on data obtained through simulated hearings in a courtroom in Australia. Five different configurations were tested for this study, as follows:

| 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 |

Fig. 1 Different configurations of defendants and interpreters tested in Napier's study (2011)

A series of scripts based on actual transcripts of court hearings were used in the five different configurations above. 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 made to the courts in New South Wales, with five out of six of these being accepted by the authorities who commissioned the report. Interestingly Napier recommends that the system should *not* be used at all for Auslan⁷/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:

.....it is recommended that this system is not used to provide Auslan/English interpreting services in NSW courts, as there are too many issues with guaranteeing effective, equitable access.

(2011: 179)

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 the unorthodox seating arrangements for the Deaf defendant and interpreter necessitated by the angles of the fixed cameras, both issues that I have identified as significant in chapters 4 and 5.

⁷ Auslan is the sign language of the Australian Deaf community.

1.2.5 Research into courtroom interpreting in the wider field of interpreting studies

There is a small number of studies on 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 excellent quality vision and sound, conference interpreters involved in 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 (*ibid.*) 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.

Moser Mercer (2005a) also shows how the interpreter's gaze is selective in that it searches for particular verbal or non-verbal behaviour which is needed for information-processing at that particular moment. She analyses the features of successful face-to-face communication and demonstrates how audible and visible speech complement one another. She asserts that listeners rely more on one mode when the other is less readily available and argues that the senses are designed to work together to perceive input; the integration of information from several different sources such as gaze, gesture, facial expression and posture are all required for the effective transmission of information. Because all human utterances are underdetermined (Grice 1975: 225-242) interpreters must supplement what is said by making use of these elements in their renditions. Grundy explains Grice's concept thus: "by this we mean that an utterance might typically have one of several different possible meanings, and that the inferences we draw determine which of these possible meanings is the one which the addressee thinks the speaker is intending" (Grundy 1995:9). Moser Mercer (*ibid.*) claims that such feedback is vital to the interpreting process, and that the interpreter's anticipation mechanisms are fostered by this feedback. She also describes the phenomenon of "presence" as being crucial for optimal performance in simultaneous interpreting and uses Witmer and Singer's (1998: 225) definition: "the subjective experience of being in one place or

environment, even when one is physically situated in another”. Moser Mercer describes four main factors which appear to be important for the fostering of a sense of presence in RCI: control, sensory, distraction and realism factors. (Moser Mercer 2005a: 731). A lack of control of one’s interpreting environment will detract from a conference interpreter’s ability to predict and anticipate: both vital skills for simultaneous interpreting. The absence of multisensory stimulation and/or contradictory information received through visual and auditory channels requires the RCI to deploy additional mental energy to resolving the contradiction. Distraction from the virtual environment is another negative factor, since it is the isolation from the distractions of the real world of the interpreting booth that enables the RCI to immerse herself in the virtual environment and develop a sense of presence. The more realistic the visual and auditory information and the larger the screen, the greater the sense of presence, according to Moser Mercer.

However, surveys of RCI collated and compared by Moser Mercer (*ibid.*) appear to have highlighted interpreters’ inability to develop a sense of presence because they could not obtain a realistic view of the conference room and because of a sense of alienation from the real world. How relevant, then, is the research on RCI for my own study?

1.2.6 Applicability of conference interpreting research

As I have already indicated, no in-depth exploration of courtroom actors’ and interpreters’ experiences of working through PVL in the UK has been conducted to date, (not surprising as the technology is fairly recent and its use with interpreters is even more recent). Their working conditions are very different from those using RCI and working from sound-proof booths. In PVL interpreting the interpreter in the courtroom is deprived of many of the sensory cues cited above by Moser Mercer, cues which would normally be available if the non-English-speaking prisoner were sitting beside him/her. The speakers whose utterances the interpreter is processing for the defendant are co-present in the courtroom with the interpreter. The court interpreter does not sit in a soundproof booth, and must learn to ignore distractions and extraneous noise in the courtroom. PVL hearings are relatively short and sometimes time-limited (lasting from a few minutes to no longer than 30 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 defendant in custody) rarely speaks, and is reduced to being an observer for most court proceedings. The defendant is dependent upon

pre-selected video frames, and if the court clerk, whose task it is to track the speakers, fails to do so, the defendant may be looking at a frame of the magistrates when it is the advocate who is actually speaking, for example. It is not a question of interpreting the utterances of a speaker who appears on a screen, (as in RCI) but of interpreting the utterances of court personnel to a mostly silent, compliant and remote observer: the defendant.

Moser Mercer's assertion that information from the face improves the comprehension of the message and that non-verbal behaviour complements auditory information appears to have a crucial importance for this study, and this is backed up by interview responses of court interpreters in chapter 6 (6.4).

Braun's (2006) article presents a very thorough survey of all the available technologies and accompanying research to date, but there is very little new, detailed or practical information about the impact upon interpreted PVL or the recipients of the interpreter-mediated utterances, despite the title. Braun claims that the spread of new technologies has not replaced face-to-face communication, yet in courtrooms all over the UK PVL is now used routinely, and it seems impossible now to envisage a return to face-to-face communication for defendants on remand in custody. Braun (*ibid.*) also distinguishes between two types of VC in communicative events: ones in which the primary participants themselves are distributed over distant locations and others in which the primary participants are together on site and the interpreter works from a distant location. However, courtroom PVL does not fit neatly into either of these two categories; only one of the primary participants (the defendant) is in a distant location (and his presence is something of a token, since he rarely speaks and is mostly an observer) and the interpreter is co-present with all of the other participants in court. I would therefore argue that every interpreted transaction which is mediated through any kind of video conferencing technology is unique and context-dependent, and that the physical distribution of the participants, the number of people who are co-present, the layout of the room in which the transmission takes place (see figs. 8 and 9 in chapter 4, 4.1.6 for details of layout), the positions of the video monitors, the camera angles, the audio-visual quality, the skill of the technicians, the goals of the institutional proceeding, and, importantly, the status of the participants are only a few of the large number of variables which affect the dynamics of the communication. All of these may well affect the PVL interpreter and will determine the relative success or failure of the interpreted communicative event. Thus, because the PVL courtroom is such a singular place, the insights gained through some of the studies cited by

Braun(*ibid.*) in the field of medical or conference interpreting have a limited application to the courtroom.

1.3. Video conferencing in criminal proceedings literature

1.3.1 Research into the use of video conferencing in the field of law

Whilst it can be said that there is a small body of research (see below) into VC technology and its possible effects and uses in the courtroom (especially in the US where it has been used since the 1970s) there is relatively little research on the effects of VC technology on how the defendant is perceived by the court, or its effects upon the relationship between defence advocate and defendant, or the possible effect of video link on the outcome of the case. Most studies do not mention interpreting.

The studies critical of VC in the US courts have been conducted by US academics and others at the Federal Judicial Center in Washington in the US. Thaxton (1993) is unequivocal: electronic production of a defendant is 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.) Raburn-Remfry (1994) does not go as far as Thaxton, but does set out a wide range of profound concerns about the possibility of such violations. Johnson and Wiggins (2006:218) claim that the right of a defendant to confront witnesses is “arguably compromised”. 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 that of the judge in the courtroom as a neutral convenor, and defendants need to be aware of this (Borman 2001). There is a potential “dehumanising” effect of appearing by VC (Johnson and Wiggins 2006:215); 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 (1989) psychological study demonstrating how the higher acoustic frequencies carry information about the emotional state of the speaker is cited by Johnson and Wiggins (*ibid.*). They claim

that 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, Johnson and Wiggins and Raburn-Remfry 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's (*ibid.*) study is by far the most comprehensive study of VC in criminal proceedings to date. She focuses exclusively upon the experience of appearing remotely in court for both the English-speaking defendant and the defence attorney, drawing upon a wide range of her own experiences as a lawyer and studies in the fields of communication studies and social psychology which appear to demonstrate multiple negative effects upon both of these parties. She considers the limitations of the technology, citing 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; she 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. Since the accounts of inadequate representation of defendants in court by public defenders in the US are legion, the use of VC in court, involving as it does the separation of lawyer and client, tends to make an already bad situation worse, she argues. Again, no reference is made to interpreting or to other court actors in interpreter-mediated hearings.

Although interpreters are mentioned twice in Haas (2006) who carried out a study into the use of videoconferencing in immigration proceedings in the US, his concerns relate solely to the separation by distance of interpreters from defendants and that many non-English speaking defendants do not have access to one. His conclusions about the use of VC in court are negative; like Poulin, Johnson and Wiggins (*ibid.*) 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.

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 must choose whether to look at the screen and 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 reported their concerns to me. This issue is frequently raised in chapters 4 and 5 of this study.

Johnson, Wiggins and Poulin (*ibid.*) all claim that demeanour and gaze are part of the constellation of elements which make up the perception of guilt or innocence on the part of legal decision-makers. Whether these aspects of non-verbal communication have any effect on magistrates or judges in England using PVL remains largely unexplored, and chapter 6 analyses semi-structured interviews with magistrates and district judges (6.4), court clerks (6.5), crown prosecutors (6.6) and defence advocates (6.7) where these issues are discussed.

1.3.2 The 2000 Government report on PVL

(Plotnikoff and Woolfson 2000) produced a significant and comprehensive government report on the subject of PVL: an evaluation of the video link pilot project being trialled at Manchester Crown Court in 1999 (mentioned at 1.1.5).⁸ In many ways this non-academic report echoes most of the concerns and shortcomings expressed by lawyers and legal researchers in the literature review in section 1.3.1, and foreshadows my own findings in chapters 6 and 7, although none of the cases observed for this evaluation were interpreter-mediated. Defence advocates expressed concerns about confidentiality in the pre-court booths, difficulties taking adequate instructions from their clients through PVL and fears that defendants could not follow what was happening in court; judges and court clerks thought that defendants *present* in the courtroom could follow proceedings and maintain eye contact better than those appearing on the link. A constant theme throughout my own study is the failure of the court clerk to track the current speaker and its effect upon the defendant. This is clearly highlighted by the authors:

Some clerks had difficulty in doing so [tracking the current speaker] at pilot hearings observed by the evaluators. Defendants can easily become confused if the speaker is not in

⁸ The full report can be accessed at <http://lexiconlimited.co.uk/PDF%20files/Videolink%20Crown.pdf>

shot at any particular time. The layout and design of the video link courtroom and the adherence of participants to some simple protocols are important in avoiding such confusion.

(Plotnikoff and Woolfson 2000:6)

Inaccurate tracking of current speakers in interpreter-mediated PVL hearings is an issue which is discussed in more detail in chapters 5, 6 and 7 and it forms a significant part of the findings and recommendations in chapter 8. However, this study is taking place in an entirely different environment, where, 12 years later, PVL is very much the norm. The Plotnikoff and Woolfson (*ibid.*) report seems to focus on technical issues, whereas my own study focuses entirely on interaction and communication. I will refer to the report again in chapter 8.

1.3.3 Summary

Although PVL has been in operation for thirteen years in England and Wales, it has not been researched as a medium of communication either in interpreter-mediated or non-interpreter-mediated cases. Interpreter educators urgently need research-based information in order to deliver effective training to trainees. Interpreters are working intuitively, which could compromise the communicative relationship between interpreters and defendants. Courts have no useful guidelines, and so they too are working intuitively. The AVIDICUS report (*ibid.*) does not address PVL directly, although it raises some interesting issues and is still the most recent and thorough investigation into VC in criminal proceedings to date. Defence lawyers and judges have shown concerns about the use of VC in US and English/Welsh courts, and these are certainly echoed by the court actor interview responses in chapter 6.

1.4. Language of law literature

1.4.1 Studies of the language of legal proceedings other than trials, interpreted and non-interpreted

There is a considerable body of research into various aspects of courtroom language, but these studies have focused mainly on various aspects of criminal trials (especially in Anglo-American jurisdictions) as opposed to pre-trial, civil or other non-evidential procedures. Examples are Danet (1980) on the language and the construction of reality in a manslaughter

trial; O'Barr (1982) on how language is used as a means of control in the trial; Drew (1990) on the examination of witnesses as a contest; Stygall (1994) on discursive practices in trial language; Cooke (1997) on questions and answers in Aboriginal evidence in Australian courts; Eades (2002) on the linguistic strategies used by defence counsel with young Aboriginal witnesses; Heffer (2005, 2007) on legal-lay courtroom interaction in trials; Atkinson and Drew (1979) with their pragmatic study of the language of an inquest and a tribunal of enquiry (not trials but certainly investigating lawyers and their adversarial cross-examination of witnesses and therefore similar in this respect, at least, to a criminal trial) among many others.

Studies of interpreters in the courtroom have also focused largely on the trial: Berk-Seligson 1990/2002 on the linguistic strategies of interpreters; Hale and Gibbons (1999) on the construction of realities in interpreter-mediated trials; Rigney (1999) on questioning in interpreted testimony; Jacobsen (2002) on interpreter additions in trials; Hale (2004) on the discourse of witnesses and interpreters; Christensen (2008) on direct and indirect forms of address by trial judges. Notable exceptions in non-interpreted non-trial hearings are Maynard (1982), who conducted extensive examinations of the language of plea bargaining, Harris (1984), with her study of questioning in fines courts in a Magistrates Court in England, and Conley and O' Barr (1990), whose investigation of interactions between lay litigants and judges in the relative informality of small claims courts in the US has some relevance for this study in that several of my recorded hearings took place in courts where defendants were unrepresented (although the context was the magistrates court and not the small claims court). Conley and O'Barr found that the behaviour of lay litigants in these courts fell into two main categories, relational and rule-oriented, and that this behaviour was based upon their own beliefs about the law. Relational litigants were more likely to believe that the law was there to punish according to their own notions of social need and entitlement, and, as a result, more likely to introduce extensive details of their social lives into their narrative accounts, which Courts deem to be irrelevant and inappropriate. Many of these relational litigants regard the court process as a kind of therapy, irrespective of whether they win their cases or not. Rule-oriented litigants, on the other hand, are engaged in "a deductive search for blame" (1990:59) and introduce few extraneous facts into their accounts, concentrating upon issues which the court is likely to deem relevant to a case. Their behaviour is based upon a particular notion of the law as "a system of precise rules for assessing responsibility"(1990:58). The authors stress, however, that some litigants do exhibit both types of behaviour in their accounts. Since

most of the rule-oriented litigants are educated business people, landlords and other professionals who have acquired the skill of rule orientation, whereas most of the relational litigants are from less powerful sub-classes and minorities who are less well educated and do not have the opportunity to acquire these skills, the latter are at a disadvantage in the small claims courts. Conley and O'Barr based their analysis upon uninterpreted court hearings in informal courts. Nevertheless, their description of the role of small claims court judges in these informal courts (master of ceremonies, inquisitor and referee) is somewhat similar to the role of magistrates in the Magistrates Courts when unrepresented defendants enter the dock and are given a great deal of latitude to relate their version of events. To some extent these roles are assumed by magistrates in England and Wales too, but they are often carried out jointly rather than by one person. Conley and O'Barr's master of ceremonies, inquisitor and referee roles are often assumed by both magistrates acting as bench chairs and court clerks, and in chapter 4 there are two interpreted cases where defendants are unrepresented (see 4.5 and 4.8). Further brief references will be made to unrepresented relational-oriented and rule-oriented defendants in chapter 4 (see sections 4.5, 4.5.4 and 4.8.4).

It is beyond the scope of this study as to whether unrepresented defendants, interpreted or not, suffer the same disadvantage as the relational litigants in Conley and O'Barr's study.

1.4.2 Intertextuality in court hearings

Philips (1998:28) applies the concept known as 'intertextuality' to the relationship between the written and spoken genres of the law. The written law of Rule 17, *Arizona Rules of Criminal Procedure: Pleas of Guilty and No Contest* (Arizona Revised Statutes) influences and dominates the spoken realization of it in the context of the guilty plea in the US courtroom. Because the guilty plea procedure is bounded by an opening and a closing, she regards it as having genre-like properties. She cites the work of Briggs and Bauman (1992:131-172) on the 'intertextual gap'; that is, the degree of closeness between genres which represent the same kind of information. In her transcripts of guilty plea hearings, she shows how judges implement Rule 17 in speech and thus realize the written law in a different genre. The degree to which different judges broaden the gap between written and spoken genres shows how one genre (the written) can transform another (the spoken). In fig. 2 below I have shown how PVL hearings how spoken and written genres are combined to form a complex whole.

| Procedure | Genre | Person responsible |
|---|----------------|-----------------------|
| Opening | | |
| Call of case | Spoken | Usher/court clerk |
| Identification of defendant | Spoken | Court clerk/defendant |
| Substance of procedure | | |
| Nature of charge re-capped | Spoken/written | Court clerk |
| Background to case | Spoken/written | Court clerk |
| Opposition to bail/request for imposition of conditions | Spoken | Crown Prosecutor |
| Application for bail | Spoken/written | Defence advocate |
| Closing | | |
| Bail decision | Spoken/written | Chair of Bench |

Fig. 2: spoken and written genres in a bail hearing after Philips (1998)

As in Philips' (*ibid.*) study on guilty pleas, many court hearings are dominated by the language of the Bail Act (1976)⁹ and other Acts with stock phrases lifted directly from them are used throughout the procedure. It is also common to hear these phrases used in elliptical form. Fig. 3 below is just one example, and there are many others to be found in chapters 4 and 5.

| The spoken realization | The written genre | Law referred to |
|---|---|----------------------|
| The prosecution object to bail on the grounds of further offences, failure to surrender and interference with justice. (Crown Prosecutor) | He [a person] may be required to comply, before release on bail or later, with such requirements as appear to the court to be necessary to secure that (a) he surrenders to custody (b) he does not commit an offence while on bail (c) he does not interfere with witnesses or otherwise obstruct the course of justice whether in relation to himself or any other person | Bail Act 1976 (c.63) |

Fig. 3: Example of spoken realization of the written genre recorded in an English Magistrates Court

⁹ In England and Wales there is a general right to bail. Any person accused of committing a crime is presumed innocent until proven guilty in a court of law. Therefore a person charged with a crime should not be denied freedom unless there is a good reason. The main reasons for refusing bail are that the defendant is accused of an imprisonable offence and there are **substantial grounds for believing that** the defendant would [abscond](#), commit further offences while on bail, or interfere with witnesses. The court should take into account the nature and seriousness of the offence, the character, antecedents, associations and community ties of the defendant, the defendant's bail record, and the strength of the evidence. (Retrieved from <http://www.legislation.gov.uk/ukpga/1976/63/crossheading/bail-for-accused-persons-and-others>. Last accessed February 2nd, 2012.)

1.4.3 Trials in English and Welsh Magistrates Courts

Trials do take place in the English and Welsh Magistrates Courts (without juries) as well as in the Crown Court (with juries), but in fact, the trial as a judicial process is much less common than other types of proceedings. On 12th January 2012, the most recent figures available showed that of the 1.5 to 2 million hearings in the Magistrates Courts only 43% of them proceeded to trial there¹⁰. Since the offences tried in the Magistrates Court are summary or either way offences¹¹, they attract much less attention from researchers, despite the fact that approximately 97%¹² of all cases begin and end there and only the remaining 3% are dealt with in the Crown Court.

I want to shift the focus away from the comparatively rare occurrence of the Crown Court criminal trial towards *non-trial* proceedings in the Magistrates Courts where most of the business of the criminal justice system is conducted. There appears to me to be a great diversity of styles of legal language and social contexts to be observed in non-trial proceedings. In the Crown Court, this diversity becomes, to some extent, levelled out; Crown Court advocates (generally speaking but not always) both prosecute and defend rather than specialize in one or other of the two different types of advocacy, as in the Magistrates Courts, and it is possible that this may have an effect upon speech styles.

1.5 Gobo's visual orientation study

Gobo (2008a) carried out an interesting ethnographic study of communication in medical emergency dispatch centres. The researchers noticed that some call takers interacted much more frequently than others with medical staff, based in the same room. Having discarded all other possible explanations of this phenomenon, they concluded that the interaction could be explained by the constraints imposed by visual orientation. In his diagram (reproduced in Gobo 2008b:184) demonstrates how the "foveal vision cones" or sightlines, correspond to the visual angles of the greatest concentration of attentiveness. This in turn explains the privileged relations between particular call takers and medical staff.

¹⁰ Source: <http://www.justice.gov.uk/publications/statistics-and-data/courts-and-sentencing/judicial-quarterly.htm>

¹¹ Summary offences are minor ones which can only be dealt with in a Magistrates Court; either way offences can be dealt with in the Magistrates Court or the Crown Court and are more serious. (Source: <http://www.hmcourts-service.gov.uk/last> last accessed October 21st 2009)

¹² Source: <http://www.judiciary.gov.uk/>

Sightlines and seating positions are vital components of interaction in the courtroom, and are discussed in the courtroom fieldwork chapters 4 and 5. Whilst acknowledging the potential significance of these factors, it was not possible within the scope of this study to fully explore their influence. Chapter 8 makes a recommendation for further research in this area.

1.6 Summary of chapter 1

What the literature shows is a pre-occupation with the trial in non-interpreter mediated cases, and a similar pre-occupation with the interpreter *within* the trial system with a focus on comparisons between source texts and target renditions. According to Christensen, however, it is important to “investigate *all kinds* of interpreter behaviour” (2008:105) and Mason suggests that we should “observe regularities of behaviour of *all other parties* to these encounters”(Mason 2000:220) (my italics).

It seems that there are virtually no studies of interpreters and court actors in the English and Welsh courts for videolinked reviews of detention, re-remands and committals to the Crown Court - hearings which are extremely common and which are much less adversarial than a trial. This analysis will provide a unique insight into the functioning and procedures to be observed in interpreter-mediated, non-evidential hearings, and will make a substantial contribution to the training curricula of both court actors and interpreters. The main focus of this study, then, is not the language of the court as such, but rather the proximity, behaviour and interaction of defendants and court actors.

In chapter 2, I will present and discuss another aspect relevant to this study: the *challenges* inherent in court interpreting. I shall review the existing literature with a view to isolating the challenges that relate solely to face-to-face interpreting and those that may be generated specifically by video link hearings.

Chapter 2: Literature review: court interpreting

2.1 Introduction

This study aims to discover if interpreter-mediated face-to-face hearings and procedures are different from interpreter-mediated prison video link hearings and whether any differences impact upon the communication process for court actors and for non-English speaking defendants on remand in custody and who appear in court remotely from prison. The aim of this chapter is to review the literature on traditional court interpreting in a wide range of face-to-face court contexts so as to isolate the factors that relate to face-to-face court interpreting and subsequently compare them with those that are generated specifically by video link interpreted hearings. These latter challenges can then be regarded as additional layers of complexity, which can be subjected to analysis. Through this process it will be possible to devise interpreter training programmes based on the empirical evidence obtained from audio-recordings of interpreted court-prison-video link proceedings.

All interpreter-mediated interaction in public service contexts presents a range of communicative challenges for participants, interpreters, service users and service providers alike. These challenges originate in four different areas: the modes of interpreting used in court, the institutional settings within which interpreters operate, the nature of interpreted communication itself, and finally the critical situations in which most service users find themselves resorting to an interpreter. Naturally, these are entirely arbitrary divisions that cannot hope to account for all the elements of difficulty in court interpreting, and constitute no more than an attempt to provide a descriptive framework which might serve as a baseline for the later examination of court interpreting through video link.

Firstly, communication in a monolingual court is different from that in a bilingual court, and the presence of the interpreter has a direct effect upon legal procedures and the behaviour of other court actors in that setting. The degree to which court actors are aware of her presence also affects the dynamics and communicative relationships within that court. This links up with one of my working research questions (see 4.2.1) which is that formal open acknowledgement of the interpreter's presence by court actors leads to a greater accommodation of her professional needs. This research question will be explored in chapters

4 (face-to-face hearings) and 5 (PVL hearings) using the evidence provided by recordings and transcripts.

Secondly, as in every institution, the law has its own social hierarchies, rule-governed relationships, power differentials, socio-political frameworks and speech styles. Outsiders, such as interpreters and others who have no designated role within that setting, disrupt normal professional practice and cause confusion in terms of roles and responsibilities in communication. Interpreters are expected to be invisible yet cannot help but impact upon the interaction. In chapter 4 (4.2.2, 4.2.3, and 4.2.4) and chapter 5 (section 5.2) the issues of interpreter presence, role and responsibility together with those of other court actors are treated in depth through the formulation of three other research questions. These explore assertions about interpreter interventions for repetition or clarification, interpreters' responses to defendant back-channelling and interpreter strategies or modes and their appropriateness. Again, the research questions will be explored in the two contexts using the evidence mentioned above.

Thirdly, there are challenges which originate in the nature of interpreted communication itself and the transfer of cultural and linguistic concepts from one language to another. Interpreting is essentially a triadic form of communication between two interactants (a service user and a service provider) who do not share the same language, and who may not share the same culture. This alters the dynamics of normal dyadic exchanges in such a way that the interpreter can become a *co-ordinator* and *constructor* of talk (Wadensjö 1998).

Fourthly, public service interpreting takes place¹³ in a situation which involves a crisis of one sort or another in the life of the non-English speaking interactant; there is usually a great deal at stake. Because of the critical nature of the interaction, then, the alterations made to speakers' utterances by interpreters may have both practical and significant consequences for the service user.

This chapter will thus provide a literature survey of the main issues in the four problem areas identified above. Firstly however, I will explain the qualifications required by interpreters to

¹³ Public service interpreting is the umbrella term used in the UK for any interpreting involving communication between a service user and a public service provider. Other countries use the term "community interpreting".

work in English and Welsh courts, and secondly, I will describe the main differences between interpreting and translating and consider some of the main debates and issues in the field.

2.1.1 Interpreter qualifications and recent developments

In theory, interpreters are supposed to possess a pass in all six tasks of the Diploma In Public Service Interpreting, Legal Option. The six tasks consist of two interpreting tasks each with 10 minutes consecutive interpreting and five minutes simultaneous interpreting (30 minutes in total; these two tasks are actually considered as one); two sight translation tasks, into and out of the foreign language; and two translation tasks, into and out of the foreign language. There is no test of ethical understanding. At the time of writing, the examination does not test court interpreting. At this point it is worth stating that two five-minute simultaneous interpreting tasks is hardly an appropriate preparation for face-to-face court interpreting. Most of a court interpreter's work will be in the simultaneous mode, as hearings are overwhelmingly non-defendant-focused (unless defendants are unrepresented). This could involve many hours or even days using the simultaneous mode.

At the time of writing the debate about the professionalization of interpreters has intensified because the Ministry of Justice has recently outsourced all interpreting to a single commercial agency, Applied Language Solutions (now taken over by a multinational company called Capita). From February 1st 2012, this company was contracted to supply all court interpreters to Magistrates and Crown Courts across England and Wales. Some police forces have also contracted out to the same company. The company is at present contracted to assess potential interpreters, source them, supply them on demand to the courts, monitor their performances, maintain an interpreter register, provide professional development courses and adjudicate in cases of disciplinary matters, functions normally carried out by autonomous professional bodies. Even professionally qualified interpreters must submit to the new assessment process. The National Register of Public Service Interpreters, with its strict admission criteria and in operation since 1995, is now no longer in use as far as the courts are concerned. Despite the stipulation of the Ministry of Justice that interpreters should have interpreting qualifications, the evidence emerging from the courts and the interpreting profession is that un-assessed, unqualified and inexperienced interpreters are being sent to courts where they are found to be unable to cope with the work. These errors have resulted in many aborted trials and adjourned cases at huge cost to the tax payer. At the time of writing, representations have been made to

the Public Accounts Committee and to the Justice Select Committee of the House of Commons.

2.2 The fields of interpreting and translating

Interpreting Studies is traditionally regarded as a branch of Translation Studies. Providing an adequate definition of the above terms is no easy matter, as it depends on whether such a definition is in the context of the specialist academic domain or the general lay domain. In the lay domain, non-specialists, the media and even interpreters themselves, frequently use the word “translator” to mean “interpreter” (as in “court translator”). In the specialist academic domain, interpreting (or interpretation) can be broadly defined as “interlingual, intercultural oral or signed mediation, enabling communication between individuals or groups who do not share, or do not choose to use, the same language(s)” (Pöchhacker & Shlesinger, 2002:3). Confusingly, the term “translate” is used by academics to describe the process of transferring or converting meaning from one language to another. So the activity of interpreting is considered to refer to the “translation” of the spoken word and translation to the “translation” of the written word (Hale 2007:3). However, as Pöchhacker & Shlesinger point out, the very words “interpreting” and “interpretation” are problematic in the English language, as these are used interchangeably in both domains. The latter implies an explanation of meaning, or an expansion of someone’s source utterance, and as Chesterman (2006) has shown in his etymological investigation of such words as “interpret” and “translate”, their meaning is not consistent across all languages.

Hale (2007) gives us four other key definitions of translation/interpreting which can be said to show the development of ideas about the translation process over the past five decades. Hale’s first key source is Rabin (1958:123) who defines translation as: “a process by which a spoken or written utterance takes place in one language which is intended and presumed *to convey the same meaning as a previously existing utterance* in another language.” (All emphases are my own). Nearly twenty years later House’s definition highlights the notion of pragmatic equivalence together with consideration of the importance of speakers’ intentions: “in translation it is always necessary to aim at the equivalence of pragmatic meaning, if necessary at the expense of semantic equivalence. Thus pragmatic meaning, for House, overrides semantic meaning. We may therefore consider a translation to be primarily *a pragmatic*

reconstruction of its source text.” (House 1977:28). Another twenty years on brings us to Wadensjö’s definition, which makes no mention of equivalence: “an act of translating is in practice performed by a specific “I”, *speaking or writing on behalf of a substantial other.*” (Wadensjö 1998:41). For Wadensjö, notions of fidelity and message preservation give way to the notion of message creation, and the acknowledgement that an interpreter makes new meanings in her renditions. Hale’s final definition is from Pöchhacker, whose definition encompasses the practical processes as well as the product of interpreting: “Interpreting is a form of translation in which a *first and final rendition* in another language is produced on the basis of a *one-time presentation of an utterance in a source language*” (Pöchhacker 2004a). Thus, as Hale points out, there are areas of disagreement in the field about the extent to which interpreters can remain faithful to the original, and, in general, the concept of faithfulness has been replaced by the notion of “equivalence”.

It is clear that there are differing notions of “equivalence”. If, as Hale says “what is meant is a literal translation - that is, a target text that is equivalent at all levels of the language hierarchy (lexical, syntactic, semantic and pragmatic) – then such a requirement is largely unachievable. If, however, as has been argued (House 1977; Hale 1996, 2004; Nord 1997) equivalence is viewed from a pragmatic perspective, it is an achievable end.” (Hale 2007: 7).

2.2.1 Comparisons between interpreters and translators

Hale (*ibid*) points out that translators have the advantage of having the texts they are to translate in front of them, together with the time and resources to consider all the different possibilities for translating them. She regards conference interpreters as having more in common with translators, as they have the same set of resources available to them. So-called community interpreters do not have much access to documentation, and cannot prepare what they are about to hear (see 2.3.7). In addition, there are areas where the activities of translation of the written and oral modes overlap, such as sight translation, where the interpreter makes an oral rendition of a written text, again, with very little preparation time.

2.2.2 The myth of “verbatim” interpreting

The persistent view of the judiciary that interpreters must convey everything they hear in court “verbatim” is one of the biggest obstacles when training court actors to work collaboratively with interpreters.

Mikkelsen (1998) reviews the debate about interpreting and translation to show that the typical judicial exhortation to interpret “literally” or “verbatim” is, in Morris’ phrase, nothing but an unattainable legal fiction. As Morris (1995) states, it is unreasonable of the judiciary to expect courtroom language to be transparent in meaning and thus susceptible to verbatim translation when the law itself requires expert intralingual interpretation by lawyers and judges. Although, as Mikkelsen suggests, court interpreters have a professional obligation to provide accurate and complete interpretations of messages from one language to another, if words have no meanings without contexts, and the language of the law is complex and verbose, literal interpretation is both meaningless and impossible. Mikkelsen gives some interesting practical examples of typical source texts to be found in the courtroom and shows some of the difficulties of rendering them into Spanish. One of the features of Spanish that she highlights is the polysyllabic nature of Spanish words as contrasted with the large number of monosyllabic words in English. She compares some typical courtroom source texts in English with target texts in Spanish; whereas the English texts have an average of 1.50 syllables per word, the Spanish ones have an average of 2.16 syllables per word. Obviously it will take longer for an interpreter to articulate the target text utterances than the source text utterances. Mikkelsen (*ibid.*p.5) shows how source texts can be reduced whilst still preserving the legal register of the original, thus saving time and breath for the interpreter. She also describes the concept of “compensation” attributed to Vazquez-Ayora (1977), where “a translator offsets the inability to render a particular element of meaning in one part of the text by expressing it another form in another part of the text.” The example she gives is the problematic rendition of the English word “you” in Spanish, since in this and many other languages, its rendition depends on the relationship of the person to the speaker, and has no equivalent in English. She highlights another problem of interlingual transfer; some languages do not have a legal register at all (for example, in countries where the language at issue is a minority or an indigenous language). Insults and swear words are also culture-specific, and Mikkelsen asserts that interpreters must be able to make the necessary adaptations in order to convey these effectively. She claims that the speed of the speaker has implications not only for the interpreter but also for the defendant in court. According to Mikkelsen, simultaneous interpreters may be able to process speech delivered at 170 words per minute, but defendants may well have difficulty in processing information at 190 words per minute, the speed required to render meaning from the source to the target language. Her sample English texts and their translations into Spanish show how utterances can be reduced and legal register

preserved without any loss of meaning. This skilled procedure is the very opposite of the verbatim, or literal, interpreting, that the judiciary often expect from interpreters.

2.3 Modes of interpreting: consecutive and simultaneous modes in the court context

2.3.1 Definitions of consecutive and simultaneous interpreting

Pöchhacker (2004) describes consecutive interpreting mode as a continuum whereby utterances from as short as one word and as long as entire speeches can be rendered. There is a distinction to be made between short utterances (such as questions and answers) and longer utterances (such as long speeches lasting up to ten or fifteen minutes). For the former, **short consecutive** is the mode generally used. In short consecutive mode, interpreter renditions are made when the interlocutor has finished speaking. For the latter, **long consecutive** is used. Long consecutive involves considerable effort of memory and extensive note-taking in order to accurately render the whole content of a speech in the target language “in one go”(2004:18). Pöchhacker points out that the distinction between simultaneous and consecutive modes is not always as clear cut as the terminology might imply, however, claiming that “even spoken-language liaison interpreters often give their (essentially consecutive) renditions as simultaneously as possible”(2004:19). De Groot (1997:26) identifies a subtle difference between what she calls “semi-consecutive” and consecutive interpreting. In semi-consecutive interpreting, speakers fragment their speech so that interpreters render each segment consecutively, rather than rendering a whole speech in one go, as in long consecutive. This fragmentation is extremely common in community interpreting, and particularly so in the courtroom. Much of the data I have collected for this study consist of these semi-consecutive renditions (see chapters 4 and 5) and it presents problems which are discussed at the end of each of those chapters, and also in chapter 8.

The **simultaneous** mode of interpreting involves providing the rendition *at the same time* as a person is speaking. Simultaneous mode can be delivered in two ways: either through electronic transmission equipment (in which case it is voiced) and whispered simultaneous, or *chuchotage*, with no equipment. In the latter mode the interpreter sits next to the limited-English-speaking person and renders speakers’ utterances. Despite its name, this mode of

interpreting is usually delivered to a defendant *sotto voce*, at a volume slightly greater than a whisper but not so loud as to be clearly heard by the rest of the court (Pöchhacker, *ibid*).

In English and Welsh face-to-face courtroom hearings it is the accepted norm that when defendants and witnesses are being directly addressed, short consecutive mode at full volume is used; when defendants are not being directly addressed whispered simultaneous mode is used, *sotto voce*. This will be explained in more detail in chapter 4.

2.3.2 Consecutive versus simultaneous: which is the more accurate mode?

This study focuses on the interactional behaviour of court actors, and it is a central plank of my argument that such behaviour is bound to be affected by the modes of interpreting used by the interpreter. These modes are easily visible (though not necessarily audible) by everyone present in court.

It might seem axiomatic that consecutive interpreting (that is, renditions into the target language delivered *after* a person has finished speaking) is easier to perform and therefore more accurate than interpreting performed in simultaneous mode, since in Gile's words:

...interpreters have the possibility of listening to and assimilating the linguistically completed expression of ideas or sequences of ideas before starting to produce their own speech, whereas in simultaneous, they cannot afford to lag behind the speaker and therefore must often start their rendition into the target language on the basis of a shorter, not fully digested source-speech segment.

Gile (2001:8)

This is the view expressed by early researchers such as Van Hoof (1962), Longley (1968) and Weber (1989) but disputed by Gile (*ibid.*), whose study about the relative accuracies of the two modes was triggered by informal conversations with interpreters who claimed that "certain speeches are too fast for consecutive but 'feasible' in simultaneous" (2001:8-9). His subsequent study revealed simultaneous mode to be "clearly superior" (2001:8) to consecutive, but he urges caution when attempting to generalise his conclusions. Interestingly, as far as accuracy is concerned, he suggests that some language combinations may be more amenable to one mode of interpreting rather than another.

This view is in direct opposition to Russell (2005) and most other researchers. Russell's comparative study of sign language interpreting in the two modes demonstrated much greater accuracy for consecutive rather than simultaneous. Witnesses who testified through interpreters in her study also expressed a preference for consecutive rather than simultaneous mode, finding it easier to understand "especially during complicated questioning" (2005: 154). Mikkelsen (2010) too is clearly of the view that consecutive is superior to simultaneous in terms of accuracy and fidelity.

It all depends, of course, what is meant by the term "accuracy" in so-called community interpreting. To Hale (2007) "accuracy" involves not simply the transfer into another language of all the propositional content in a message, but the inclusion of non-content discourse features such as tone, style of speech and hesitation markers. Hale maintains that, in simultaneous mode *into the mainstream language* (as in courtroom interpreting), content is conveyed at the expense of form. The inference is, then, that modes of interpreting which preclude the transfer of these discourse features (such as simultaneous from English into the foreign language, whispered simultaneous and long consecutive - see Hale 2007:24-5) are less "accurate" than other modes of interpreting such as short consecutive and whispered simultaneous into the mainstream language).

Naturally, the two modes should not be considered in isolation from environmental or contextual factors which could affect the interpreter's cognitive load. For example, fatigue and stress induced by competing against noise or other distractions, poor acoustics, or working for too long in either mode will have an effect on the interpreter's accuracy. Some of these factors will be described in greater detail in section 2.3.

However, in chapter 6 of this study, interpreter 3 (INT(iii)) maintains a similar position to Gile (2001), claiming that she can convey tone of voice and emphasis as well as content by using simultaneous mode into the foreign language, but that when using consecutive mode she can convey content only, and her rendition is less accurate. Informal discussions have also shown me that many interpreters are of the same view as INT(iii). This is probably an area where no firm conclusions can yet be drawn about the merits and limitations of either mode, but since most UK court interpreters receive very little, if any, proper training in either consecutive or simultaneous interpreting techniques, and the latter is only examined for a period of five minutes in the Diploma In Public Service Interpreting examination, it is highly

likely that most interpreters are using the two modes intuitively. Evidence for this is provided in chapter 4, where I explain whispered simultaneous interpreting (*chuchotage*) in greater detail and *when* it is usually deployed in court.

2.3.3 The use of third person in interpreting and the Code of Practice for interpreters

The generally accepted method of interpreting, not just in the courts but in all public service interpreting contexts, is by using direct speech. In other words, if someone speaking a foreign language says “my name is X” the interpreter should interpret this as “my name is X” rather than “he says his name is X”. There are good reasons for this; firstly the problem of pronoun confusion is minimised, secondly it obviates the need on the part of the interpreter to reformulate the utterance from reported into direct speech, and thirdly it focuses the attention upon interaction between the service user and the service provider rather than the interpreter as an intermediary, creating the illusion that the two key participants are speaking directly to one another. Most Codes of Practice around the world stipulate this. For example, Canon 5 of the Code of Ethics and Professional Responsibilities, the National Association of Judiciary Interpreters and Translators exhorts its interpreters to “use the same grammatical person as the speaker. When it becomes necessary to assume a primary role in the communication, they must make it clear that they are speaking for themselves.”¹⁴ However, the NRPSI Code of Practice for registered interpreters in the UK does not specify which person shall be used for the interpreting process, nor the reasons why this should be done.¹⁵ Use of the third person in interpreting can be traced to the alignment of the interpreter with the service user, as demonstrated here by Angermeyer (2009).

Angermeyer examines first and third person usage by interpreters in a small claims court in New York where claimants are not legally represented. He notes that interpreters fall into three categories when interpreting in these courts; those who use first person translation (“I

¹⁴ The code can be found at <http://www.najit.org/about/NAJITCodeofEthicsFINAL.pdf>

¹⁵ Extract from the Code of professional conduct, National Register of Public Service Interpreters:

| | |
|--------|--|
| 5.12 | <i>Practitioners shall not interrupt, pause or intervene except:</i> |
| 5.12.1 | <i>to ask for clarification;</i> |
| 5.12.2 | <i>to point out that one party may not have understood something which the interpreter has good reason to believe has been assumed by the other party;</i> |
| 5.12.3 | <i>to alert the parties to a possible missed cultural reference or inference; or</i> |
| 5.12.4 | <i>to signal a condition or factor which might impair the interpreting process (such as inadequate seating, poor sight-lines or audibility, inadequate breaks etc.).</i> |

have” translated as “I have”), those who use third person translation (“I live” translated as “he lives”) and those who avoid a pronominal reference altogether by using a passive construction (“we give the cash on the table” rendered as “the cash was put on the table”) (2009:9). He finds that, in general, his sample of third person interpreters use this variant more frequently “when translating the voice of the English-speaking litigant or arbitrator than when the source speaker is a speaker of a LOTE (Language other than English)”. Interpreters thus make use of third person when interpreting into the LOTE. By doing so, they signal their non-involvement with English-speaking source speakers and conform to the LOTE litigant’s expectations of a community interpreter. However, when interpreting from LOTE into English, interpreters are more likely to use first person, partly because they align themselves with the LOTE speaker, and partly because they want to demonstrate to the court their awareness of interpreting norms. In this respect, Angermeyer claims that his findings coincide with those of three other researchers (Anderson (1976:212) and Knapp and Knapp-Pothoff (1985:453) who find that interpreters are more likely to align themselves with monolingual speakers of their mother tongue rather than speakers of English. Attitudes to these monolingual speakers affect their behaviour. For example, if interpreters view LOTE speaking litigants as less well-educated than themselves, they blame them for pragmatic misunderstandings or ignore their interruptions by instructing them not to speak out of turn.

There are many examples of third person usage in my own data, both by interpreters and by other court actors when they interact with the defendant (see chapters 4 and 5).

2.3.4 The dangers of interpreters becoming interlocutors

Trinch (2003) provides an example of a triadic interaction between a Spanish interpreter and an official whose task it is to ask particular questions of a Latina woman complaining of domestic abuse. These questions often interfere with the woman’s desire to tell her story in the way that she wishes to tell it. The official does not react or provide any feedback tokens to encourage the woman in the relating of her story, and is largely interested in “reportable” information. However, when the interpreter begins to act as an interlocutor rather than an interpreter, the latter’s open display of emotion at the woman’s plight encourages her to tell her story. Whilst this can be seen as an opportunity for distressed victims of domestic violence to use the interview as a “cathartic space”(2003:151), Trinch shows how dangerous such a practice is; when the woman comes to court, it appears that vital information about a

threat to her life and to that of her unborn baby was stated to the interpreter but not passed on to the official, deleting the accusation of violence from the report.

Section 5.9 of the Interpreter's Code of Professional Conduct in the UK stipulates that interpreters "shall not enter into discussion, give advice or express opinions or reactions to any of the parties"; interpreters who act as interlocutors are obviously violating this Code.

2.4 Problems originating in the institution of the court

2.4.1 Perceptions of the role of the interpreter

Arguably, the most problematic aspect of courtroom interpreting is the interactants' widely differing perceptions of the interpreter's role. The expectation of courtroom personnel, for example, is that the interpreter is a sort of invisible conduit or machine who will convey verbatim and unaltered what is said from one language into another. (See a range of examples in Morris 1999). Defendants on trial, on the other hand, may perceive interpreters as compatriots who can offer support and advice about what to say and what the prospects of acquittal are (Hale and Luzardo 1997). Here the expectations of court and defendants may merge; interpreters sit close to the defendant in the apparent intimacy of the dock performing whispered simultaneous interpreting and arousing the suspicion of the court that they may not be as impartial as they claim to be (Morgan 1982). As for interpreters' perception of their own role, whichever ideology they adopt (whether consciously or unconsciously) will determine the quality and nature of their own output (Hale 2004). If they align themselves with the court's view that they are conduits who transfer words uttered in one language into another, they will interpret literal semantic content only. If they believe that they have a duty to help citizens from their own country with similar linguistic, cultural and religious backgrounds, they will see interpreting as encompassing advocacy and will therefore urge or encourage defendants to make the responses they believe are the most appropriate. If they subscribe to a view of interpreting that is based upon their own intuition and natural inclinations rather than informed by theory and an understanding of the linguistic choices available to them, an inconsistent quality of interpreting will result. Bearing in mind that most UK court interpreters receive minimal training, all or any of the attributes mentioned above may form the typical court interpreter profile to be found in most UK courts today. Those rare

interpreters who have received the extensive training required in pragmatic aspects of language transfer, as recommended in Berk-Seligson (1990/2002), are more likely to be aware of how easy it is to unwittingly distort the court's perception of defendants and witnesses by altering the effect of their utterances; such interpreters will attempt to emphasise speaker intention rather than semantic content, where that is appropriate.

2.4.2 The interpreter as an intruder in the Magistrates Court

Heffer (2005) gives an extensive account of the architecture of an English Crown Court and of how the participants' status and power is represented by courtroom layout. He compares the courtroom to a theatre where power is marked by seating positions and also by the distinctive and separate doors through which participants enter the court. This certainly applies to Magistrates Courts, which may have a slightly different layout, but where power and status are similarly marked. Maley (2000:248) states that "the courtroom operates with a recognised participant format of distinct institutional participant roles": in the case of the Magistrates Court that means three magistrates (or a district judge), a court clerk, prosecution and defence advocates, defendants and witnesses. Hale (2004) underscores the fact that roles in the courtroom are clearly defined for every participant - except for the interpreter.

Interpreters have no special door by which to enter the court and must use the public entrance. They have no designated seating area or distinctive clothing; because of this they must take the initiative to distinguish themselves from other members of the public and to alert the court to their presence. They may encounter uncertainty from the Bench (if not used to working with interpreters) about the swearing-in process, the validity of the interpreters' credentials, the verification of their registration status, their formal introduction to the other court participants, or their seating position. This low participant status creates practical problems which will impact upon their performance in a variety of ways (see sections 1.3, 1.4, 1.5, 1.6, 1.7).

Morris (1995:28) discusses another dimension which compounds the intrusive status of the court interpreter:

The law's denigratory attitude to foreigners, and its related distaste at having to deal with the problems which arise from their presence in the host country, exclude its making

proper interpreting arrangements for its dealings with them. In this way, its dire fears about defective communication become self-fulfilling.

As far as provision of quality interpreting is concerned, she continues, legal professionals appear to ignore the implications that this has for potential miscarriages of justice. Thus the law and those who operate the legal system at every level do not accept that they have a shared responsibility in ensuring such quality.

2.4.3 The concept of non-personhood applied to the courtroom

We owe the concept of the “non-person” to Goffman (1990 [1959]) although it remains relatively unexplored:

Those who play this role are present during the interaction but in some respects do not take on the role of either performer or of audience, nor do they.....pretend to be what they are not. (1990:150)

The example he gives is that of a servant who is physically present but has no direct effect on the interaction and has no public role. He also classifies children, the very old and the sick as non-persons. While Goffman’s definition does not entirely fit the role of defendants (hearings are conducted in their presence but they participate very little in the proceedings unless they are not legally represented) they are at once the most and the least important participants in the process.

Morris (1995: 30) regards non-personhood as a “convenient legal fiction”, and as further evidence of the law’s negative attitude towards court interpreters together with the generally held view of language as a conduit. She cites White (1990:259-60) to support her claim:

...White asks whether that inherently marginal figure, the interpreter, who lives “in the space between two languages” can ever have a voice or an identity of his or her own. Going even further, he queries why it should not be possible for the interpreter to actually enter one or another of these worlds, and “speak with momentary, if qualified, confidence within it”.

(Morris 1995: 35)

Wadensjö (1998) suggests that the interpreter may be a non-person in Goffman’s terms (*ibid.*), although since the interpreter has a speaking role she readily admits that the description does not quite fit. Ironically, it is the defendants who are legally represented in

court in such hearings who are more likely to be non-persons, since the defendant's advocate, having been previously instructed, speaks on behalf of that person and renders his active participation largely unnecessary. Conversely *unrepresented* defendants are the very opposite of non-persons, since the courts must allow them to make representations on their own behalf. There are examples of unrepresented defendants in two of the 11 face-to-face interpreted hearings in chapter 4 and one of the 10 PVL interpreted hearings in chapter 5. In the same chapters, there are clear examples in many of the transcript extracts where interpreters have been forgotten, with actors providing texts delivered too fast, in too fragmented a manner or with too low a volume to be adequately processed by interpreters.

2.4.4 Videoconferencing in English and Welsh courts

There are three contexts in which videoconferencing is used in the courts. The first and most common is prison/detention centre video link (prisoners on remand in custody or detainees in immigration detention centres apply for bail or have their cases reviewed from a specially adapted room within the prison/detention centre). (See chapters 4 (figs.8 and 9), 5 (fig.34) (and 7 (fig.57) for diagrams of typical layouts of these courts.) The second is videoconferencing between a police station and a Magistrates court (the virtual court). Here cases are disposed of and defendants sentenced from the police station without appearing in court in person. The third type is witness video link where vulnerable or intimidated witnesses appear in court remotely to give evidence.

The introduction of videoconferencing into the courtroom setting requires interpreters to make considerable adjustments to their professional practice, and this serves to highlight the extent to which interpreters are intruders in the courtroom. Issues to do with seating position, access to dedicated microphones, lack of electronic transmission equipment, remote communication, acoustics, procedure, gaze and modes of interpreting have not yet been explored by researchers. Investigating the effects of prison video link upon court participants is the subject of this thesis, and this topic will be fully explored in later chapters. As yet, there has been no research into interpreter-mediated prison video link in the English context.

2.4.5 Acoustics

Audibility is well known as a stress factor for both conference and court interpreters. Gerver's study (1974) demonstrated that a deterioration in listening conditions is accompanied by a

considerable rise in the number of interpreter errors. Gerver measured the performance of interpreters subjected to noise interference and found that

levels of noise which would not necessarily impair perception of speech by simultaneous conference interpreters could interfere with the processes involved in the retrieval and transformation of the messages being interpreted.

(1974:159-167)

Sound systems for amplifying the voices of advocates, magistrates, judges, defendants or witnesses are not uniformly installed in all courts. In England and Wales, court etiquette requires advocates to present their cases facing the bench of the Magistrates or judge. The dock, in which defendants and interpreters sit together (sometimes enclosed by thick protective Perspex), is usually at the back or side of the court. Advocates have their backs to the interpreter and defendants, unless specifically reminded not to do so by the judge or magistrate. Interpreters will thus often find themselves deprived of the good quality auditory signals needed as a basis for effective interpreting.

Interpreters who are engaged to work with defendants who are enclosed in secure docks are presented with a choice. Either they enter the secure dock with defendants and lean forward to hear what is being said through the thin slats, or they stay outside the dock and lean backwards or sideways to perform simultaneous interpreting through these slats (see chapter 4 for analyses of some court recordings where defendants are present in secure docks, and see chapter 6 for comments by interpreters about the challenges of working from a secure dock).

An interpreted case requires advocates to change their behaviour in two ways; firstly they must change their physical orientation (face the interpreter rather than the Bench) and secondly make more effort to project their voices so that they can be heard by interpreters. The latter must strain to hear as best they can, and, unlike conference interpreters, are not provided with *any* electronic equipment to facilitate their task (a misleading impression is created by Braun and Taylor's illustration (2011a:33) of a court interpreter wearing headphones while interpreting. Court interpreters in other parts of the European Union may well be provided with such equipment but this is not the case in the UK). Unless defendants are giving evidence from the witness box, interpreters use *chuchotage* (interpreting using the simultaneous mode and whispering into the ear of the defendant). In theory the interpreter can stop advocates if they speak too fast or the interpreters need clarification; my observations

have shown that only the more assertive interpreters do this (see chapters 4 (4.15.3) and 5 (5.14.2) where examples of interventions by interpreters are shown to be few and far between).

Vidal (1997) points out an additional problem:

.....no one seems to realize that the interpreter's hearing is further obstructed by the sound of his or her own voice overlapping the original speaker's at all times, creating an additional acoustical impediment.

(1997:1)

It is rare for magistrates and court clerks to be aware of the problems caused by poor acoustic signals for interpreters, but defence advocates have often pointed out to me that their own (native English-speaking) clients often cannot hear what is being said through the slats of the secure dock. Thus we can see that the acoustics of the courtroom take no account of the working conditions needed by the interpreter, and indeed can be said to hamper optimal performance.

2.4.6 The effect of prolonged turns

Although judges and magistrates take breaks, the same facility is not accorded to interpreters unless they specifically request it in open court, behaviour which necessarily draws attention to them. Conference interpreters, who normally work in pairs, generally perform simultaneous interpreting for no more than 20-30 minutes at a stretch before a boothmate takes over. Boothmates, when technically resting, can continue to listen to their colleagues and provide rapid assistance if necessary.

Moser Mercer et al conducted an experiment to study the effect of prolonged turns and found that the quality of output in simultaneous interpreting declines after 30 minutes, and that, interestingly, interpreters are not aware of this decline:

[the results] provided evidence for the negative effect prolonged turns (those lasting longer than 30 minutes) have on the quality of an interpreter's output and on his attitude towards the task. [...] Interpreters do not seem to be sufficiently aware of the decline in quality that occurs in the course of prolonged turns so as to quit when given the opportunity to do so....

(Moser-Mercer *et al* 1998: 62).

She explains this lack of awareness in terms of a desire on the part of the interpreter to keep going, no matter at what cost:

The increase in the number of meaning errors combined with the interpreters' lack of awareness of this drastic decrease in quality shed some light on the validity of interpreters' judgement of their own output quality [...] This lack of judgement appears to be the result of cognitive overload: a situation in which the interpreter tries to economize on processing capacity and allocate resources only to those parts of the interpreting process that will ensure continuous output (irrespective of the quality provided) [...]

(Moser-Mercer *et al* 1998: 62).

Unlike their conference interpreting colleagues, court interpreters engaged for a long trial may be expected to interpret for long periods (certainly longer than 30 minutes) without breaks. They may be called upon to interpret in both consecutive and simultaneous modes, but the bulk of the work will always be in simultaneous; non-English speaking defendants only require consecutive interpreting services when being directly addressed by court actors (I call this 'defendant-focused' communication: see chapter 4, 4.3.1 for a definition of this). For the rest of the time they are little more than spectators (I call this 'non-defendant-focused' communication; again, see chapter 4, 4.3.1).

By virtue of the Human Rights Act (2000)¹⁶ defendants must be "present" at their own trial; the Iqbal Begum case¹⁷ (see 2.7.1 for more details) showed that non-English speaking defendants are not deemed to be "present" unless they have a "free and understanding mind". Defendants therefore have a right to hear everything that is being said in court, whether they are being directly addressed or not, and this entails the prolonged use of simultaneous interpreting. Were Moser Mercer *et al*'s experiment on prolonged turns to be repeated in a courtroom setting, one can reasonably infer that the results would be very similar.

¹⁶ The Human Rights Act 1998 is a law, which came into full force in October 2000. It gives further effect in the UK to the fundamental rights and freedoms in the European Convention on Human Rights. It makes it unlawful for a public authority, like a government department, local authority or the police, to breach the Convention rights, unless an Act of Parliament meant it could not have acted differently. It means that human rights cases can be dealt with in a UK court or tribunal. Until the Act, anyone who felt that their rights under the Convention had been breached had to go to the European Court of Human Rights in Strasbourg. It says that all UK legislation must be given a meaning that fits with the Convention rights, if that's possible. If a court says this is not possible it will be up to Parliament to decide what to do.

¹⁷ The R.v Iqbal Begum (1985) (*R v. Iqbal Begum* [1991] 93 Criminal Appeal Reports 96) case was a landmark legal case in which a defendant was deemed not to have been present at her own trial because the interpreter used by the court did not speak her language. She was subsequently released on appeal after her trial was declared a nullity, having spent several years in prison.

There is an interesting negative disparity between the working conditions of the conference and court interpreters. (Sign Language court interpreters' working conditions are similar to those of conference interpreters in that they work in relays of two, but with a third interpreter present to monitor the output of the other two.) What is the reason for this disparity? It may be that conference interpreters command higher salaries, are better educated, organize themselves more effectively into lobby groups, and are more generally perceived and valued as experts by employers. Another possible reason is the client: conference interpreters work with professionals or experts, whereas court interpreters work with defendants charged with a criminal offence. This in turn may explain the power conference interpreters have to influence their working conditions and set minimum standards.

Vidal (1997), a court interpreter, makes a series of comparisons between conference and court interpreting, claiming that every court interpreter would concur with the findings of Moser Mercer *et al* (1998) that conference interpreters tend to deflect responsibility for their errors once they find themselves overloaded and adopt a 'couldn't care less' attitude. She believes that the conference interpreting booth is a relatively stress-free environment compared to the physical discomfort and extraneous noise of the courtroom, and continues:

All of the factors found by the various studies described here to be major causes of conference interpreter stress and fatigue—acoustics, prolonged periods on task, lack of familiarity with relevant terminology, excessively fast or incoherent speakers, etc.—are in fact more applicable to interpreters in court than in any other setting.

(Vidal 1997:4)

She quotes an example of good practice by Obst, a senior US court administrator and Director of the Office of Language Services at the US State Department:

The policy on simultaneous interpreters is simple and corresponds to that of all other responsible interpreting services in the entire world (United Nations, European Commission, International Red Cross, International Court of Justice, foreign ministries in other nations.) No individual simultaneous interpreter is allowed to work for more than 30 minutes at a time.....This is also done for the protection of the users. After 30 minutes the accuracy and completeness of simultaneous interpreters decrease precipitously, falling off by about 10% every 5 minutes after holding a satisfactory plateau for half an hour..... The human mind cannot hold the needed level of focused concentration any longer than that. This fact has been demonstrated in millions of hours of simultaneous interpretation around the world since 1948. It is not a question of opinion. It is simply the result of empirical observation.

(Obst, H. in Vidal 1997:4)

If interpreters are expected to continue simultaneous interpreting as if they were machines over long periods of time, and if there is clear evidence which points to the negative effect of prolonged turns in simultaneous interpreting, then the courtroom is indeed a more stressful environment than the isolation of the conference booth.

2.4.7 Familiarity with the case : anticipation

Kirchoff (1976) places a high value on the importance of anticipation in simultaneous interpreting and shows how interpreters' skills in this regard come from two sources: firstly from the interpreters' own linguistic competence in their working languages and secondly from knowledge of the situation in which they find themselves together with their *prior knowledge of the subject*. Kirchoff also goes on to claim that

“the certainty with which an interpreter can anticipate will increase (in other words, the subjective information value of the text will decrease) as the interpreting progresses, because it becomes easier for the interpreter to recognise and predict the performance characteristics of the sender and the subject matter.”

(Kirchoff 1976:115)

Lederer (1978) echoes this and distinguishes between two different types of anticipations: those based upon sense expectation and those based upon language prediction. Gile (1995) also highlights the usefulness of anticipation and distinguishes between *linguistic* and *extralinguistic* anticipation; the former refers to the high probability that, for example, in English an article will be followed by a noun, and that this ability to anticipate not only reduces uncertainty in transition from one speech segment to another, but also reduces processing capacity requirements in identifying incoming segments. *Extralinguistic anticipation* he defines as “good knowledge of the conference situation, of the subject and of the speaker” and maintains that this “makes it possible to anticipate ideas that are expressed in speeches”(1995:76). He goes on to highlight the importance of conference preparation:

by using documents and preparatory briefings in order to acquire knowledge about a conference, that is, about names, ideas, and terms likely to be used or referred to during a conference, interpreters increase their power of anticipation and therefore decrease their Listening and Analysis Effort capacity requirements.

(Gile 1995:176-7).

Lawyers have access to and familiarity with the extensive documentation of their cases and are able to engage in thorough preparation before the court case. Court interpreters, however, often experience difficulty in accessing such documents, or they may only have limited opportunities to access them before the hearing, reducing the possibilities for making use of anticipation and redundancy, both essential strategies for effective simultaneous interpreting.

Court interpreters' lack of familiarity with the details of the case they are to interpret puts them at a distinct disadvantage when compared to defence and prosecution advocates and their conference interpreting colleagues, who usually know the content of speeches beforehand. Court interpreters must therefore rely almost entirely on their linguistic, rather than on their extralinguistic (in Gile's 1995 terms) competence; they have much less opportunity than conference interpreters to draw upon any prior knowledge of the case they are about to interpret.

2.4.8 Familiarity with the case: redundancy

Redundancy is regarded, together with anticipation, as a linguistic property of speech. Allen (1994:255) claims that, in human speech recognition, listeners use context to resolve ambiguities when speech is underdetermined. He defines redundancy in speech as "the over specification of information", and adds that "the information may be removed and the meaning is still uniquely defined". Thus speakers often repeat themselves, or use different words to express similar ideas; these are both phenomena which can be used by interpreters as strategies to minimise their processing efforts. Redundancy is considered to be crucial in simultaneous interpreting. Chernov, for example, claims that redundancy in speech is an accepted fact and believes that

redundancy at a series of levels (whose exact structure and number we have yet to establish) in discourse, is a unique and very powerful basis for a probability prediction mechanism in SI [simultaneous interpreting]

(Chernov 1979:107).

In other words, redundancy in speech enables an interpreter using simultaneous mode to ignore, or pay less attention to, material which is repetitive or highly predictable; if the

information load is less dense and requires less concentration to interpret, interpreters can conserve valuable energy and processing capacity.

2.4.9 Lack of official monitoring and the status of official transcriptions

There is no official monitoring of court interpreting competence in the UK, and whilst it might be possible to institute an evaluation programme for languages of wide diffusion such as French, Spanish or Arabic, there are very few competent assessors of languages of lesser diffusion such as Somali, Amharic, Lingala, Vietnamese or Tigrinya.

As far as monitoring opportunities afforded by the official record are concerned there are differences between Magistrates and Crown Courts. In the former, court clerks write their own summaries of what transpires during a court proceeding. In the Crown Court however, official recordings are made, which are then outsourced to commercial transcribing companies. Since, on the whole, court interpreters do not use sound equipment, and since during a trial for a non-English-speaking defendant they are mostly (but not wholly) performing *simultaneous* interpreting (*chuchotage*) into the ear of the defendant, the possibilities of monitoring the fidelity or otherwise of the interpreter's output and thus evaluating professional and linguistic competence are limited. On the other hand, *consecutive* interpreting can be monitored either by an observer or by the official Crown Court recording, although the latter is not normally made available to the public. Once the transcription process is finished, the recording is destroyed. The transcription will not take any account of any foreign language material, and thus any appeal will be based solely on the English renditions of witnesses' and defendants' utterances. There is an expectation that these transcripts will be verbatim, but as Graffam Walker (1990) points out, the very notion of what constitutes 'verbatim' is problematic; court reporters in her survey were operating to sets of conflicting professional instructions, and the transcription process itself is particularly susceptible to personal bias. Graffam Walker (1990:233) lists seven categories of speakers within the courtroom in relation to the degree of 'verbatimness' court reporters apply to each category: (1) Sworn/unsworn (2) Educated/uneducated (3) expert/lay witness (4) ins/outs (5) employer/non-employer (6) liked/disliked (7) sees transcript/doesn't see transcript. She describes the speaker status of each category and claims that there is a direct correlation between how exact a copy of his/her speech will be made by the reporter. In summary, the court reporters in her sample 'cleaned up' the grammar of some speakers and levelled out

dialect features so that speakers all ‘sounded the same’ on paper. She claims that court transcribers fear being perceived as incompetent and unprofessional and thus excise pauses, hesitation markers and ungrammatical forms from the record, especially if these forms were uttered by judges or those who might be expected to speak in a more polished manner. Interestingly there is a clear similarity here between the court’s expectations of the court transcriber and the court interpreter which is highlighted by Morris (1995:25):

Most of the obstacles to the court reporter’s understanding of speech in the courtroom setting that [Graffam]Walker (1990:214-217) identifies and analyses are equally applicable to the performance of interlingual court interpreters: lack of context, inability to hear, insufficient knowledge of linguistic code and professional jargon, insufficient background knowledge, garbled or dialectal delivery, overlapping or co-speech, and being discouraged by custom from interrupting speakers for any reason. [Graffam]Walker’s studies (1988, 1990) show that, in addition to the discrepancies likely to result from the ensuing problems, transcripts differ in innumerable ways from the unrealistic verbatim standards prescribed by the system and are therefore not a ‘true’ representation of the original spoken material.

The court will therefore base its decisions and any subsequent appeals upon interpreter-mediated renditions (however faithful, accurate or otherwise these are) rather than on the primary evidence given by the witness. The gap between what defendants actually say and the interpreter’s rendition may thus be considerable, and, as I have shown, only consecutively interpreted renditions can be retrieved from the official Crown Court recording; simultaneous renditions cannot be captured on separate tracks, and thus it is difficult to ascertain retrospectively what defendants understood from their interpreters.

2.4.10 The interpreter’s attention-drawing behaviour

There is a tension between the expectation of invisibility of the court and the attention-drawing behaviour of the interpreter (see Berk-Seligson 1990/2002). Defendants, who cannot be expected to understand the role of the interpreter, often attempt to engage them in side conversations or pass remarks privately which they do not intend to be heard in open court. Somehow interpreters must cope with this eventuality since they are bound by their code of ethics to interpret everything that is said to the court. If they intervene to explain to the court what is happening, this risks holding up the business of the court, or as Berk-Seligson (*ibid.*) shows, can precipitate confusion as to the author of the utterance.

Poor acoustics, the pace of speakers and unfamiliar legal language will mean that an interpreter will have to interrupt proceedings from time to time in order to ask for clarification

or repetition. The opportunities for interpreter interventions in trials appear to be more limited than in non-trial procedures. This is because the proportion of simultaneous to consecutive interpreting is perhaps greater in a trial than in other court procedures. The processing capacity of interpreters will be tested to the limit in order to listen, take notes, interpret, keep up with the pace of the speaker, make interventions, remember why the intervention was necessary and continue from the precise part of the utterance which required the clarification in the first place. The choice for the interpreter is often to intervene and incur the impatience of the court, or keep interpreting, no matter what the quality of the output.

Other attention-drawing behaviours highlighted by Berk-Seligson (*ibid.*) are clarifying the responses of defendants or witnesses, clarifying lawyers' questions and controlling the flow of testimony. I will discuss and give examples of attention-drawing behaviours by court interpreters at greater length in chapters 4 and 5.

2.4.11 Risks for the court interpreter

Berk-Seligson's (2002) work abounds with examples of the risks to which court interpreters are exposed. The interpreter can be forced into the violation of the rules for the questioning of a defendant through an interpreter. She gives an example of a Spanish-speaking defendant, who, unfamiliar with the US legal system and the requirement to use the set phrase to enter a plea of not guilty or guilty, had to be prompted to do so by the interpreter at the request of the defence attorney. She claims that this results from a common confusion occurring in US courts with non-English speaking defendants or witnesses, who often answer *yes* or *no* to *wh-* type questions.

Interpreters can attract criticism and derision when they faithfully and correctly interpret errors made in the speech of lawyers, defendants or witnesses; for example a defendant may inadvertently say he was born in "1892" instead of "1992". Similarly if interpreters accurately relay a defendant's irrelevant or inappropriate response to a question, or if a defendant answers "I don't understand" to a question, the competence of the interpreter may be questioned because of uncertainty as to actual author of the utterance. On the other hand, if, during a hearing, interpreters ask lawyers for clarification or repetition of a term or phrase with which they are not familiar, they risk holding up procedure whilst any ambiguity is

rectified; this in turn risks causing impatience and irritation if the interaction required to resolve the ambiguity is prolonged.

2.5 Problems originating in the nature of triadic interaction

2.5.1 Introduction

Interpreter-mediated discourse has been studied from various standpoints. Wadensjö (1997) identifies the three main areas of interest amongst interpreting researchers. Firstly the effectiveness of didactic strategies and models for interpreter training, secondly the quality of interpreters' work where source texts are compared with target language texts (a deficit model), and thirdly the investigation of cognitive processes involved in interpreting such as the one by Moser Mercer *et al* (1998) described in section 1.5. Wadensjö (1997) takes a new descriptive direction, showing that the prescribed norms for interpreters as non-persons cannot hold true, as they are active participants in the communication process, acting as co-ordinators of talk.

Taking Wadensjö's (*ibid.*) second area of research, I firstly will examine studies of interpreted discourse, in particular, studies of additions and omissions in renditions and the effects on end-receivers in the short term and on the outcome of a non-English speaking defendant's case in the longer term. I include omissions in the framing of questions, omission of discourse markers and the pragmatic effect of additions as examples. Secondly I will consider Wadensjö's (*ibid.*) descriptive approach and consider whether it can be applied to court interpreting.

2.5.2 Interpreter omissions in the framing of lawyers' questions

According to Bennett and Feldman (1981), the primary reality of the courtroom relates to the "here and now" in terms of procedures, legal framework and relationships within the courtroom. The secondary, or external reality of the outside world is represented through the testimony of witnesses and by artefacts such as clothing, weapons or other physical evidence. This secondary reality manifests itself in the way that lawyers frame their questions during examination-in-chief and cross-examination. According to Hale and Gibbons (1999), this

framing is the result of their subjecting the defendants' or witnesses' accounts of the crime story to two forms of checking: firstly for relevance and secondly for accuracy.

Checks for relevance include what Solan calls the "goodness of fit between a particular event that occurred in the world and a legally relevant concept" (Solan 1995:1072-3). This means that although witnesses themselves may consider, in their re-telling of the crime story, that their account is relevant, their view of "relevance" may be at odds with the law's much stricter view. Harris (1984) provides particularly illustrative examples of magistrates preventing defendants from straying from the strict path of legal relevance.

Of much greater relevance to interpreters is the second form of checking to which witness accounts are subjected, according to Hale and Gibbons (*ibid.*), that of accuracy. In Common Law systems the task of lawyers is to construct two competing versions of the crime story, or secondary reality. Witnesses and defendants may give what they believe to be truthful accounts of events, but lawyers have a professional duty to use language strategically to "convince or persuade the judge or jury or magistrate to believe their version of the facts" (1999:205). Thus in examination-in-chief and cross-examination lawyers' questions are not only designed to elicit a particular response from the witness but are framed in such a way as to make a clear distinction between primary and secondary realities and how *they* (the lawyers) would like the court to view the witnesses' *version* of reality.

Hale and Gibbons (*ibid.*) claim that court interpreters often omit the primary reality framing of lawyers' questions in such a way as to represent only the secondary reality. Examples of the impact of utterances given by Hale and Gibbons fall into various categories: omitting references to the courtroom (*Can you tell the court* *what happened?* interpreted as *What happened?*), changes in tenor (*Mr Gomez, could you please tell the court* *what happened ?* interpreted as *What happened ?*) and the omission of reported speech (*How long do you say* *this incident took?* interpreted as *How long did this incident take?*). (The authors' underlinings show the difference between the framing of the question and the rendition of the interpreter.) The effect of such omissions upon the witness is to subvert lawyers' questioning strategies by removing references to the courtroom. Therefore what the witness is hearing is a simple request for information; what the questioner intends is that the witness give an account of *their version* of the truth: a more challenging and aggressive stance.

Hale and Gibbons (*ibid.*) also showed that the omission of question tags had the effect of making questions less coercive than they were designed to be. Lawyers who append question tags such as “didn’t you” “isn’t that right” and “is that correct” are doing so with the intention of discrediting the witness. The effect of omitting such tags is to soften the coerciveness of questions. This could, in turn, change the nature and force of the witness’ response.

Hale (2004) also shows how interpreters not only omit the reality of the courtroom but omit discourse markers such as *well*, *see*, and *now* (see section 2.2.2 where I discuss the relative accuracy of simultaneous and consecutive modes of interpreting). The effect of such omissions depended upon whether they were used in examination-in-chief or in cross-examination. She found that when used in cross-examination, the discourse markers served as “markers of argumentation or confrontation, mostly initiating disagreements or challenges”. When used in examination-in-chief, they mostly functioned “as a means for maintaining control of the flow of information, as well as to mark progression in the narrative.” (Hale 2004:240). Hale’s sample of seventeen interpreters, despite their specialised training, showed a lack of awareness of their role and of the significance of question types in examination-in-chief and cross-examination, in her view. There is no reason to suppose that interpreters in the UK behave differently from Hale’s Australian sample in this regard.

2.5.3 Additions in interpreted renditions

It appears to be impossible for an interpreter to render source language utterances into the target language without generating additions of various kinds. Why do interpreters do this when they are exhorted by their Code of Conduct to interpret everything that is said without making additions or omissions? And if we acknowledge that interpreters make additions, what impact do these additions have on the end receivers?

In answer to this question, Jacobsen (2002:282-286) claims firstly that court interpreters are pre-occupied with pragmatics, secondly that they are engaged in “building a mental model of speaker meaning and conveying that perception of speaker meaning to end receivers” and thirdly that they are aware of the fact that end receivers are unfamiliar with the context of the interaction. Because of this they compensate by making various additions to their renditions which serve to improve their comprehensibility. It is these interpreter-generated additions

which Jacobsen explores in her work. (The term “addition”, she points out, must not be confused with adjustments to the interpreting process or with interpreter errors.)

Pragmatics is concerned with “the distinction between what a speaker’s words (literally) mean and what the speaker might mean by his words.” (Atkinson, Kilby and Roca (1988:217). Since all human communication is under-determined, interpreters, whether they are aware of it or not, develop strategies for making implied meanings more or less explicit. According to Grice’s four maxims and his theory of conversational implicature, (Grice 1967/1975) there are agreed, but unstated, rules for talk. Grundy (1995:40) expresses the concept thus: “Knowing these principles (maxims) enables an addressee to draw inferences as to the implied meanings (implicatures) of utterances.”

So what do interpreters do when they encounter implicatures which might require explanation for the full meaning to be understood? Although Jacobsen (*ibid.*) posits a range of possible interpreter strategies for conveying implicature in their interpreted renditions only three were actually chosen by the interpreters in her study. These were as follows:

1. Interpret the semantic content and explain the implicature.
2. Interpret the semantic content and explain part of the implicature.
3. Interpret part of the semantic content and explain part of the implicature.

The additions made by her sample of interpreters were studied in the context of a Danish trial court. She divided these additions into categories and sub-categories; while some of the additions were judged to have had minimal or no overall impact on the target text, others were considered to have had significant impact such as emphasising and down-toning speaker utterances and adding new information. She also discovered that interpreters were prepared to violate their own professional ethical guidelines in terms of accuracy and completeness in the supposed interests of mutual understanding. One example demonstrates this:

[the Danish source texts are omitted and information about speakers expanded for convenience]

Example 128:

Translation of defence counsel: Does he mention anything about how many cards he brought ?

Back translation of interpreter's rendition: *Did he mention any number of credit cards that he brought along with him ?*

Translation of defence counsel: He doesn't do that at any time ?

Defendant source text: Er I can't remember but he might have done, he might have told me that, I I honestly can't remember, because it's not my business how many he has got.

Back translation of interpreter's rendition: *Er I can't remember , it's very likely that he mentioned it at some point, but but it was no concern of mine how many cards he has.*

Jacobsen, in her microlinguistic analysis of the text, shows that the interpreter chose the second of the three strategies above: that of rendering the semantic content and explicating part of the implicature. The reason for this strategy, she concludes, is that the interpreter believed that the implicature contained in the first utterance *cards* was not sufficiently obvious for it to be apparent, and it therefore required some explanation to render the meaning available to the end receiver. The motive for the emphasis *very likely* was to “alert the defence counsel to the fact that implicit information in the context of the defendant's answer needed inferencing for speaker meaning to be available.”(Jacobsen 2002:206).

Thus additions, as well as omissions and alterations to the pragmatic effect of interpreters' renditions may have anything from a minimal to a significant impact on the message received by addressees. Jacobsen seems to be saying that interpreter-mediated communication cannot (and perhaps should not) take place without these additions and explications, since interpreters see themselves primarily as bridging the gap between two speakers of different languages; they appear not to be able to divorce their role as *conveyers of messages* from their role as *explicators of implicatures*. Thus there is an irreconcilable tension between interpreters' Codes of Ethics, the courts' expectation that they will render everything that is said *verbatim*, and the interpreters' natural proclivity towards explication: a tension which can often lead them to violate their own norms of conduct (adding new information not stated in

the source utterance is contrary to most professional norms¹⁸ which exhort interpreters to interpret ‘only what is said’).

2.5.4 Accuracy in interpreting leading questions in court

Berk-Seligson (1999) conducted an extensive study on the pragmatic force of 504 interpreted leading questions in the courtroom. Leading questions are those that are obviously steering a witness towards giving a particular response; the questions are put to the witness in such a way as only to allow the reply of ‘yes’ or ‘no’, or they are framed in such a way that they assume certain facts not yet established. In England and Wales they are only allowed in cross-examination. Berk-Seligson uses Woodbury’s (1984) 13-question typology of leading questions as her framework for analysis; the typology is a continuum of leading questions from least coercive to most coercive, with “didn’t you enter the house at that time ?” as the least coercive type of question to “it is true, isn’t it, that you entered the house at that time ?” as the most coercive. She found that half of the leading questions were incorrectly rendered by interpreters, mostly because they left out the coercive elements of the question altogether; thus the force of lawyers’ questions is weakened by the interpreters. Berk-Seligson is quick to point out that by accuracy, she is not referring to the transfer of content (which she found to be highly accurate) but accuracy in the transfer of pragmatic force between the two languages. Interestingly, the accuracy of pragmatic force in interpreting leading questions was higher in consecutive than in simultaneous mode. Berk-Seligson explains this as probably due to the audible nature of consecutive mode that is intended for the court to hear, and the largely inaudible nature of simultaneous mode, which is only intended for the ears of the defendant. She concludes that the topic is under-researched and that, in the interests of justice and equality, defendants have a right to pragmatic accuracy in both modes.

2.5.5 The wide range of speech styles to be found in the courtroom

Interpreters will encounter a wider range of speech styles within the courtroom than in most other institutional spheres. Not only will they come across a variety of accents, dialectal features, slang and other speech styles in both English- and foreign-language speaking witnesses and defendants, but in lawyers they will also encounter a continuum of styles from

¹⁸ The UK Interpreters’ Code of Conduct can be found at www.iol.org.uk

frozen to very informal (Joos 1967) and O'Barr (1982: 25). An added complication is that lawyers will strategically, as well as idiosyncratically, deploy different styles according to the context within the same hearing. In an English Magistrates Court, the reading out of indictments by the court clerk, the swearing of oaths, and the prepared formulae contained in the Magistrates Bench Book (which are used as a basis for pronouncements) are at the formal end of the continuum; cross-examinations, examinations-in-chief may consist of a range of styles along the formal to informal continuum; responses from witnesses and defendants may be anything from hyperformal (as defined by O'Barr, *ibid.*) to casual (Joos, *ibid.*). Examples showing the mix of styles from my observation data include an interaction between a magistrate and an unrepresented fine defaulter offering to pay off a fine in instalments. Because the magistrate is speaking directly to the defendant rather than through a defence advocate, he appears to adopt a much more casual style:

Example 1

| | |
|-----------------|---|
| Fine defaulter: | What's the minimum per week I can pay ? |
| Magistrate: | About a <u>tenner</u> . |
| Fine defaulter: | I can manage fifteen. |
| Magistrate: | We'll <u>'ave that</u> . |

In the next example a defence advocate presents arguments in favour of his client receiving bail and mixes formal with casual speech style for rhetorical effect. His lexical choices (underlined) demonstrate his empathy with his client:

Example 2

| | |
|--------------------------|---|
| Defence advocate: | My client is immature - <u>baby-faced</u> would not be an inaccurate description...his involvement is peripheral. He is of good character and he doesn't look as though he is a man of violence... <u>my lad</u> lives on t'other side of the city.....he should, with the greatest of respect, be afforded bail. |
|--------------------------|---|

Court interpreters must not only recognise these different style features but must be able to shift from one register to another rapidly and into the equivalent register in the target language (Berk-Seligson, 1988). Berk-Seligson maintains that

some interpreters do not have a wide enough range of speech varieties in their linguistic repertoire, or, alternatively, they establish one particular style as their general norm, regardless of the particular way that a given witness, defendant, witness or judge, is speaking.

(1988:22).

Although Berk-Seligson was writing about court interpreters in the US courtroom, one can surmise that this deficiency in bilingual competence is also likely to be found here in the UK where court interpreter training is often minimal.

2.5.6 The interpreter as co-ordinator of talk: Wadensjö's descriptive approach

According to Wadensjö (1998), the interpreter is in the unique position of being the only person in the room to be able to understand everything that is being said. (It is possible, as is frequently the case in US courts where defendants or witnesses are Spanish-speaking, that Hispanic jurors, judges and lawyers are able to monitor the output of the interpreter, but this is certainly a rarity in the UK.) This puts her in a position of power in relation to the other interactants in the courtroom. Wadensjö (*ibid.*) rejects the monologic notion of interpreters as text producers. She sees interpreters not only as translators but as active co-ordinators of talk, able:

- to influence the progress of the interaction
- to influence the substance of the interaction
- to regulate interaction (distribution of turns at talk; speed)
- to determine the on-the-record versus off-the-record distribution of talk
- to remind parties, implicitly or explicitly, of the interpreter's preferred mode of working
- to generate a shared discourse and, at some level, a common focus of interaction
- to sustain a definition of the encounter, for instance, as being a medical consultation or a police interrogation
- to sustain the definition of the encounter as being an interpreter-mediated one

(1998:105)

She therefore adopts a dialogic interactional approach to the study of interpreter-mediated interaction. But her spheres of investigation are limited to an immigration officer working from a police station and a nurse in a medical setting, and neither of these can be compared with the authority-permeated relationships and rule-governed talk of the courtroom as evidenced by Atkinson and Drew (1979). How far the above typology can be applied to courtroom interpreting is a largely unexplored question, as the courtroom is a more intimidating environment to work in than, say, a doctor's surgery or a police interview room where there are usually only three people present. Court interpreters' opportunities for explicit co-ordination (in her terms) would appear to be limited; it would appear that the first four types of Wadensjö's co-ordination behaviours are more often observed in the courtroom than

the last four. Active intervention by interpreters is often frowned on or even discouraged by court personnel. It seems that more research is needed to show how far court interpreters adopt these strategies in this particular setting.

2.6 Working in a context of crisis

Those who appear in court are already in a situation of crisis, but how this critical element affects interpreters in their task appears to be a relatively under-researched topic. I will examine the literature on interpreting at two levels of crisis, global and personal, and consider how far research can demonstrate the influence that this critical context has upon the nature of the court interpreters' task.

2.6.1 Global and personal levels of crisis

It is the situation of crisis, whether at a global level (such as the invasion of Iraq and Afghanistan) or at a personal level (such as patients who suffer life-limiting illnesses, parents accused of child neglect or abuse, a householder accused of council tax fraud, or an unemployed person claiming benefits such as jobseeker's allowance) which sets public service interpreting apart from other types of interpreting such as conference, or escort interpreting. This is simply because of what is at stake: imprisonment or liberty, war or peace, health or sickness, homelessness or somewhere to live, a measure of financial independence or living on benefits. The crisis situation can itself produce the elements which make interpreting much more of a challenge. And any crisis can be made much worse by using inappropriate interpreters (or no interpreters at all) in a situation where there is existing institutional incompetence or lack of awareness of language issues. Examples of both types of situations are examined below.

2.6.2 Interpreting in global crises

At a global crisis level, Thomas's account of United Nations Military Observer Interpreters operating in the war zone of Sarajevo during the Bosnian conflict of 1995 shows how interpreters played "a key role in the attempt to keep ethnic conflict from breaking out into open warfare." (Thomas 1997:250). Wiegand's (2000) account of interpreting for the South

African Truth and Reconciliation Commission showed how specialist structures were required to support interpreters who not only had to bridge eleven widely differing languages and cultures on a daily basis but also cope with the emotional public catharsis that constituted the Commission. Wiegand found that these inexperienced interpreters were particularly susceptible to taking on the emotions of the witnesses for whom they were interpreting since they had been trained to interpret in the first person (2000:211). Wiegand cites a newspaper article of the time which discusses the effect upon the listener of the detachment of the interpreters' renditions:

Survivors too were on hand to tell their stories. As they spoke, mostly in the Xhosa languages, the dispassionate voice of the interpreter amplified the cold horror of their testimony.

(Hawthorne 1996 in Wiegand 2000)

During the Iraq invasion interpreters found that their lives became permanently at risk as a result of having provided vital interpreting services between Iraqis and allied troops, only to have their plight ignored by the countries to whom they requested asylum, notably the UK (Colebourn 2007).

2.6.3 Interpreting in personal crises: neutrality

At a more personal level, it would be unusual to engage a public service interpreter for anything other than a situation of crisis, and perhaps one can stretch the boundaries of the category by including pre-natal and maternity care. As Garber (Head of the Across Languages Translation and Interpreting Service, Canada) points out,

out of all 35,000 assignments, never once has one of our interpreters been required to facilitate basic activities of daily living for a healthy, mentally-competent person. The only times we have sent interpreters to a supermarket or shopping mall has been when a non-English speaker has been charged with shoplifting.

(Garber 1997:16)

The comment by Hawthorne in section 3.2 above forms a stark contrast to Wadensjö's (1998) account of an interpreter who caused resentment by *not* replicating the voices and tones of a midwife and patient. Although the example I provide below is not related to a courtroom

context, it does appear to suggest that the interpreter needs to use discretion in the matter of how and to what degree affect is rendered. The very contrast between the emotional outpourings of the witnesses and the dispassionate renditions of the Truth and Reconciliation Commission interpreters appears to have had the effect of *increasing* the intensity of their effect. But in the triadic exchange described below, the same detachment appears to have had a *negative* effect upon the interactants:

I interviewed a midwife and a pregnant woman after one of their regular encounters, and they both claimed that the interpreter's formal style had made it hard for them to talk and laugh as they had done before with another interpreter. The midwife reported that she and the mother had started enthusiastically, but that the interpreter's style had made them lose interest in communicating. They had read his dry and formal style as displaying a lack of interest.

(1998:284)

As with the examples cited in section 3.2, the non-English service user's personal crisis can be expected to generate a measure of stress and emotion. For example, rape complainants who may be forced to relive traumatic events may display a range of emotions from which interpreters must detach themselves if they are to interpret competently. Wadensjö (1998) provides an interesting example of how personal crisis can lead directly to the challenge of interpreting overlapping speech for the interpreter. She describes how a woman whose child had been taken into care by the authorities visited the social welfare bureau to be informed about the measures they had taken. On being interviewed by Wadensjö after the event, the dismayed interpreter asked whether this was really what the job entailed. Wadensjö continues her comment on his account:

People shouted at each other via the interpreter, but without leaving him any space to speak, until the social secretary ordered him to stay with the woman and calm her down while she went away to fetch some colleagues. He felt sorry for the mother, so he did try to comfort her, but at the same time he felt it to be unfair that he thus became associated with the authorities that had put her in this despairing mood.

(1998:194)

In this case, the emotional outburst caused the overlapping speech. However, the interpreter's neutrality had become compromised; his concern that the woman would associate him with the authority who had removed her children had caused him to identify with the woman's plight by comforting her.

Overlapping speech is a common challenge in public service interpreting. Although it is perhaps less likely to occur in the measured formal atmosphere of the court than in other settings, it can still be difficult for the interpreter to cope with. Roy has a list of four possible strategies for dealing with overlapping speech:

1. The interpreter can stop one or both speakers and, in that way, halt the turn of one speaker, allowing the other speaker to continue.
2. The interpreter can momentarily ignore one speaker's overlapping talk, hold in memory the segment of talk from that speaker, continue interpreting the other speaker, and then produce the 'held' talk immediately following the end of the other speaker's turn.
3. The interpreter can ignore the overlapping talk completely.
4. The interpreter can momentarily ignore the overlapping talk, and, upon finishing the interpretation of one speaker, offer a turn to the other primary speaker, or indicate in some way that a turn was attempted.

(1993:350)

However, to be able to deploy any of the above strategies effectively the interpreter requires a degree of quick thinking, confidence and assertiveness which can usually only be acquired by extensive training and experience. Chapters 4 and 5 attest to the general reluctance of interpreters to intervene in the courtroom.

2.7 Institutional incompetence

2.7.1 Lack of interpreters: the Iqbal Begum case

The confusion surrounding the case of Iqbal Begum (1991: see footnote 3, p.11) who served four years of a life sentence for murder illustrates how the judicial system can proceed with complete insouciance and without any awareness of fundamental defects in its arrangements. The lack of awareness of the language needs of this particular defendant on the part of the police, the defendant's lawyers and the judge appear to be so gross as to be tantamount to professional misconduct. This was perpetuated by every agency in the criminal justice system with whom the defendant subsequently came into contact.

Iqbal Begum was an uneducated woman from a village in Pakistan who had moved to England. She had had no formal education of any kind, and could not speak English. She had suffered years of physical abuse and this had reached a point where her husband had

threatened to take away her children. She then murdered her husband by hitting him over the head with an iron bar. She was mistakenly thought to have entered a plea of guilty to murder, when in fact she had uttered a phrase in a dialect of Punjabi equivalent to “I have made a mistake”. Although an interpreter had been assigned to her, he did not speak the defendant’s particular dialect and was not a qualified interpreter, but an accountant. The defendant had not understood the difference between murder and manslaughter, nor had she understood what had taken place at her trial. She was found guilty and given a life sentence. The Court of Appeal ruled that she had not, in fact, been present at her own trial, and she was released after having served four years in prison. This supposedly “interpreted” case constitutes one of the major miscarriages of justice ever recorded in English law.

2.7.2 Lack of interpreters: the Satpal Ram case

Another English miscarriage of justice case was that of Satpal Ram¹⁹, given a life sentence in 1987. In 1985 he had stabbed a man who had attacked and slashed him with a broken glass. The Bengali-speaking witness to the murder was not offered an interpreter, and his testimony in English was reportedly “unintelligible”, to the point where he could not be cross-examined. Ram was released in June 2002 after serving 17 years in prison.

2.7.3 Lack of interpreters: the Victoria Climbié case

The perpetuation of mistakes committed by different agencies handling the same case is illustrated in the tragic murder of Victoria Climbié. Victoria Climbié’s aunt, Kouao, who was found guilty (together with her partner Carl Manning) of the murder of the eight year old in January 2001, was afforded a French-speaking interpreter for the trial, but Victoria herself, who did not speak English, had never been spoken to by the authorities after the initial abuse had been discovered by doctors. Victoria’s death was thus not only the result of the torture inflicted upon her, but the result of the authorities neglecting to speak to her through an interpreter to make an assessment of her deteriorating physical condition. Recommendation 18 of the Climbié Report²⁰ was that:

¹⁹ The Satpal Ram Appeal judgement can be viewed online at http://www.satpalramisguilty.20m.com/ram_lawtel_19951.html

²⁰ The Climbié Report can be accessed at <http://www.publications.parliament.uk/pa/cm200203/cmselect/cmhealth/570/570.pdf> Last accessed on February 2nd 2010.

When communication with a child is necessary for the purposes of safeguarding and promoting that child's welfare, and the first language of that child is not English, an interpreter must be used. In cases where the use of an interpreter is dispensed with, the reasons for so doing must be recorded in the child's notes/case file.

(Climbié Report: paragraph 6.251)

2.7.4 Lack of interpreters: the Robert Dziekański case

Another example of crisis and the non-provision of an interpreter is that of Robert Dziekański, who was a Polish immigrant to Canada, and did not speak any English. He died on October 14, 2007, after being tasered five times by the Royal Canadian Mounted Police at Vancouver International Airport. As he had become progressively more erratic and agitated, no-one had thought of contacting an interpreter to discover what was the motive for his behaviour (cf. Kredens and Morris 2010), and no multilingual leaflets were available at the airport for him to read. The Braidwood Inquiry (2010) into Dziekański's death recommended that police officers receive training in understanding how and when to contact interpreter services so that passengers know what is being asked of them.

2.8 Summary and conclusion

In this chapter I have defined and compared the two activities of interpreting and translating and considered some of the major debates and issues in the field. The two main modes of interpreting (simultaneous and consecutive) were described, and research about their relative accuracy discussed. These two modes will figure prominently in the discussion and analysis of the court hearings in chapters 4 and 5. In section 2.3.2 I showed how no firm conclusions can be drawn about the relative accuracy of consecutive and simultaneous modes of interpreting, although the overwhelming view of researchers is that consecutive is the more accurate. However, the numerous distractions present in a courtroom and lack of preparation on the part of the interpreter together with fatigue caused by prolonged turns can have a significant effect upon the accuracy of either mode. In 2.3.3 I describe research about the effect of the use of third person in court interpreting; actual examples of this practice by court actors will be considered further in chapters 4 and 5. In section 2.4.11 I showed how problems stem from the fact that court interpreters and foreign-language speaking defendants *intrude* upon and *disrupt* the long-standing traditions and etiquette of the court: there is no place for them. Attitudes towards foreign-language speaking defendants, the unique ecology of the

courtroom, the power differential between defendants and lay witnesses on the one hand, and the legal professionals, judiciary and magistrates on the other all play their part in maintaining the status of the court interpreter as intruder. This status in turn generates a series of practical challenges in terms of the interpreters' working conditions, and these are not easily overcome, especially as the law itself does not take responsibility for ensuring that court interpreters provide quality interpreting in optimal working conditions. On the whole interpreters in the UK lack the specialised training required for this kind of work, but are often content to collude with the court by failing to challenge the low status assigned to them. Thus although the intruder status of interpreters can be said to have been generated by the court institution itself, it is often sustained by interpreters themselves, each perpetuating an uneasy dependence on the other.

In section 2.5.6 I discussed challenges emanating from the nature of triadic communication itself. Wadensjö (1998) makes a persuasive case for a clear distinction between prescriptive models of the interpreting process (such as Jacobsen's (2002) work) and deficit models (such as Berk Seligson (2002) and Hale (2004) who compare source and target renditions). Omissions and additions in interpreter renditions, although very important, cannot be considered merely as a failure in fidelity and accuracy on the part of interpreters. Whilst it is true to say that interpreters need to be aware that rendering utterances without regard to their pragmatic force will distort the message and change end receivers' perceptions of the speaker, it appears to be unrealistic to expect interpreters to add or omit nothing, as exhorted by their professional codes of conduct.

In section 2.6 I showed how situations of crisis are part and parcel of the context within which public service interpreters find themselves. Very little is known about how crisis itself affects the dynamics of the court and still less how it impacts upon the bilingual courtroom. Personal crises generate emotion, and interpreters must strive to avoid being distracted by the emotions expressed by the service user. In addition, interpreters may have to deal with the overlapping speech produced by emotional service users. Finally, the crisis itself can mean that life and liberty are at stake, that institutional mistakes are easily magnified by inaccuracies, and that considerable pressures are exerted upon the interpreter.

Court interpreters are thus presented with a unique combination of practical, cognitive, pragmatic, cultural and professional problems generating certain tensions which cannot easily

be resolved. These interpreters now have a new element of complexity to deal with: that of video linked communication where defendants and interpreters are not co-present. In the succeeding chapters of this study, we shall see how court actors cope with some of these tensions and how their behaviour impacts upon interpreters, defendants and, ultimately, the communication process.

Chapter 3: Data and Methodology

3.1 Overview of the study

This thesis is a linguistic ethnographic study of bilingual adult Magistrates courtrooms in the West Midlands and inner and outer London, with a particular focus on the interaction amongst court actors, court interpreters and non-English-speaking defendants. It integrates linguistic, interactional, proxemic and socio-cultural aspects of that institution with data provided by audio-recordings and observations of court hearings in two different contexts, supplemented by interviews and ethnographic observation. The aim of the study is to compare communication in interpreter-mediated cases in two types of court hearings (face-to-face and prison video link) in order to gain information about any differences in court actors' behaviour, to examine how any changes in behaviour might affect the communicative relationship between the interpreter and the defendant, and finally to discover how such changes might influence the course of justice.

The distinguishing feature of the bilingual Magistrates Court context is that it is the interface between a range of legal (crown prosecutors, court clerks and defence advocates) and non-legal lay persons (magistrates) and non-institutional lay persons (interpreters). Within that institution, an adversarial system of law operates. Court actors within the courtroom have their own unique perspective on the judicial process, and an understanding of each of those perspectives provides a compelling account of the institutional relationships within the courtroom. Had I based this study solely upon recordings and ethnographic observations, I could not have conveyed some of the richness and complexity of interpreter-mediated interaction. By using the analysis of recordings, ethnographic observation (both in the courtroom and the prison) as well as interviews with court actors, I have built up a more convincing, informed and reliable set of data.

3.1.1 Court interpreters as court actors

In this study, I have included court interpreters as court actors alongside magistrates, district judges, court clerks and defence and prosecution advocates, but this is very much a personal point of view based upon many years as a provider of interpreter training, working in close

consultation with sympathetic legal practitioners in mock courts. Whether other court actors regard interpreters as such depends very much on how they see the interpreter's role, the degree of professional contact they have had with them, and their understanding of what is involved in interpreting.

3.1.2 The data

The distinguishing characteristic of this study is the large quantity of data from several different sources, as follows:

- (i) 11 audio-recordings of face-to-face court cases
- (ii) 10 audio-recordings of PVL court cases
- (iii) 17 semi-structured interviews with court actors
- (iv) 10 semi-structured interviews with court interpreters
- (v) Ethnographic observation of Magistrates Courts
- (vi) Ethnographic observation of 7 PVL cases from the courtroom in Wormwood Scrubs Prison

3.2 Research methods

The study comprises linguistic ethnography (LE) as the main research method and Move Analysis as an analytical framework. I will first define linguistic ethnography and then show how I integrate this research method with Move Analysis to provide an account of court actors' behaviour in the Magistrates Court. I proceed on the basis that recorded data supplemented by observation and *thick description*, a concept first coined by the philosopher Gilbert Ryle (1968), developed by Geertz (1973) in his work as an anthropologist and later taken up by linguistic ethnographers, would readily lend itself to research in the English courtroom. According to Geertz, thick description is a way of accounting for an observed behaviour by placing it in its social, linguistic and cultural context. I will consider the scope of ethnography and outline some recent concerns about the status of interview data.

3.2.1 Ethnography: definition

In this section I define “ethnography” in order to demonstrate how my own work follows a linguistic ethnographic approach.

The distinguishing characteristic of ethnography as a research methodology is participant observation as the primary source of data, although my own observation status within this research field is somewhat ambivalent (in the courts I am a participant observer and in the prison I am mostly a non-participant). In the ethnographic method, research activities other than observation are used to supplement the data, such as informal conversations, the study of institutional documentation and interviews. The status of interview data is a topic to be discussed in more detail in section 3.2.5.

According to Blommaert and Jie (2010) ethnography can be regarded as an inductive science, working *from* empirical evidence *towards* theory (my italics), in contrast to other deductive scientific disciplines. Rampton et al. (2004:2) define ethnography as an attempt to “comprehend the tacit and articulated understandings of the participants in whatever processes and activities are being studied, and it tries to do justice to these understandings in its reports to outsiders.”

Since no one researcher can observe everything, the interpretation of what is seen will necessarily be incomplete and partial, filtered through the experiences of the researcher. Ethnography is thus an interpretive research method, so whatever conclusions are drawn about behaviour are necessarily subjective. This subjectivity is countered by using a process called “reflexivity”, a process first used by Whyte (1955) to describe “the self-aware analysis of the dynamics between researcher and participants, the critical capacity to make explicit the position assumed by the observer in the field, and the way in which the researcher’s positioning impacts on the research process” (Gobo 2008:43).

3.2.2 Linguistic ethnography: definition

This study uses linguistic ethnography as a research method to study court actors’ behaviour by observing them in the courts as they perform their daily tasks, incorporating these observations into the linguistic analysis of the interactional context. The observation data and

analysis is supplemented by interview data in order to “investigate aspects of the culture still unclear or ambiguous even though they have been subject to close observation” (Gobo, *ibid*).

Linguistic ethnography (LE) is a fusion of linguistic and ethnographic methods. In the words of Rampton et al. linguistic ethnography:

generally holds that language and social life are mutually shaping, and that close analysis of situated language use can provide both fundamental and distinctive insights into the mechanisms and dynamics of social and cultural production in everyday activity.

(Rampton et al., 2004:2)

LE argues that each of the two disciplines can benefit the other. According to Creese, linguistics can offer useful analytical frameworks such as discourse or conversation analysis (or in my case, genre analysis), whilst ethnography can offer the reflexive sensitivity required during the interpretive process (2008:232).

3.2.3 Data triangulation and critiques

Triangulation is the methodological approach most likely to fulfil the conditions of reducing (but not eliminating) the possibility of ambiguity or bias in the interpretation of the data. Denzin (1970) distinguishes four types: data triangulation, which uses data gained through several sampling strategies; investigator triangulation, where more than one researcher gathers and interprets the data in a particular field; theoretical triangulation which makes use of more than one theoretical position for the interpretation of data, and finally methodological triangulation, involving the use of at least two, or more, methods of obtaining data. Methodological triangulation is the approach used for this study.

However, triangulation as a methodology has been criticised by, for example, Silverman, 1993; 2000; Fielding and Fielding, 1986; Hammersley and Atkinson, 1995 and Mason 1996. They question whether it is valid to compare different kinds of data gathered in different ways, especially when mixing qualitative and quantitative methods which are based on different epistemological assumptions. In Blaikie’s words, “serious problems have been created, although not usually recognised, when methods based on different [ontological and epistemological] assumptions have been used.” (Blaikie 1991:115). However, more recently,

Olsen (2004:24) shows how “triangulation can cut across the qualitative-quantitative divide”, and shows how empiricism, realism and constructionism (all based on differing epistemological assumptions) can offer different philosophical starting points for research. My own triangulated study, however, makes sole use of different types of *qualitative* data, so there is no potential conflict between epistemologies.

3.2.4 Questionnaires and interview guides`

Emerson (1995:4) regards questionnaires as a way of reducing social discourse to written form:

Survey questionnaires...record “responses” to pre-fixed questions, sometimes reducing these answers to numbers, sometimes preserving something of the respondents’ own words.

I rejected questionnaires as instruments for eliciting court actors’ experiences of PVL and considered that the range of possible responses would be too restricted to be able to gain rich information about feelings and personal experience in relation to its use; I also anticipated that the response rate from court actors would be poor.

Accordingly I used semi-structured research interviews to generate some of the data. I developed an interview guide for use with respondents (see Appendix C). An interview guide is more structured than an informal conversational interview but still possesses flexibility in its composition, according to Gall et al.(2003).

3.2.5 Description and status of the interview guide

When conducting interviews, whatever approach is adopted, interviewers need to bear in mind their original research questions and think carefully about the topics that need to be broached with respondents. An important consideration was the time available for interviews; some respondents were too busy to give me more than 15 minutes, whilst other interviews lasted anything up to an hour and a half. In order to maximise the opportunities available to talk to court actors, the interview guide consisted of a printed list of topic questions to be discussed with the five different groups of court actors (see Appendix C). If respondents said something which did not appear on the interview guide but needed following up, I would

abandon the guide. The guide, then, was not a script but rather “a flexible resource for asking questions” (Roulston 2011:82). Constructionists (see section 3.2.6 for a discussion of constructionism) prefer to use the word “topic” rather than “question”, since “not all there is to be found out can be found out by asking” (Blommaert and Jie 2010:46-47). These two researchers recommend conceptualising the interview as a conversation rather than an interrogation, in line with Briggs (1986).

3.2.6 Critiques of the research interview

The debate about the status of interview data is particularly animated in the field of linguistic ethnography. Rampton (*ibid.*) maintains that there is a difference between tacit, and often unconscious understandings, and understandings which are made explicit and articulated to a research interviewer (see section 3.2.1). This is an issue which is considered by many to be particularly problematic (Garton and Copland 2011, Talmy 2011, Roulston 2011, Talmy and Richards, 2011).

Interviews have been widely used for many decades in the social sciences as a perceived means of enquiring into respondents’ attitudes, experiences and beliefs. The problematisation of the research interview was highlighted by Briggs as far back as 1986. He sees the pervasive presence of the interview in everyday life in the media as well as in the social sciences as the main reason why “we take for granted that we know what it [the interview] is and what it produces” (1986:2). Atkinson and Silverman (1997) also attribute the belief that interviews will yield reliable data to the fact that they are so common in society. There is an assumption that the interview will lead to the generation of “credible knowledge” about the beliefs and experiences of interviewees (Roulston 2011:79).

Talmy and Richards identify many historical and contemporary problems associated with the use of qualitative interviews as ethnographic data and make a strong case for reconceptualising the interview as a research method. They highlight the failure of many researchers to acknowledge the “discursive perspective” of interviews as socially situated co-constructed interactional events (Talmy and Richards, 2011:2). Mann (2011) complains that little or no attention is given to such matters as how interviews are set up, the prior relationship between interviewer and interviewee, the analysis of the interviewer’s role, the effect of the presence of a recording device and reference to the context in which the

interview was conducted (I include this information in chapter 6 and in Appendix B). Mann argues for much greater transparency in transcriptions, urging researchers to make their transcripts available for others to view. He sees problems in providing extracts and summaries of interviews, without showing how these extracts were “interactionally occasioned” (2011:18) and identifies an element of crucial relevance to this study: whether the interview is carried out in L1 or L2, and how this might affect the interaction, an issue also discussed in chapter 6.

Silverman (2011) outlines three possible views of interview data, and both show how they are based upon particular epistemological assumptions and how these assumptions affect the status of the data thus generated.

In a “positivist” view, according to Silverman, the interview generates facts about behaviour and attitudes through standardised questions or random samples. Facts and feelings are believed to *reside within* the respondent, with the interviewer extracting the information without contaminating it (Holstein and Gubrium (2011) in Silverman 2011).

In the “emotionalist” approach to interviewing, according to Gubrium and Holstein (1997: 179) “emotions are treated as central to the experience”. In this approach, interviewers are encouraged to become emotionally involved with interviewees. Using open-ended interviews, “researcher and researched offer mutual understanding and support” (Silverman 2011:179). Silverman goes on to cast doubt upon the validity of the claim of the emotionalists to “elevate the experiential as the authentic” (2011:179) and questions whether emotions can exist in a vacuum, ready to be expressed whenever a researcher asks a question (Gubrium and Holstein 1997a).

In a “constructionist” approach, it is the interview interaction itself which is the focus for analysis. As Hammersley and Atkinson assert, the accounts produced by respondents “are not simply representations of the world; they are part of the world they describe.”(1995:107). Rather than seeing responses as “true or false reports on reality”, then, constructionists see interview data as “displays of perspectives and moral forms which draw upon available cultural resources” (Silverman 2011:199) or “cultural stories” (2011:188). According to the constructionist approach, (and this approach is the closest to my own view) researchers cannot claim to generate objective data through interviews because such data are co-constructed by

both interviewer and interviewee (Roulston 2011). Contrary to emotionalist and positivist approaches, interviewers need no special skills (Rapley 2004:25 in Silverman 2011:164). Silverman himself describes interviewers and interviewees as using their “mundane skills”(2011:164).

3.2.7 The approach for this study

The approach I take in this study, then, is a cautious constructionist one, cautious because such an approach generates its own problems. Silverman poses the question, “can interview data tell us anything beyond how participants locally assemble recognisable interview talk ?” and seems to take an extreme position: “I believe the ethnographer should pursue what people actually do, leaving what people say they ‘think’ and ‘feel’ to the skills of the media interviewer”. (Silverman 2011:118). Space does not permit me to show how each one of the many interview extracts and summaries in chapter 6 are, in Mann’s words, “interactionally occasioned” (2011:18). Although not an entirely satisfactory solution, I have created a dedicated appendix (Appendix A) where longer stretches of interview discourse obtained from a sample of four different court actors can be viewed, together with a reflexive commentary for each. My intention is to demonstrate a self-critical awareness of my own journey from inexperienced research interviewer with many positivist assumptions about interview data, to cautious constructionist.

3.2.8 The relationship between research interviews, police interviews and court hearings

What can interview data reveal about experiences, beliefs and practices in the courtroom ? In other words, what extra information is provided by court actors that could not have been obtained by ethnographic observation and recordings ?

In order to consider this question, it is crucial to understand how court cases are the end product in a long chain of discursive events (Haworth 2009). Court actors come together on a daily basis to hear cases and make decisions about defendants. Each court actor has a different job to do in the adversarial courtroom. Court clerks manage the process and advise magistrates; prosecutors prosecute the case on behalf of the state; defence advocates defend their clients; magistrates adjudicate and communicate decisions to defendants; witnesses give evidence; defendants who are charged with an offence give accounts of themselves;

interpreters are supposed to transfer all that is said in court to defendants and to other court actors.

The interpreter-mediated interactions I have just described *take place within the specific legal framework of the court hearing*. The evidence produced in such court hearings originates in the wider legal framework of the *police* interview. In the light of what we know about research interviews, we may well ask how *police* interviews are to be conceptualised, and in particular, how the *interpreted* police interview is to be conceptualised. After all, police interviews are co-constructed by three people: the police officer, the person suspected of an offence, and the interpreter, who also, according to Wadensjö (1998) *makes a new meaning* when transferring material from one language to another (see chapter 2, 2.5.6).

Haworth (*ibid.*) shows clearly how police interviews are collaboratively produced, and how the interviewee (the suspect) responds to the agenda set by the police interviewer, an agenda with which the police officer is familiar, whilst the interviewee is not. Questions are asked in a particular format by police officers who have an understanding of the wider evidential significance of the answers, whilst the interviewee is at a disadvantage by not being aware of this agenda. S/he thus responds intuitively, and often incriminatingly, to the interviewer's questions. As far as the *status* of such evidence is concerned, Haworth's claims are convincing in that the police interview "has a vital role in the evidence-gathering process – but evidence of what, exactly?" She goes on to suggest that:

the interview is only good evidence of what an interviewee thought was appropriate to say at the time of the interview, in that specific context, and for that immediate audience. These factors are of fundamental importance in shaping the resulting discourse, yet given the wider position of the interview [as evidence] in the judicial process, it is highly likely that the interviewee will have misjudged one or all of them.

(2009:322)

Fascinating though these wider issues are, they are beyond the scope of this study. So what is the value of the interview data in this study ?

3.2.9 The status of the interview data

The courtroom is a place where questions about “information” generated by police interviews are asked, answers given, and meaning spontaneously co-constructed by questioners and questioned alike. In other words, a constructionist view of the interview data presented in chapter 6 accords it no greater and no lesser validity than the co-constructed versions of events produced by witnesses, defendants and other court actors through a process of questioning by key court actors. Like Haworth’s interviewees, my respondents answered my questions in a way that they thought was appropriate at the time, in that specific context and for that immediate audience.

My interview responses reveal neither facts nor truths, but are representations of court actors’ own perceptions, collaboratively produced by the interviewees and myself. These representations have a value in that they can be shared with other court actors for training and pedagogical purposes without regarding them as self-evident realities. The interviews in this study are part of a much larger collection of data obtained from fieldwork, and which “contain materials that reflect very different ways of addressing the same social events” (Blommaert and Jie 2010: 64). Although it is commonly accepted that there is often a gap between what interviewees say and what they are observed to do, the interviews I conducted for this study are not relied upon as empirical evidence of institutional practice in the courts, but as sets of personal and subjective perceptions about court actors and the parameters of their roles. These perceptions influence the behaviour of other court actors, and impact upon the behaviour of court interpreters and their communicative relationship with defendants.

3.2.10 Setting up the interviews: court personnel

In cases where I had encountered willing court personnel by going to Magistrates Courts and recruiting them face-to-face, they were given a written description of the research to keep. They then signed a consent form, a copy of which I retained. (These can be found at Appendix E). The interviews took place either face-to-face on the same day in an empty (though often noisy) court office, or by telephone at a later date. In both cases the interviewees were told that they would be recorded. The information they had been given in the face-to-face recruitment encounters was given to them again at the beginning of every recorded interview; their verbal consent was again sought anew, and recorded. The face-to-

face recorded interviews took place in offices at courts; the recorded telephone interviews took place either whilst the interviewee was at home or at work after the court day had finished. Anonymity was assured.

3.2.11 Setting up the interviews: interpreters

Some of the interpreters were encountered at the courts, in which case the procedure was the same as that in the previous paragraph. Others came to me and offered themselves for interview.

3.2.12 Prior relationships with interviewees and the interviewer's role

In five of the interpreter interviews the interpreters had been my former students, and this fairly close relationship would have been developed over an academic year, starting in October and ending after the examinations in June the following year. In three cases I had no relationship with the interpreter prior to the interview, whilst two other interpreters were acquaintances encountered at conferences. These relationships could be expected to have had an effect upon the interview interaction. A table showing prior relationships between myself and interviewees can be found at Appendix B. Further details of prior relationships can also be found in Appendix A in the reflexive commentaries.

Because I had been a professional interpreter trainer over a period of twenty or so years, I anticipated that I would be perceived differently by those who had been my former students as contrasted with those whom I had not met before. That pedagogical relationship meant that I had closely monitored the development of their interpreting skills over a long period and shared their disappointments and successes along the way, a relationship which had resulted in some lasting professional friendships. These former students and myself could therefore be expected to share the same ethical and professional goals. Although there was no pedagogical relationship with the two acquaintances whom I interviewed, they were, like my former students, trained professional interpreters who cared greatly about their profession and wanted to contribute to its development. It is possible, though, that the interpreters in my sample who were former students of mine might regard me as a figure of authority, and that our prior pedagogical relationship might influence their responses. They might see me as “testing” their knowledge of interpreting, for example, or be intimidated by my questions, seeing me first

and foremost as a teacher and an authority on interpreting rather than as an independent researcher. They might be tempted to elaborate on their answers in order to impress me.

The three interpreters with whom I had had no prior relationship were less willing to engage in the interview process. They probably thought that that I was “checking up” on their credentials (after all they had had no formal training), and because of this I was not as successful in establishing a good rapport; they revealed much less about their views and preferences than did the other subjects, and came across as defensive.

I had no prior relationship with any of the other interviewees except the district judge. Further details of this relationship can be found at Appendix A, extract 3.

3.3 Overview of the ethnographic approach for this study

The following steps, described by Gobo (2008) are characteristic of the ethnographic approach which I adopted for this study:

- Entering into a social setting (the magistrates courts) as an outsider
- Participating in the daily routines of this setting (observing and recording court hearings)
- Developing relationships with the people in the setting (in this case, court actors)
- Systematically writing down what is heard and observed (making field notes during and after court hearings and interviews)
- Making recordings and transcripts (of court hearings)
- Conducting and recording semi-structured interviews (with court actors)
- Interpreting the data obtained
- Using a systematic process of reflexivity to minimise bias
- Drawing conclusions about behaviour

3.3.1 Ethnographic field notes

Field notes originate in the discipline of anthropology, and are meant to show not only what was witnessed by the observer, but what emotions accompanied that witnessing (Blommaert

and Jie 2010). In effect they are a form of diary and are meant to capture the feelings, concerns and thoughts of the researcher during and after observations. In turn, these notes are then used when interpreting data as ways of minimising bias and encouraging reflexivity in the way that the data is presented.

Following Gobo (2008), I made four kinds of field notes, although the different categories often overlapped, and memory sometimes failed me before I could record a particular event or thought. It is obviously impossible to observe everything that goes on in a court, as there are far too many activities and distractions. The categories of field notes identified by Gobo (and whose system I followed) are observational, methodological, theoretical and emotional.

According to Gobo, observational notes are “thin and detailed descriptions of events and actions directly seen or heard by the researcher.”(Gobo 2008:208). My observational notes included rough sketches and descriptive comments about the following features of a courtroom as viewed either from the prison or from the courtroom itself:

- Seating positions of key court actors including myself
- Sightlines of key court actors
- Comments about the gazes of key court actors
- The appearance of the defendant on the video link
- Sound quality and acoustics
- Extraneous noise and disturbances
- Camera shots and sound to image matches
- Court actors’ demeanour

Methodological notes are “essentially questions or reflections about how to remedy the difficulties that arise in the field” (Gobo 2008:210). My methodological notes included the following information:

- Difficulties in accessing the right people for information
- Difficulties in setting up the recording equipment
- How to gain the consent of all the court actors to the recording within a short time frame
- The position of the digital recorder and how I could be close enough to monitor it

- How not to attract attention to myself and disturb the business of the court
- How best to introduce myself to court actors and in particular to interpreters
- The quality of the recordings

Theoretical notes “signal elements that warrant further exploration, or they invite the researcher to recognize that the action observed is an empirical example of a concept, a research question or a sociological theory” (Gobo 2008:211). In this section I included speculative questions about:

- The relevance of Bell’s theory of audience design to interpreter-mediated events
- The status of the interpreter as addressee or as auditor
- How the different Moves were linked together (Move Analysis)
- Checking that the Move Analysis framework I had devised was flexible enough to account for variations in court hearings
- How lawyers’ submissions, generally delivered as monologues, differed from rapid two party exchanges between court clerks and advocates/magistrates, and the significance of this for interpreters

Emotional notes, according to Gobo, “aid awareness....of the stereotypes and prejudices, the fears and beliefs that the ethnographer may harbour towards the actors studied” (2008:212). Here I wrote down, for example:

- My private thoughts about whether PVL was fair to defendants or not
- My private thoughts about the quality of the interpreting I observed
- Thoughts about the behaviour of key court actors towards interpreters
- Negative feelings towards interviewees and their responses
- Concerns and doubts about the significance of the study and how it would be viewed

3.4 Genre and Move Analysis as an analytical framework for the study

The most useful definition of genre is that of Bhatia (1998) after Swales (1981). Bhatia sees Swales’ theory of genre construction as too static in that it underplays psychological and cognitive factors and therefore undermines the importance of the tactical aspects of genre

construction as a dynamic social process. Bhatia's work is concerned with written rather than spoken genres, but he constantly warns us not to analyse varieties and registers in isolation from social context: this would exclude how social purposes are accomplished.

He maintains that genre is;

a recognizable communicative event characterized by a set of communicative purpose(s) identified and mutually understood by members of the professional or academic community in which it regularly occurs. Most often it is highly structured and conventionalized with constraints on allowable contributions in terms of their intent, positioning, form and functional value. These constraints, however, are often exploited by the expert members of the discourse community to achieve private intentions within the framework of socially recognized purpose(s).

(1998:13)

He lists the characteristics of genre as influenced by the content, form, intended audience, medium and channel of the communicative event; genre changes when and if the communicative purpose changes; if there are minor changes these become sub-genres; specialist members of the community know their own communicative goals and the structure of the genres they use; genres have constraints on allowable contributions which result in mismatches being considered as odd; constraints are exploited by the expert to achieve private intentions within the framework of socially recognized purposes. As an example of the latter, Bhatia claims that in a counsel-witness examination in a court of law, "the counsel's private intention to win often takes precedence over the real communicative purpose of cross-examination, i.e. bringing the facts of the case to the attention of the court" (1998:15). (I take issue with Bhatia here: in the adversarial system of an English or Welsh court, a cross-examination has a different communicative purpose depending on the cross-examiner; it is not to bring facts to the attention of the court, as Bhatia claims, but to maximize the effect of evidential aspects *favourable* to the cross-examiner's case and to minimize the equivalent effect of evidential aspects *adverse* to that case.)

Bhatia's (1998:22-36) seven-step approach to the analysis of genres (see fig.4 below) though originally envisaged as a device to investigate written rather than spoken texts, offers the most useful way of approaching the analysis of face-to-face and PVL hearings. The analysis of recordings made in the courtroom and the collection of utterances (according to step 4 of Bhatia's list) will be undertaken through observation and field notes.

| Analysis of communicative events from the perspective of Move structure: Bhatia (1998) |
|--|
| 1. Find a typical example of the genre. Place given genre-text in its situational context. Identify the extra-textual reality which the text is trying to represent. |
| 2. Refine the situational/contextual analysis. |
| 3. Survey the existing literature. |
| 4. Select the corpus. Define genre/sub-genre well enough to distinguish it from other similar genres. Find distinctive textual characteristics. |
| 5. Study the institutional context, its linguistic, social, cultural, academic and professional rules and conventions. Include study of the organizational context and its constraints and pre-requisites. |
| 6. Study how the genre is realized at various linguistic levels. |
| 7. Make use of specialist informants (eg lawyers) as “interpreters” to explain what members of the organizational culture do when they exploit language to accomplish their generic goals. |

Fig.4 Using genre analysis to analyse spoken discourse

3.4.1 Application of Move Analysis to the Discourse of the PVL Courtroom in the Magistrates Courts

Move Analysis (Swales 1981) is a type of genre analysis which was originally designed for application to written academic texts and intended for pedagogic uses. Swales found strong similarities in the way that academics wrote introductions in research papers and proposed a general structure which could be broken down into ‘moves’ and ‘steps’ within that Move, although he did not provide a clear definition of those terms. Biber, Connor and Upton (2007:15-16) provide the most useful definition of a Move:

...the text is described as a sequence of ‘moves’, where each move represents a stretch of text serving a particular communicative function. The analysis begins with the development of an analytical framework, identifying and describing the move types that can occur in this genre: these are the functional/communicative distinctions that moves can serve in the target genre.

Subsequently, selected texts are segmented into moves, noting the move type of each move.

A Move, as further defined by Kanoksilapatham in Biber, Connor and Upton (2007: 23)

refers to a section of a text that performs a specific communicative function. Each move not only has its own purpose but also contributes to the overall communicative purposes of the genre.

According to Bhatia, (1998:32) moves are “discriminative elements of generic structure” and strategies are “non-discriminative options within the *allowable contributions* [Bhatia’s italics of Swales’ phrase] available to an author for creative and innovative genre construction.”

I have chosen Move Analysis for the following reasons. It is a tool helpful in making sense of the under-explored genre of Magistrates Courts hearings; Move Analysis, although it is only one of the existing ways of describing a genre, is particularly useful in the context of this study as it can perform two functions simultaneously. It is a structural tool best suited for linguistic description and analysis of the ethnographic data. It also enables me to comment upon the question of how the court accommodates non-English-speaking defendants through an interpreter. Since I have no access to the information received by the defendant in his/her language, I cannot comment on communicative success using issues to do with linguistic transfer as a point of departure. However, from the criminal justice system perspective communicative success is achieved if everything goes smoothly until the dismissal stage.

At the centre of this study is the question whether communication with second-language defendants in Magistrates Courts is successful in the two different contexts, face-to-face and PVL. The completion of move 1 at figure 5 below, for example, implies that the court's intentions of identifying the defendant and of ascertaining the indication of his plea or his actual plea have been achieved to its satisfaction and it can progress on to the next Move. From the perspective of the court, successful communication implies swift and unimpeded progress through all the Moves. The fact that there is an interpreter and a defendant who cannot understand the language of the court is of little significance unless there is a glaring mismatch of some kind, say, the wrong defendant or, indeed, the wrong language.

Finally Move Analysis is particularly effective as a pedagogical tool in the training of court interpreters and it will enable court actors to accommodate interpreters in the most appropriate way. One of its main advantages is the emphasis that it has enabled me to place upon the importance of the *focus* of each Move (defendant-focused or non-defendant-focused) and the significance that that focus has for the interpreter and for the court in terms of interpreting mode. This focus can be seen in the typical five-Move structure of a face-to-face court below at fig.4:

| | | | |
|---------------|--|---|--|
| Move 1 | 1.1 Announcement of case U | Initiation of contact with D and identification of D, presence of INT acknowledged by the court | Intention: Identification of D and swearing in of INT (D-focused) |
| | 1.2 INT sworn U,INT | | |
| | 1.3 Confirmation of D's details CC, INT, D | | |
| | 1.4 Charge is put CC, INT | Legal formalities | Intention: ascertain indication of plea or actual plea (D-focused) |
| | 1.5 Plea is taken CC, INT, D | | |
| Move 2 | 2.1 Crown submissions CP, INT | Outline case against the D | Intention: Informing DJ/M of alleged |

| | | | |
|---------------|--|--|--|
| | 2.2 Crown requests for costs, CP, INT | | offence and convincing them of the merits of the CPS case <u>(non-D-focused)</u> |
| | 2.3 Previous offences, CP,INT | | |
| | 2.4 Application for costs, CP, INT | | |
| Move 3 | 3. Previous offences read out in detail, CC, INT | Providing a full picture of the D | Intention: enabling DJ/M to formulate an appropriate sentence <u>(non-D-focused)</u> |
| Move 4 | 4. Defence submissions DA, INT | Make representations on behalf of the D | Intention: to convince the DJ/M of an merits in the D's case, whilst conceding any merits in the CPS case <u>(non-D-focused)</u> |
| Move 5 | 5. Pronouncement DJ, INT, M | <ol style="list-style-type: none"> 1. Explain how decision was reached 2. Announcement of decision 3. Details of punishment explained 4. Dismiss D | Intention: to communicate and explain the terms of judicial decision <u>(D-focused)</u> |

Fig. 4 Move Analysis chart for a typical Magistrates Court face-to-face guilty plea hearing after Bhatia (1998)

Compare the above Move structure with that for a PVL hearing below at fig. 5:

| | | | |
|---------------|--|---|--|
| Move 1 | 1.1: CC logs on and calls prisoner CC | Initiating contact with D, identification of D, ratification of INT and legal formalities | Intention: Establishing prison court link and checking identity <u>(D-focused)</u> |
| | 1.2: INT affirms or takes oath CC, U,INT | | |
| | 1.3: INT sight translates oath CC, D,INT | | |
| | 1.4: Virtual tour of the courtroom CC, INT | | |
| | 1.5: Confirmation of D's details CC, INT | | |
| Move 2 | 2.1: Background summary and current status of case CC, INT | Outline of case | Intention: Briefing and preparation of Ms for decision making <u>(Non-D-focused)</u> |
| | 2.2: Invitation to CP to outline case against D CC,INT | | |
| Move 3 | 3.1: Read aloud Crown case and account of alleged offence(s) or reasons for bail refusal CP, INT | Crown submissions | Intention: Informing Ms of alleged offence and convincing them of merits of CPS case <u>(Non-D-focused)</u> |
| | 3.2: Crown submissions CP, INT | | |
| Move 4 | 4.1 Make any representations on behalf of D DA, INT | Defence submissions | Intention: to convince the DJ/M of an merits in the D's case, whilst conceding any merits in the CPS case <u>(non-D focused)</u> |
| Move 5 | 5.1: Announce decision to D M, INT | Pronouncement | Intention: to communicate and explain the terms of judicial decision to D <u>(D-focused)</u> |
| | 5.2: Explain decision M, INT | | |
| | 5.3: Dismiss D M, INT | | |

Fig.5 Move analysis chart for a typical Magistrates Court PVL hearing (after Bhatia ibid.)

There may, of course, be variations on either of these frameworks depending on the status of cases and the stage which they have reached in the criminal justice process.

To sum up, Bhatia's Move Analysis is considered to be the best analytical framework for this study for the following reasons:

1. Magistrates Courts hearings are highly amenable to Move Analysis because they are constructed of chains of rigidly pre-determined, rule-governed, interlinked segments (Moves: see figs.2 and 3) which are observably distinct from one another in a number of different ways:

| Properties of Moves in a Magistrates Court hearing | Examples |
|---|---|
| Communicative functions | To make a range of legal decision(s) about the D or the case |
| Communicative intentions | Identifying the D, briefing the bench, convincing Ms of strengths or weaknesses of the case, communicating the decision |
| Type of speaker or addressee | D, CC, CP, DA, M |
| Style and delivery | Declamatory, rhetorical, informal, formulaic |
| Speech rate | Fast with few pauses, slow with pauses |
| Type of focus | D-focus or non-D focus |
| Degree of D participation/type of interaction | Consultative or non-consultative |
| Speaker volume | Speaking in a way which is meant to be heard, or not meant to be heard by the wider court |
| The absence, presence and/or interplay of primary and secondary realities | Reference to circumstances of alleged offence |
| The presence or absence of intertextuality | Oral reference to written laws or documents |

Fig.6 Properties of Moves with examples, after Bhatia (ibid.)

2. These Moves, or Move Steps, usually progress seamlessly from one to another by the use of key phrases, words or gestures, which act as prompts or cues to other court actors to begin speaking. These court actors are institutional "insiders" and so know what these key phrases or gestures are. Thus for an outsider (such as an interpreter) to become an insider, knowledge of these cues is essential.
3. The distinctive properties of each Move are of great significance for interpreters, as a knowledge of these will enable them to predict formulaic language and anticipate style and form, strategies which are known to aid the interpreter's accuracy; see Kirchhoff

(1976), Lederer (1978), Gile (1995) and my discussion of the role of anticipation and redundancy in chapter 2, 2.3.7 and 2.3.8.

4. Deviant forms can be described as “sub-genres” (Bhatia 1998:21). In chapter 4 there are two examples of hearings with unrepresented defendants: case KSFF1 at 4.5 and case UFF at 4.8. PVL hearings (see chapter 5) are also examples of sub-genres.

3.5 The data collection process

3.5.1 Activity 1: audio-recording in the courtroom

Obtaining data for this study was an extremely complex, time-consuming and occasionally frustrating process which took over two years to complete. The data collection period consisted of four concurrent processes, as follows:

- (i) Making written requests to all Magistrates Courts with PVL facilities in England, obtaining information about interpreted PVL cases from court listing offices and attending Magistrates Courts to collect audio-recorded data
- (ii) Interviewing court actors on court premises face-to-face or by telephone
- (iii) Interviewing court interpreters face-to-face and by telephone
- (iv) Making a formal application to Wormwood Scrubs Prison to conduct ethnographic observation of hearings from the PVL courtroom there.

3.5.1.1 The law concerning audio-recordings of court hearings

The courts in England and Wales do not usually allow recording of proceedings (Section 9 of the Contempt of Court Act 1981, Chapter 49²¹ prohibits this), but each court has discretion in

²¹ Subsection 9 (Use of tape recorders) of the Act states:

(1) Subject to subsection (4) below, it is a contempt of court— (a) to use in court, or bring into court for use, any tape recorder or other instrument for recording sound, except with the leave of the court; (b) to publish a recording of legal proceedings made by means of any such instrument, or any recording derived directly or indirectly from it, by playing it in the hearing of the public or any section of the public, or to dispose of it or any recording so derived, with a view to such publication; (c) to use any such recording in contravention of any conditions of leave granted under paragraph (a).

(2) Leave under paragraph (a) of subsection (1) may be granted or refused at the discretion of the court, and if granted may be granted subject to such conditions as the court thinks proper with respect to the use of any recording made pursuant to the leave; and where leave has been granted the court may at the like discretion withdraw or amend it either generally or in relation to any particular part of the proceedings.

(3) Without prejudice to any other power to deal with an act of contempt under paragraph (a) of subsection (1), the court may order the instrument, or any recording made with it, or both, to be forfeited; and any object so forfeited shall (unless the court otherwise determines on application by a person appearing to be the owner) be sold or otherwise disposed of in such manner as the court may direct.

the matter. Harris (1984) is one of the very few researchers (if not the only one) to make recordings in the English courtroom; she examined questioning strategies in fine courts within the Magistrates Courts in Nottinghamshire. Atkinson and Drew (1979) and Heffer (2005), for example, used official “cleaned up” transcripts as data, although the former used non-criminal proceedings (an inquest and a tribunal of enquiry) as the basis for their study. In jurisdictions such as the US or Australia recording courtroom proceedings is more common; since each jurisdiction is culturally specific, and because the language of those courts is shaped by the laws and cultural norms of those countries, their applicability to the UK context is necessarily limited.

3.5.1.2 Making formal requests to record

It was Subsection 2 of Section 9 of the Contempt of Court Act (1981) that I highlighted when applying to courts to allow me to make recordings. I made reference to this discretionary clause in my applications to each court.

In July 2009 letters of request to make audio-recordings were sent to three types of local court in the West Midlands. Care was taken in each case to identify and specify the appropriate official(s) with the authority to consider my request. One was to Birmingham Magistrates Court, where my application was considered by a group comprising the designated District Judge, the Chair of the Birmingham Bench and the Clerk to the Justices. Another was sent to the Immigration Appeal Tribunal Court in Birmingham to be considered by the Resident Senior Immigration Judge. The final letter of request was sent to Birmingham Crown Court to be considered by the Senior Liaison Judge. Although my objective was always to focus attention on Magistrates Courts, I wanted to be able to cast my net wider to include other courts where video conferencing is used in case permission from other courts failed to materialize. Gaining access to official recordings of Crown Court proceedings was to be my final attempt to gain access to recorded data. In the event, in each case the responses were negative; reasons for the refusals were not given.

(4) This section does not apply to the making or use of sound recordings for purposes of official transcripts of proceedings.

3.5.1.3 Responses to requests

I subsequently wrote to 123 further courts with PVL facilities in England making the same request. 104 courts did not respond at all. There were 13 outright refusals, four letters passed on to be considered by more senior officials, and finally two expressions of interest, one from Bristol Magistrates Court and one from Walsall Magistrates Court in the West Midlands. In the latter two cases both officials referred me to the Ministry of Justice (MOJ), explaining that, although they were interested in my research, the courts would need prior approval from a senior member of the judiciary (whom they did not specify) for audio-recordings to be made. My requests were then passed to the Head of Criminal Business at the MOJ who formally considered them to see whether I could gain access to the official recordings that are routinely made in the Crown Court, and/or whether he could facilitate my request to record in the Magistrates Courts. Even if my focus would have had to change from the Magistrates to the Crown Court, the ready availability of such official recorded data would have been a research opportunity not to be missed.

3.5.1.4 Gaining permission to record

In December 2009, my request was forwarded by the Ministry of Justice to the office of the Senior Presiding Judge of England and Wales (SPJ), Lord Justice Goldring. The SPJ is a Board member of HM Courts and Tribunals Service and oversees the work of Presiding Judges on each circuit in England and Wales, providing a general point of liaison between the judiciary, the courts and government departments. After asking for further information, the SPJ invited me to his office in the Royal Courts of Justice in London in order to discuss my request. This meeting took place in February 2010, and was attended by myself and Dr. Tim Grant, (the then) Deputy Director of the Centre for Forensic Linguistics at Aston University. The meeting lasted about an hour and the SPJ listened to my proposals with what appeared to be great interest. Although he did not give me an immediate answer, he said he would let me know after he had discussed the proposal with his senior colleagues. In April 2010, I received an email to say that the recordings could go ahead, together with an official letter (see Appendix E) that could be given to courts, asking them to facilitate my request to make recordings. It should be noted that even the SPJ does not have the authority to *order* courts to allow recordings to be made: it is up to each individual court to make that decision. He also provided me with a letter for Crown Court officials to allow me to gain access to official

recordings of court hearings. I decided that obtaining permission from all those involved, locating recordings of interpreted proceedings and approaching a wide range of commercial firms to which such recordings are outsourced for transcription would be too complex a task, best left for another research project.

At this stage I still did not know how I would be received in the courts, even with my letter of authority from the SPJ. I wanted to leave all my options open and decided to make an application to the Senior President of Tribunals (Lord Justice Carnwath). The application consisted of a request (identical to the one I made to the SPJ) to allow me to record interpreted Immigration Tribunal hearings at Sheldon Immigration Appeal Court in Birmingham. Although my request was formally considered by the Principal Research Officer (Constitutional and Access to Justice Analytical Services (CAJAS)) it was eventually refused on the grounds that “while the aims of the research were very worthwhile” and that she would “welcome the research as such”, she was “concerned and felt unable to endorse the research at present given that....the research is unlikely to add to the existing evidence base because of the lack of robustness of any results due to the insufficient sample sizes and the apparent lack of a rationale behind the sampling”. The proposal presented to the Senior President of Tribunals was identical to the one sent to the SPJ, yet it did not find favour. The Officer offered me an opportunity to discuss matters further at a meeting, but I decided that time was running out and I should now concentrate on face-to-face hearings and PVL cases in Magistrates Courts. The criticism of the research project above will be addressed further at 3.7.

3.5.1.5 Making the recordings in court

In total I recorded eleven face-to-face hearings and ten PVL hearings. Having previously found out which cases were interpreted and for which courtroom they were scheduled from the courts’ listing officers, I developed a standard procedure for approaching court actors with a view to asking them for their permission for the recordings to be made. I would arrive at the Magistrates Court, in formal dress, at opening time (usually 9 am: cases are usually heard from 10 am onwards). This would give me an hour or so to approach court actors, show them Lord Justice Goldring’s letter, talk to them about my research, and gain their permission. My next move was to find the court usher with responsibility for that particular court. These officials were usually extremely helpful, and once a relationship had been established with

them and they understood what I needed to do, were crucial in introducing me to appropriate court actors and giving me information about when defendants were due to appear. However, contact with court actors needed to be managed with tact and sensitivity, as they were often pre-occupied with preparing their cases or looking through bundles of documents; not only was I seeking consent to record cases, but to obtain consent for interviews to be conducted at a later date, usually by phone. Sometimes I was met with indifference, occasional hostility and outright refusals, but these instances were rare, and most officials were interested in the study and prepared to co-operate. Sometimes I was asked to stand up and make my request in open court; at other times the CC or the Magistrates made the request on my behalf. It has to be said, though, that there is a lack of a standard procedure for making such a request and CCs did not always effectively manage that task. Although consent forms were given out for people to sign, more often than not they were ignored in favour of verbal consent. In the end, I had to assume that once the duty of obtaining consent from those present (including defendants) had been delegated to the court itself, there was little I could do to ensure compliance with the SPJ's conditions without disturbing the business of the court.

I had only one refusal by a defendant in a face-to-face court who consulted his lawyer on the matter before declining. All the other defendants and court actors agreed to be recorded after I discussed the research with them through the court interpreters. The process of transcription for the court recordings was done by myself. All identifying material was anonymised. This includes names, place names, dates of birth and all other dates and numbers pertaining to the alleged offences.

3.5.2 Activity 2 of the data collection process: interviewing court actors

My questions to court actors had several aims (see Appendix C for the interview guide). I wanted to elicit whether there were guidelines for working through interpreters, whether they changed their behaviour when dealing with an interpreted PVL case, where they thought interpreters should sit, their own personal preferences about PVL and their opinions about future applications of PVL.

3.5.2.1 Magistrates and District Judge

Four Magistrates and one District Judge granted me interviews. Ideally I would have preferred all interviewees to have had experience of presiding over interpreter-mediated PVL

cases, but disappointingly, they proved too difficult to find. This is probably because Magistrates are normally only required to give up two days per month to their duties on the Bench; the likelihood of being assigned to any PVL case is small (there is usually only one PVL court in each court building), and the likelihood of being assigned to an interpreter-mediated case is still less. Nevertheless, I was able to interview one lay Magistrate whom I had observed and recorded sitting in an interpreter-mediated PVL case that very morning, as well as three more Magistrates who had some experience of sitting in non-interpreter-mediated PVL and interpreter-mediated face-to-face cases, and a District Judge with considerable experience of working with interpreters in both contexts. Two of the four lay Magistrates were interviewed together.

In the case of one of the Magistrates and the District Judge, both of whom I had observed working in court with interpreter-mediated video link, the interviews were conducted in a short break during proceedings so due to time constraints I was unable to fully explore some of the interesting ideas they brought up. The other three Magistrates were all interviewed in their own homes. Interviews lasted from twenty to forty minutes.

3.5.2.2 Court clerks

I interviewed three court clerks in PVL courts, all of whom had had experience with interpreter-mediated PVL, and two of whom I had been fortunate enough to observe in court. One worked in an outer London Magistrates Court, the other two worked in the Midlands. CC(i), for example, gave me an extensive and extremely useful demonstration of the prison video link system. When collecting interview data from court officials, it is preferable to interview those who have already been observed in action in the courtroom. To do so adds to the immediacy of the encounter, and yields a wealth of material which might not otherwise have been available. For example, I sometimes asked them about decisions they had made that very morning. CC(i) was interviewed in the PVL courtroom itself during a break, and the other two were interviewed by telephone.

3.5.2.3 Crown Prosecutors

I interviewed four crown prosecutors, all of whom I had observed working with interpreters in

the courtroom, although not necessarily with PVL. I interviewed three in person in the CPS²² room on court premises, the remaining prosecutor was interviewed later by phone.

3.5.2.4 Defence Advocates

I interviewed five defence advocates, four of whom are currently practising in West Midlands Magistrates Courts and who were observed by me working with interpreters in the court, and one of whom practises in the London Metropolitan area whom I did not actually observe. Two of the five defence advocates had considerable experience of prison video link *without* interpreters, and of face-to-face courts *with* interpreters. Two others had wide experience of working through interpreters both face-to-face and in PVL courts. The remaining advocate had extensive experience of PVL and of working in the Virtual Court in London, and although he had not used interpreters in the Virtual Court or in PVL I felt that an interview with him might yield considerable insights. Two of the advocates agreed to a telephone interview, and the other two were interviewed in a private room in the court. The other advocate (DA(v)) was interviewed at the Law Society's headquarters in Chancery Lane, London.

3.5.3 Activity 3 of the data collection process: interviews with court interpreters

For this part of the research project ten court interpreters were interviewed. All had had experience of face-to-face court interpreting and PVL, whether with witnesses, detainees appearing in immigration appeal tribunals or the Virtual Court pilot in London, and were therefore in a position to make a comparison between the two contexts. Ideally, I would have preferred to interview respondents whom I had also observed in court; in this way I could have made direct reference to any interesting behaviour of other court actors, and the interview would have been a shared experience. In the event, only two interviews were obtained with this type of respondent. Maintaining contact with this group proved to be difficult for three reasons. Firstly it was not always possible to speak to interpreters before they left the court, especially if I needed to stay in the courtroom to monitor the audio-recordings of other interpreter-mediated cases. Secondly, some showed a marked reluctance

²² The CPS is the Crown Prosecution Service. This is the government department responsible for prosecuting criminal cases investigated by the police in England and Wales. The CPS advises the police on cases for possible prosecution, reviews cases submitted by the police, determines any charges in all but minor cases, and prepares and presents cases at court. For more information see <http://www.cps.gov.uk/about/>

or refused to be interviewed. Thirdly, although three interpreters I had observed in court had agreed to a telephone interview and provided me with their business cards, none of them responded to my messages left on at least four different occasions. To make up my sample to ten, I encountered five interpreter respondents (without having observed them) in a local court whilst making my recordings. Then a colleague from the Institute of Translating and Interpreting offered to post my request on her email distribution list, which resulted in two more interviews, and finally an encounter with a court interpreter at a conference resulted in my tenth and final interview.

All the interpreters who agreed to be interviewed were formally asked for their consent, which was granted. Seven interviews were conducted by telephone; the other three were conducted face-to-face. Some interpreters agreed to sign a consent form, but all were asked once again at the beginning of each interview whether they consented to the recording of the interview. The transcription and the recording thus provide documentary evidence of their agreement.

3.5.4 Activity 4 of the data collection process: gaining access to defendants on remand in prison

I consulted the statistics for foreign national prisoner populations of various prisons in the South East of the UK, and chose HMP Wormwood Scrubs in West London (34.73% in June 2010 rising to 45.90% in September 2011)²³ and, although there are prisons with higher populations, Wormwood Scrubs is more easily accessible. I calculated that there would be a higher chance of encountering limited English-speakers appearing on interpreted video link in this prison (for example, HMP Birmingham had only 16% foreign nationals). Another factor in my decision was that the Magistrates Court in outer London where I had made most of my audio-recordings processes a large number of interpreted PVL cases from Wormwood Scrubs.

3.5.4.1 Ethical considerations in relation to defendants on remand

My original intention was to interview defendants on remand in custody before and after their cases were heard. In order to do this I would have had to engage the services of interpreters

²³ Source: <http://www.justice.gov.uk/publications/statistics-and-data/prisons-and-probation/oms-quarterly.htm>.

both to obtain defendants on remand in custody's consent and to conduct the interview. Regrettably, I decided to abandon the interview strategy for both practical and ethical reasons:

- i) It proved very difficult to gain information from Magistrates Courts Listings Officers (the personnel who book interpreters) long enough ahead to be able to engage appropriate interpreters in good time for the case. Magistrates Courts operate on a very short time frame, and give little notice of interpreted cases in the system. Moreover, Wormwood Scrubs Prison does not routinely record the English language proficiency of defendants on remand in custody.
- ii) Court listing officers can be vague about the languages spoken by defendants, as interpreters are registered as speaking several, and they may be booked as an interpreter in one language (in one instance, Mandarin Chinese) when in fact the defendant speaks quite another (Vietnamese). This would have made it impossible to predict the languages of defendants on remand in custody long enough in advance to have engaged interpreters or translators.
- iii) The cost of engaging interpreters would have been prohibitive, together with the cost of translating consent forms into the appropriate languages, even though in the event, a former interpreting student and another contact within Aston University provided translation services for two languages free of charge.
- iv) I considered it unethical to interview defendants on remand in custody whilst they were waiting for their cases to be heard, as they might well be in an anxious state of mind before appearing in court and any contact with them could be considered as an unwarranted distraction.
- v) Foreign defendants on remand in custody can be considered as a particularly vulnerable category being linguistically, as well as geographically, isolated. The incidence of mental health problems in defendants on remand in custody is known to be disproportionately high, and interviewing these subjects about their experience with PVL might not be fair, ethical or indeed fruitful.
- vi) Any interview would have to be conducted within the sight and hearing of Prison Officers. Defendants may associate a researcher with the prison establishment and provide answers that they think I want to hear. Because of this they may not wish to say anything negative or critical about the court process.

Interestingly, 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 decision but for different reasons, the main one being that refugee claimants' views might be coloured 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.

3.5.4.2 Ethnographic observation of the main courtroom from the prison

Rather than *interview* defendants on remand in custody, then, I decided on ethnographic observation. This involved finding out what it was like to be a defendant in the PVL suite, and sitting next, or near, to them as cases were heard. I wanted to observe not just the defendants themselves, but the behaviour of interpreters and other court actors *from the vantage point of the prison itself* as well as gain a subjective impression of general audibility, the quality of the images on the screen, the match of image with sound together with all the other phenomena I had observed during the making of my audio-recordings in the courtroom. In all, I wanted to get a prisoner's eye view of the process in order to provide a well-rounded and rich description that would plug any gaps left from my court observations and interview data, and more importantly, inform my findings and conclusions.

Ellis (*ibid.*) also decided to sit next to claimants in VC refugee hearings, although he was criticised by one of his scientific advisers for failing to consult claimants directly. Like myself, he observed VC hearings from both perspectives: that of the tribunal and that of the claimant.

In the event, it proved too problematic for me to gaze directly at defendants on remand because of my seating position (in front of and to the side of the defendant). Firstly, my position meant I would have had to turn round to observe the defendant, which would have prevented me from observing the hearing. Secondly, I judged that gazing directly at defendants would be unsettling and distracting for them. My view of the defendants was therefore the same as that of the court: the PIP (picture in picture) in the corner of the video screen. Whilst observing the cases I took field notes.

My seating position in relation to the prisoner is discussed in chapter 7 at 7.3.3, and shown in the diagram at figure 57 in the same chapter.

3.5.4.3 Gaining access to the prison

Having decided on this new strategy and on the prison where I would carry it out, a formal online research application had to be made to a central clearing body, the National Offender Management Service. The form was very long and detailed and had to be accompanied by a counter signatory declaration. Once the application had been vetted, it was passed to Wormwood Scrubs Prison and their Head Psychologist, who asked me to submit a research plan and negotiated with me at length about the wording of the defendants on remand in custody' consent forms. Two further visits to the prison in person were mandatory before I could begin the observation. The first involved a formal verification of a wide range of identity documents, including birth and marriage certificates, passport, driving licence and recent utility bills, and the second involved formal security training by a Prison Officer. Once this had been done, I was given a number to be presented to security staff which triggered the production of a security tag and admittance to the prison. The whole process took approximately six months.

This done, finding out information from Magistrates Courts about which defendants on remand in custody would be appearing on which day and what languages they spoke was difficult, occasionally frustrating and very time consuming. Not all courts in London, for example, have the same system for booking interpreters, and listing officers (the court administrators responsible for listing Magistrates Court cases for the following day) do not generally communicate directly with the interpreter booking service. Negotiating my way around all the different holders of this information aroused, at best, curiosity, and, at worst, suspicion and occasional hostility. On some occasions I was referred to Court Managers who insisted I apply to them in writing, thus making the whole process even lengthier. Fortunately the Senior Presiding Judge's office provided me (at my request) with another letter to explain my research and to ask the courts to facilitate it; this appeared to play a decisive part in courts agreeing to provide me with the information I needed.

However, information about interpreter-mediated prison video link cases given in good faith to me by administrators could change unpredictably according to circumstances. To illustrate this, I would arrive at the prison only to find that the cases of defendants I had come to observe and who were listed for that morning were not to take place after all. On one occasion I spent the morning getting to know the prison staff in charge of the PVL facilities and being

shown around the prison itself. The Prison Officer in charge was very helpful, volunteering to use the prison computer record system to find out the names of defendants on remand who were due to appear in the PVL court later that week. Although their interpreting needs were not recorded, their level of English *was* (although this seemed to consist merely of a subjective evaluation by a non-expert and limited to a short phrase). Armed with these names I then phoned the relevant courts from the prison to confirm the details I needed for the next set of court appearances.

3.6 Participants' motivations in taking part in the study

I wanted to emphasise to participants that the research would have a practical outcome and could potentially result in better-trained court interpreters and court staff, and that I hoped to be able to disseminate the results of the research to help courts to devise protocols and general guidance for court actors on how to work through an interpreter. If the study had been less practically based, less applicable to every day multilingual encounters in the courts and more theoretically biased, people might have been less willing to participate. Although I cannot speak for the Senior Presiding Judge of England and Wales, I believe that his decision to facilitate my research was strongly influenced by these considerations.

3.7 The limitations of the data

In section 3.3.4 I described how two identical applications to record cases were submitted to two senior judges, one overseeing all Magistrates and Crown Courts in England and Wales, and the other with responsibility for Tribunals for the same geographical area. Whilst one application was granted and generally greeted with apparent interest, the other was rejected on grounds of “insufficient sample sizes” and a “lack of rationale behind the sampling”.

All research is limited in some way or another, and this applies no less to the scope of a PhD thesis conducted by a single researcher. The languages and interpreters were recorded randomly, so this study presents a realistic snapshot of what goes on in Magistrates Courts every day. The study, however, is based upon an unprecedented breadth of qualitative data, which considers the perspectives of *each type* of court actor. Variations in terms of age, gender, level of training, etc. in my sample are therefore largely irrelevant. These routine non-

evidential court hearings, whether face-to-face or PVL, involve a highly structured series of court interactions where there is little room for unscheduled contributions from court actors or defendants. The formats of the range of procedures that can be heard in a PVL hearing vary little from court to court and in different parts of the country, and moreover these formats are prescribed by law. In many cases the outcome of the hearing is predictable (for example, a re-remand). Thus there is a great deal of similarity between court hearings in different areas of England and Wales, whether rural or urban; legal practitioners have similar training in whatever part of the country they are located. Magistrates, defence and prosecution advocates are trained by individual institutions each with its own specific professional goal. Since non-English-speaking defendants are mostly found in large conurbations, this is also where the largest numbers of interpreters are also found. My research was necessarily confined to these areas.

The Magistrates Courts in which I undertook my observation and audio-recordings are thus highly comparable in courtroom layout, levels of training, procedures, legal language, sightlines, audibility and seating positions of major court actors. Even if the sample sizes had been increased, the data would have yielded very similar results.

3.8 Summary of chapter 3

In this chapter I have presented an overview of the study, and have outlined my own epistemological assumptions about the data I collected. I have shown how the approach to the study is a linguistic ethnographic one and have outlined some of the debates about the status of interview data. I have also described and justified the analytical framework, Move Analysis, which will be used as both a structural and conceptual tool to understand the institutional context of the courtroom, to discover the rules for appropriate behaviour, to take account of the constraints and relationships that operate in the courtroom and to understand the linguistic and non-verbal cues which signal transitions from one Move to another. It describes at length the complex and time-consuming process for gaining access to the courtroom and prison data, and speculates about the reasons that court actors and defendants may have had for participating in the study when agreeing to be recorded or interviewed. It is thus qualitative in its orientation. The intention of the study is to contribute to the more effective functioning of bilingual courts.

Chapters 4 and 5 make use of Move Analysis in the two chosen contexts, with chapter 4 concentrating on that of the face-to-face Magistrates Court and chapter 5 focusing on the PVL court. It articulates four focused research questions and explores them by applying Move Analysis and ethnographic observation to recordings of hearings in the courtroom.

Chapter 4: Analysis of Face-to-Face Interpreter-Mediated Hearings

4.1.1 Chapter overview

4.1.1 Using face-to-face courts as a basis for comparison with Prison Video

Link courts

Since part of the purpose of this study is to investigate the differences in interpreter behaviours in Prison Video Link (PVL) and face-to-face contexts, I have chosen to begin by analysing the data obtained in face-to-face courts and using it as a baseline for comparison with PVL. I will elaborate on the function and role of the Magistrates Court system in England and Wales outlined briefly in chapter 1,(1.1.4), and describe the range of interpreter behaviours I found there. Four research questions relating to aspects of interpreter-mediated communication and court actor behaviour are formulated, described and explored by gathering evidence in face-to-face court contexts, and conclusions drawn from the findings. In chapter 5, the findings will be compared with those in chapter 4.

4.1.2. Abbreviations, transcription conventions and pronoun use

I have abbreviated court and prison personnel in the transcripts as follows, and explanations of roles which may be jurisdiction-specific are provided in footnotes: U (Usher)²⁴ DA (Defence Advocate)²⁵ CP (Crown Prosecutor)²⁶ DJ (District Judge)²⁷ M or Ms (Magistrates)²⁸ CC (Court Clerk)²⁹, interpreter (INT), Defendant (D) and PO (Prison Officer), YF(Yvonne Fowler) and SO (Security Officer).

²⁴ Court ushers make sure that everyone involved with a court case is present and knows what they have to do during the hearing.

²⁵ Defence advocates are trained lawyers who represent defendants in court.

²⁶ Crown Prosecutors represent the State.

²⁷ District Judges are professional lawyers who sit alone and judge cases in the Magistrates Court.

²⁸ Magistrates are trained, unpaid lay members of their communities who work part-time and deal with less serious criminal cases, such as minor theft, criminal damage, public disorder and motoring offences.

²⁹ Court Clerks (now called Bench Legal Advisers) assist Magistrates and District Judges in court to ensure that procedures are adhered to and that the Bench is properly directed as to the law and its powers, as well as seeing that the Courts' business is dealt with efficiently. The clerk's role is far more significant where lay magistrates are presiding because they are not legally trained and so require more advice on legal matters than a district judge. The clerk ought not exert any influence upon the Bench - to which the advice they provide must be neutral - but nevertheless the clerk's advice carries considerable weight.

In addition, the following abbreviations will be used to denote different interpreting strategies: whispered simultaneous interpreting (WSI) whispered consecutive interpreting (WCI) consecutive full volume (CFV) and voiced simultaneous (VS). The abbreviation PVL will be used to refer to prison video link.

Indicating simultaneous speech by interpreters on a transcript proved to be particularly problematic, either because the interpreter could not be heard at all (especially if in a secure dock with the defendant), or because it was too difficult to separate out interpreter turns due to lack of access to the foreign language. My solution is not entirely satisfactory, but I decided to show simultaneous speech in two ways; firstly where interpreters' renditions overlapped with current speakers, I simply shaded that overlap in grey on the transcript, and secondly where legal practitioners overlapped with each other I used the convention of square brackets. The grey shading, although unsatisfactory, does at least provide a visual impression of the speech behaviour of court actors. If interpreters in simultaneous mode could not be heard *at all*, these turns are not shown.

All the defendants I observed were males, and, in fact, male prisoners greatly outnumber female. I therefore use the pronoun 'he' for all *general* references to defendants, as they were all male. My ethnographic observation showed the majority of interpreters to be females. I therefore use 'she' for all *general* references to interpreters. When writing about *specific* interpreters I refer to them by their actual gender. Economy and clarity of presentation are the over-riding reasons for this.

4.1.3 Magistrates Court hearings: background information

The bulk of Magistrates Courts hearings are heard face-to-face, with the defendant either appearing either from custody or on bail. Although PVL hearings are common in most courts all over the UK (including Scotland and Northern Ireland), face-to-face hearings are the norm, and will serve here as a basis for comparison. On one level, PVL and face-to-face hearings are not strictly comparable at all. The kinds of procedures to be observed in face-to-face cases are obviously extremely wide-ranging, from first appearances after arrest to adjournments, trials,

committals for both trial³⁰ and sentence³¹, sendings³² and transfers³³ to the Crown Court. PVL courts hear only a narrow range of procedures ranging from second and subsequent remands, committals and transfers to the Crown Court and sentencing with the consent of the defendant. However, the intention of the study is not to make a comparison between these different types of hearings from a legal perspective, nor am I interested in semantic transfer issues; it is the perspectives and behaviour of all court actors which are central. Although PVL was introduced on a court-by-court basis over a period of ten years or so, it is different enough from face-to-face hearings to warrant special guidelines and procedures which have been devised for use by the courts. These guidelines describe PVL procedures, but provide little information about the use of interpreters, two short paragraphs, in fact. (See Prison Video Links: National Guidance, version 1.2. HCMS 2010).³⁴

4.1.4 The data

Eleven audio-recordings were made in 4 Magistrates Courts in inner and outer London and in Birmingham between May 2010 and March 2011. A wide variety of defendant languages was encountered. These included Kurdish Sorani (2), Vietnamese (2), Bosnian (1), Urdu (1), Polish (1), Romanian (2), Spanish (1) and Bengali (1). The hearings themselves ranged from committals to the Crown Court, guilty plea hearings³⁵ and remands³⁶. Most defendants were legally represented but there were 2 hearings (UFF and KSFF1) where defendants were not represented. In the Romanian case (RFF2) there were three female co-defendants, and in case 7 (VFF2) there were two male co-defendants. In all the other nine cases there was a single

³⁰ A defendant in the Magistrates Court may be committed to the Crown Court when, after being invited to do so, s/he has not indicated a plea at all, or has indicated a plea of not guilty. The CP then indicates the Crown's view as to which would be the more appropriate. The defence advocate is then able to make representations whether for disposal in the Magistrates Court or the Crown Court. The Magistrates Court then decides whether or not its jurisdiction is adequate in terms of the penalties available. If the Magistrates Court decides that the case should therefore proceed to the Crown Court the case would be adjourned for a committal hearing in the Magistrates Court. However, if the Magistrates should agree to deal with the case the defendant is then asked which court s/he wishes to choose. If s/he chooses to be delay with in the Magistrates Court, after confirmation has been secured that s/he still wishes to plead not guilty, the case would then be put off for a trial in the Magistrates Court. Should the defendant choose to be heard before a judge and jury in the Crown Court, the case would be put off to a later hearing in the Magistrates Court, whereupon there would be a committal for trial to the Crown Court.

³¹ If a defendant accused of a certain category of offence which can be heard in either court indicates a plea of guilty, and if after representations from prosecution and defence advocates the Magistrates direct that their powers of punishment are insufficient, the defendant will be committed for sentence to the Crown Court. There are also other legal reasons why this procedure may be invoked.

³² Adult defendants charged with an indictable only offence and appearing before a Magistrates' Court for the first time are usually "sent forthwith" to the Crown Court.

³³ Defendants can also be "transferred" to the Crown Court for some serious allegations concerning sexual offences and for serious fraud.

³⁴ This states: "Arrangements for interpreters will remain the responsibility of the court. interpreters can attend either the court or the prison and this can be decided by the court on a case by case basis. Any claim forms can be submitted directly to the court following the standard procedures. Please be aware, interpreters may be reluctant to visit the prison estate, in these cases local arrangements should apply subject to agreement."

³⁵ At a guilty plea hearing a defendant pleads guilty to the offence with which he has been charged.

³⁶ Whilst waiting for their cases to be dealt with, defendants can either be remanded on bail or in custody (in prison).

defendant. Although it would have been highly desirable to obtain samples which were more comparable to the typical remand/review hearings encountered in the Prison Video Link courts, this would have proved too difficult and time-consuming, as the unpredictable nature of the listing process in Magistrates Courts means that defendants appear in court as soon after their arrest as possible, and Magistrates Courts have to be responsive to recently arrested persons. Thus the time scale between arrest and first appearance in the Magistrates Court is very short, perhaps only a few hours. In any event, I was able to observe a variety of practices and behaviours displayed by interpreters, defendants and court personnel and the research questions I have formulated will be tested using the recordings and ethnographic observations in the face-to-face courtroom and in the PVL courtroom.

4.1.5 Power relationships in Magistrates Courts

There is an asymmetrical power relationship between the court actors and the defendant³⁷. This is particularly noticeable in all non-trial and non-evidential hearings; defendants are largely silent and the extent of the interaction between them and the court consists of simple confirmation of names and dates of birth at the beginning of the hearing and confirmation of defendants' understanding of the decision of the court at the end of the hearing. This asymmetry is also noticeable when live defendants are brought in from custody into the secure dock (usually in handcuffs and accompanied by one or more security officers) and when remote defendants appear via video link. However when defendants voluntarily enter the dock from the court they are not guarded by security officers and perhaps perceive that they have more licence to intervene and participate in the hearing. The defendants in my sample fall into both categories; some are brought into the dock from custody and others enter the dock from the court by themselves.

4.1.6 Court interpreter seating positions

There are two main positions for the dock in England and Wales. One is at the side of the court, the other is at the back of the court (of particular significance for the interpreters, for whom it is much harder to hear what people are saying if advocates do not face them when speaking, see chapter 2, 2.3.5). There are two main types of dock, secure and open. A secure

³⁷ Matoesian's (2008) analysis of a defendant giving evidence in the Kennedy Smith rape trial shows that this is not inevitably so.

dock is connected to the underground cells where defendants are held before coming into the courtroom, sometimes up a flight of steps. A secure dock consists of a barrier of thick security glass, with either slats or small holes through which advocates speak to their clients. Sometimes the public gallery is completely partitioned off by glass and the court itself by a door through which only court personnel can enter. Audibility thus varies according to the position of the interpreter, the acoustics of the courtroom and whether there is a sound system switched on. Where interpreters are in secure enclosed docks and use whispered interpreting, they are often hardly audible to the rest of the court. See below for typical layouts.

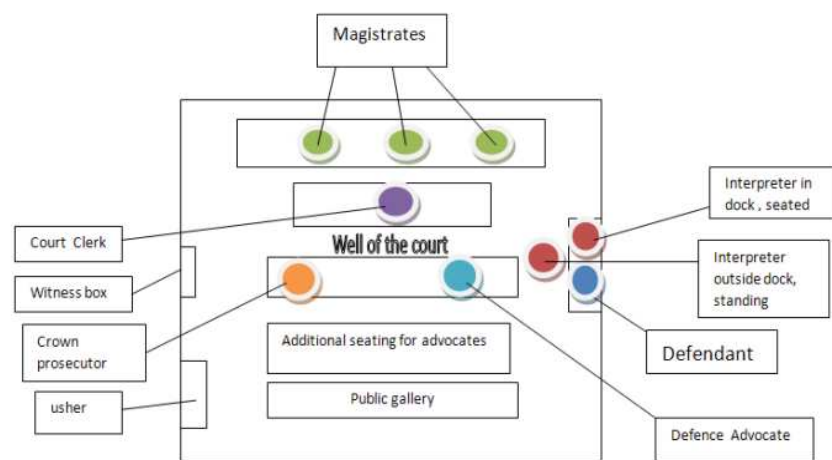


Fig. 7. Two interpreter seating/standing positions in a typical face-to-face Magistrates Court, showing alternative dock position at the back of the court.

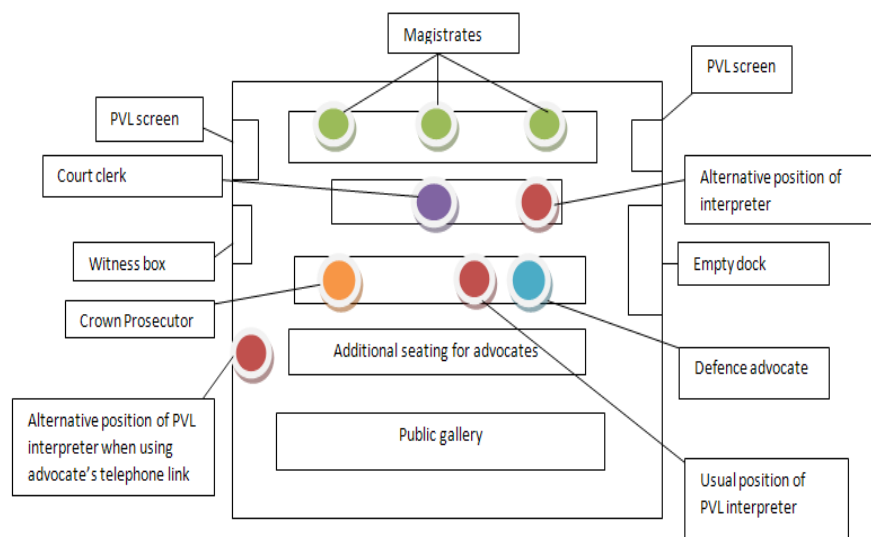


Fig.8. Typical PVL court showing three possible interpreter positions and PVL screen positions.

4.1.7 Swearing-in or affirming the court interpreter

Before any case begins, interpreters are supposed to be formally sworn in or affirmed. This is usually done in the witness box (the same place where witnesses are sworn in and give their evidence). This promise can be taken in two forms, as an oath or as an affirmation. After the interpreter has agreed to either swear the oath or affirm, one of the two cards is presented to the interpreter (usually by the usher). The oath reads as follows:

I swear by Almighty God that I will well and faithfully interpret and true explanation make of all such matters and things as shall be required of me according to best of my skill and understanding. The language is [] and my name is [].

The affirmation reads as follows:

I do solemnly sincerely and truly declare and affirm that I will well and faithfully interpret and true explanation make of all such matters and things as shall be required of me according to best of my skill and understanding. The language is [] and my name is [].

The interpreter is then expected to transmit this promise to the defendant in some unspecified form or other. Sometimes the interpreter does this unprompted, at other times interpreters are reminded to do it by the court. Both the swearing-in of the interpreter and its transmission to the defendant are sometimes omitted, however, presumably because court staff forget to do it. The possible consequences of this are discussed at 4.15.2 in this chapter.

4.1.8 Adjudicators and other court actors in the Magistrates Court

In the Magistrates Court there are two types of adjudicators, magistrates (sitting in threes) and district judges (sitting alone). In four of my recorded hearings there were district judges rather than magistrates. In all the remaining seven cases the adjudicators were magistrates, mostly three, occasionally two, sitting together. In addition to magistrates or district judges, there is a court clerk (recently re-named a “bench legal adviser” and whose role changes according to whether they are sitting with a district judge or a bench of magistrates; to avoid ambiguity I have used the old name, since lawyers and paralegals who attend the police station to give legal advice to detained persons are also called legal advisers). The powers of court clerks are outlined in the document entitled ‘The Responsibilities of Justices’ Clerks to the Magistracy and the Discharge of their Judicial Functions’³⁸.

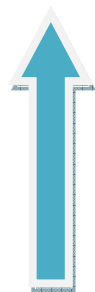
³⁸ This document can be found at http://www.judiciary.gov.uk/Resources/JCO/Documents/Guidance/guidance-justice-clerks-responsibilities_paper10102007.pdf

In addition there are one or more crown prosecutors, defence advocates, and a court usher (see footnotes 21-26 for role descriptions). There are other defendants and defence advocates waiting for their cases to be called; they generally sit at the back or the side of the court. Members of the public (often the families of defendants) sit in the public gallery, which may be partitioned off from the rest of the court by security glass, or left open (see discussion of family members in the public gallery by magistrates in chapter 6 section 6.5.5).

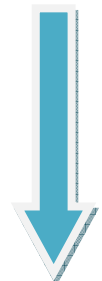
4.1.9 Interpreter behaviours and strategies

The behaviours of *all* the interpreters (both face-to-face and PVL) in this sample were observed to fall roughly into one of five different categories, and these categories can be seen as a continuum (see fig. 10 below) which forms a central part of this study. I shall argue that interpreters' position along this continuum is an indicator of their visibility, audibility and presence in the courtroom, and that there may be a relationship between these factors and the way in which interpreters are treated by the court.

Least audible/
visible



1. Mostly a hybrid of whispered simultaneous and whispered consecutive (WSI and WCI).
2. Mostly a hybrid of whispered simultaneous and consecutive at full volume (CFV).
3. Mostly a hybrid of whispered consecutive (WCI) and consecutive full volume
4. Mostly a hybrid of voiced simultaneous (VS) and consecutive full volume
5. Mostly consecutive interpreting at full volume.



Most audible/visible

Fig. 9 Court interpreter audibility and visibility continuum

In chapter 2 (2.3.1) I described the special applications of simultaneous and consecutive modes of interpreting in the courtroom context. In reality, however, the situation seems to be more complex than this; observations and recordings showed my sample of twenty one interpreters to be using varying volumes when making use of simultaneous and consecutive modes of interpreting. These volumes ranged from *sotto voce* to full volume. The term whispered consecutive interpreting is my own descriptive term for what I observed and is not a taught technique. It involves interpreting delivered *sotto voce*. By voiced simultaneous

interpreting (again, my own descriptive term) I mean that the interpreter's rendition is delivered at a higher volume than *sotto voce* whispered simultaneous but lower than full volume. Interpreters were observed to be using two types of consecutive interpreting, whispered and full volume. By consecutive full volume (again my descriptive term) I mean that the interpreter's rendition can be clearly heard by the whole court.³⁹ These strategies are described in greater detail in the individual case analyses, and the impact of these strategies is examined at greater length in the concluding section at 4.15 and again in chapter 8.

4.1.10 Coding conventions

For ease of reference the eleven cases have been assigned codes to make them easily identifiable as face-to-face cases (see fig.11 below). Codes are used to refer both to the analysis and the transcript of the case. Overlapping speech is shown as shaded in grey on the transcript.

| Case number | Case code | Language | Court | Length of hearing |
|-------------|-----------|----------------|-------|-------------------|
| 1 | VFF1 | Vietnamese | A | 13.28 |
| 2 | KSFF1 | Kurdish Sorani | A | 10.32 |
| 3 | KSFF2 | Kurdish Sorani | A | 19.28 |
| 4 | BFF1 | Bosnian | A | 22.25 |
| 5 | UFF | Urdu | A | 40.33 |
| 6 | PFF | Polish | B | 22.30 |
| 7 | VFF2 | Vietnamese | A | 06.35 |
| 8 | BFF2 | Bengali | C | 04.19 |
| 9 | RFF1 | Romanian | D | 08.29 |
| 10 | RFF2 | Romanian | A | 10.20 |
| 11 | SFF | Spanish | E | 10.00 |

Fig. 10. Table of cases showing codes, languages and duration of hearings

4.1.11. “On- and off-stage” turns

I have provided a table to show the distribution of speaker turns for each court hearing for four reasons. Firstly it provides an overview of the turn profile of a hearing, emphasising as it does the low number of defendant turns and the high number of interpreter turns. Secondly, in

³⁹ A note of caution here: the word **consecutive** is not used in the strict sense of the term (see chapter 2, 2.2.1); all the consecutive interpreting in the data sample was, in reality, **semi-consecutive** (de Groot 1997). This means that court actors fragmented their speeches, and interpreters interpreted each fragment consecutively. In the interests of simplicity, I will use the term **consecutive** to describe all renditions delivered after a speaker stops speaking.

terms of turn numbers, it also shows whether or not the number of interpreter turns equates with the numbers of all the other speaker turns added together, although it is important to realise that trained and experienced interpreters often interpret several turns together as a single turn, especially in simultaneous mode. Thirdly it will prove valuable as training tool for court staff for that very reason. Since court actors often forget the presence of the court interpreter, it shows them at a glance how much work interpreters actually do. Fourthly it provides information about the ratio of turns which are *meant to be heard* in open court (on-stage) and intended for the interpreter to process, and those which are not (off-stage). To elaborate further on this assertion, I contend that there is a distinct contrast of style and volume to be observed in the courtroom, depending on whether speakers see themselves as addressing the bench and the wider public (in which case they use a declamatory style of speaking) or whether they are checking administrative matters to do with the progress of the case (a style often characterised by rapid exchanges of turns more specifically addressed to each other rather than a wider audience, at a lower volume and a faster pace). Sometimes these exchanges are conducted in such a manner as to be almost inaudible to those not sitting in the well of the court. It seems worth making the point that these exchanges are part and parcel of any normal court hearing, and that the interpreter needs to be aware of (and mentally prepared for) sudden switches between declamatory and non-declamatory styles and where in a hearing these switches are likely to occur.

4.1.12 Positions and sightlines

To orientate the reader and to emphasise the importance of positioning and sightlines in court, each case is prefaced by a short description of where significant court actors are positioned in relation to one another. In the light of the Gobo (2008a) study of visual orientation mentioned in chapter 1 (1.5), I wanted to see if there was any relationship between the attentiveness and the visual angles of these actors. See fig.13 at 4.2.2 for a representation of these sightlines.

4.2. Four specific research questions about behaviour of court actors in face-to-face cases

These four research questions will be posed in the two different contexts, face-to-face hearings (chapter 4) and PVL hearings (chapter 5). The questions are designed to address the

following themes: the extent to which open acknowledgement of the interpreter affects the behaviour of court actors, the extent to which proximity affects interpreter intervention behaviour, the extent and range of defendant back-channelling behaviour, and choices of interpreting strategy.

4.2.1 Research question 1: does the court's open acknowledgement of the interpreter lead to greater awareness of her presence and therefore a greater accommodation of her professional needs ?

In all courts of law, court actors either ignore or openly acknowledge and refer to the presence of the interpreter in one way or another. Courts can acknowledge interpreters in any of the following ways:

1. Announcement of the interpreter to the court by the usher
2. Legally ratifying the interpreter through the swearing-in or affirmation procedure
3. Prompting the interpreter to sight translate the oath or affirmation to the defendant in the foreign language
4. Greeting interpreters and/or thanking them when the case is finished
5. Expressing concerns about whether the interpreter is able to understand, keep up or hear

Thus it seems to be a reasonable supposition that if there is open acknowledgment of a discourse participant, then that participant will become part of the interaction. By “accommodation” of the interpreter I mean the ways in which court actors make conscious efforts to adjust their behaviour (whether effectively or not) to make the interpreter's task easier. Courts can accommodate interpreters in any of the following ways:

- A. slowing down to allow the interpreter to finish
- B. taking care to avoid overlapping speech
- C. speaking directly to the defendant instead of addressing the interpreter
- D. speaking with enough volume to be heard clearly
- E. avoiding interactions which effectively exclude the defendant and the interpreter such as using formulaic speech or speaking rapidly and in lowered voices amongst themselves

Field notes and audio-recordings provide information as to whether this open acknowledgment is linked to any observable accommodation to the interpreter's professional needs.

4.2.2 Research question 2: does the interpreter's proximity to the defendant and court actors' raised volume have an effect upon the number of interpreter interventions ? Does this depend on whether the Move is defendant-focused or non-defendant-focused ?

It is reasonable to suppose that physical proximity in court affects interaction, and physical proximity of court actors can also be expected to affect the volume with which they address both one another and the defendant. The volume at which people speak is a crucial factor for the interpreter (see chapter 2, 2.3.5) and since she is usually located in the dock rather than the well of the court, this could compromise audibility and necessitate interventions for repetition.

The above research question is more clearly illustrated in figure 11 below together with the context:

| Type of Move | Context: face-to-face interventions | Context: PVL interventions |
|-----------------------------|---|--|
| Defendant-focused Moves | Less likely to intervene for repetition (because of court actors' raised volume when addressing D directly) ? | More likely to intervene for repetition because interpreter and defendant are not co-present ? |
| Non-defendant-focused Moves | More likely to intervene for repetition because of distance from main court actors ? | Less likely to intervene for repetition because of relative proximity to other court actors ? |

Fig.11: table showing the supposed relationship between proximity and intervention behaviour in two different settings

The diagram at fig.12 below shows the sightlines and the range of possible interactions between different court actors in a face-to-face court. Interpreter interventions (for repetition or clarification) during the court process are amongst a range of possible attention-drawing behaviours (Berk-Seligson 1990/2002), and the more interventions there are, the more the court is aware of her presence.

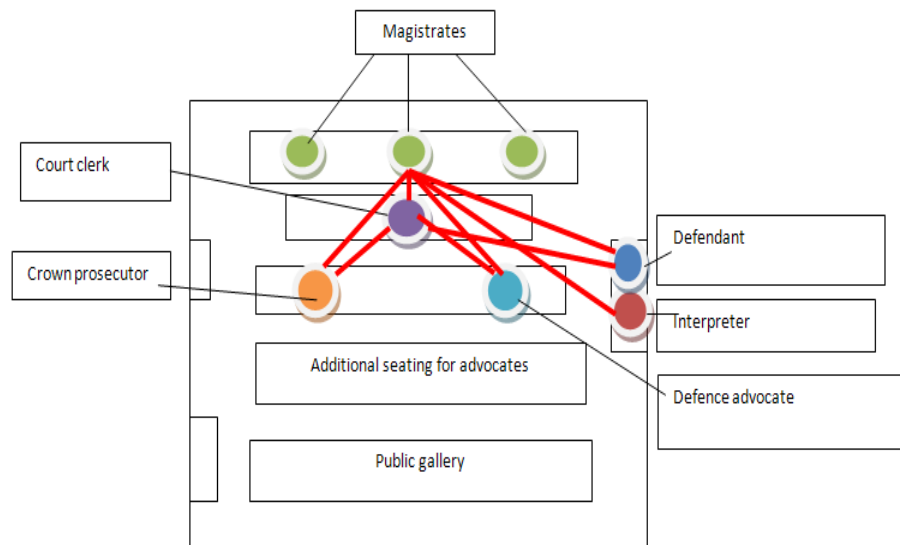


Fig. 12. Sightlines and interactions between different court actors in a face-to-face court

4.2.3 Research question 3: is defendant back channelling encouraged by the close proximity of the interpreter to the defendant ? are PVL defendants less likely to back channel ?

Proximity is also a factor in my third research question. This states that defendant back-channelling (also called ‘feedback’), both verbal and non-verbal, is encouraged by the close physical proximity of the interpreter to the defendant in face-to-face cases, and that conversely, physical distance discourages such back-channelling.

Back-channelling (‘ah’, ‘I see’, ‘okay’, ‘mm’ for example) is a phenomenon identified by Yngve (1970), Sacks et al (1974), Duncan and Fiske (1977) and Allwood (1988) and is considered to be a sign that listeners are understanding, paying attention, or reacting to what other interlocutors are saying. Such feedback can be verbal or non-verbal. In interpreted discourse, however, feedback takes on a different dimension, because, unlike non-interpreter-mediated conversation, “each interlocutor listens to every message twice, once in the original version, usually without understanding it, and then the interpreted version” (Dimitrova 1997:157). Back channelling in interpreted discourse has been shown by Wadensjö (1997) to show active participation and understanding by interactants. Researchers such as Dimitrova and Wadensjö note that verbal feedback is rarely interpreted, usually because participants can usually observe it for themselves. Dimitrova (*ibid.*) claims that interpreting verbal feedback is a risky activity for an interpreter as it is not always clear whether it is one of the interlocutors or the interpreter who is the author of the feedback. It is also true to say that the very rendition

of interlocutor feedback (normally a transparent activity which does not receive any specific attention) can appear odd, or even comic, to other interlocutors.

When it comes to court interpreting, however, defendant feedback in non-defendant-focused Moves is more problematic. The rule-governed and prescribed nature of turn taking and the whispered simultaneous mode used mean that any defendant feedback may have to be ignored by the interpreter, and ultimately, by the court. (See fig.32 in chapter 4, 4.15.3 and fig.51 at chapter 5, 5.14.3, for comparative instances of back-channelling). This may have consequences for defendants (see an instance of this in chapter 7, section 7.4.6, and my comment at 7.5.6).

The question remains whether PVL, where interpreter and defendant are not co-present, interferes with the feedback process, and this will be discussed in chapter 5.

The third research question is best summed up at fig.13 below:

| Type of Move | Defendant back-channelling in face-to-face cases | Defendant back-channelling in PVL cases |
|---|--|--|
| Defendant-focused and non-defendant-focused Moves | More likely to back-channel because of physical proximity to interpreter ? | Less likely to back-channel because of physical distance from interpreter and other court actors ? |

Fig. 13. Table showing the supposed relationship between proximity and defendant-back-channelling

4.2.4 Research question 4: do face to face interpreters have more interpreting strategies available to them ? do PVL interpreters have fewer strategies available to them ?

The fourth research question is derived from the non-interpreter-mediated pilot study that I carried out in 2006 for the Home Office (see chapter 1.) It was immediately obvious to me that the presence of the camera and open microphones would mean that any overlapping speech would make it difficult for defendants to understand what was happening. I had no opportunity to put this to the test, as, at that time, it was not the practice of the local Magistrates Courts to use interpreters in the PVL courts.

The fourth research question asks whether face-to-face interpreters have a greater range of interpreting strategies available to them, and whether PVL interpreters will have only one, that being consecutive interpreting at full volume (CFV). I imagine that this is because of the constraints placed upon them by the very nature of PVL equipment which precludes overlapping speech: only one person can speak at a time.

It is also envisaged that, because PVL precludes overlapping speech (and, as a consequence, the use of simultaneous mode), the sole use of consecutive mode might have an effect upon the communicative relationship between the defendant and the interpreter, and that there may be consequences that flow from using this mode in non-defendant-focused Moves. In fact, it seemed to me that *any* departure from the traditional use of consecutive mode for defendant-focused Moves and whispered simultaneous for non-defendant-focused Moves would have consequences for communicative relationships within the court as a whole (see Mikkelsen 2010 and discussion of the two modes in chapter 2, 2.2.1, and further discussion of defendant-focused and non-defendant-focused Moves at 4.3.1 below).

These four research questions will be investigated through the analysis of audio-recorded hearings of face-to-face hearings and my ethnographic observations. In the following chapter (Chapter 5) the same four research questions will be posed after the analysis of the PVL hearings and the two sets of information compared.

4.3 Move Analysis

Bhatia's (1998) Move Analysis has been selected as the clearest and most convenient way of deconstructing and linguistically tabulating discrete procedural steps in a hearing. See chapter 3 (3.2.3) for the justification for using this framework.

4.3.1 Defendant-focused and non-defendant-focused Moves

The language style of a hearing depends upon whether it is defendant-focused (the defendant is the addressee and his participation is expected) or non-defendant-focused (the defendant is not the addressee and is not expected to participate). In England and Wales in non-trial hearings, defendants may only participate directly in two Moves; Move 1 and Move 5 (see

below at Fig.14), unless they are giving evidence on their own behalf, or if they are unrepresented, when the structure appears to be much looser (see 1.4.1 and the discussion of Conley and O'Barr's judge roles, and sections 4.5 and 4.8 for a discussion of how these roles are realised in the two unrepresented cases in my face-to-face sample). Remand and committal hearings have a slightly different structure from the one below, and many Moves are absent altogether. Although not comprehensive enough to encompass all possible procedures, the Move structure shown at fig. 14 below (reproduced for ease of reference from chapter 3, 3.2.4) and serves as a convenient baseline into which variations can easily be incorporated. These variations will be included and described in the course of the detailed analyses. The PVL Move Analysis chart showing the restricted range of hearings in PVL courts will be reproduced from chapter 3, 3.2.4 prior to the PVL analyses in Chapter 5.

| | | | |
|---------------|--|---|---|
| Move 1 | 1.1 Announcement of case U | Initiation of contact with D and identification of D, presence of INT acknowledged by the court | Intention: Identification of D and swearing in of INT (D-focused) |
| | 1.2 INT sworn U,INT | | |
| | 1.3 Confirmation of D's details CC, INT, D | | |
| | 1.4 Charge is put CC, INT | Legal formalities | Intention: ascertain indication of plea or actual plea (D-focused) |
| | 1.5 Plea is taken CC, INT, D | | |
| Move 2 | 2.1 Crown submissions CP, INT | Outline case against the D | Intention: Informing DJ/M of alleged offence and convincing them of the merits of the CPS case (non-D-focused) |
| | 2.2 Crown requests for costs, CP, INT | | |
| | 2.3 Previous offences, CP,INT | | |
| | 2.4 Application for costs, CP, INT | | |
| Move 3 | 3. Previous offences read out in detail, CC, INT | Providing a full picture of the D | Intention: enabling DJ/M to formulate an appropriate sentence (non-D-focused) |
| Move 4 | 4. Defence submissions DA, INT | Make representations on behalf of the D | Intention: to convince the DJ/M of an merits in the D's case, whilst conceding any merits in the CPS case (non-D-focused) |
| Move 5 | 5. Pronouncement DJ, INT, M | 1. Explain how decision was reached | Intention: to communicate and explain the terms of judicial decision (D-focused) |
| | | 2. Announcement of decision | |
| | | 3. Details of punishment explained | |
| | | 4. Dismiss D | |
| | | | |

Fig. 14. Move Analysis chart for a typical Magistrates Court guilty plea hearing

4.4 Analysis of the court cases

Case 1: Vietnamese (VFF1 court A)

The hearing is some thirteen minutes in length. The dock is at the back of the courtroom, directly facing the magistrates and the court clerk. The male defendant is legally represented and is charged with two offences: driving without insurance and failing to give a breath

specimen. He pleads guilty to both charges. The District Judge therefore listens to the evidence, decides on the sentence, and negotiates payment of any fines with the defendant at a rate he can afford. Since the interpreter uses whispered interpreting nearly all the way through the hearing, all speech which overlaps with the interpreter's is shaded in grey on the transcript. My digital recorder is placed on the open dock to enable the defendant's and interpreter's turns to be heard more clearly. The interpreter does not have a notebook or pen during the hearing.

4.4.1 Positions and sightlines

The male Vietnamese defendant enters the open dock (ie. not from custody) situated at the back of the court and the female interpreter stands next to him. The defendant is in close proximity to the interpreter. The advocates are situated in front of the dock and have their backs to the defendant and the interpreter. I am positioned at the side of the court with a good view of the dock and the well of the court.

4.4.2 Turn profile

The table (fig.15) below highlights a number of issues. Firstly, that the total number of interpreter turns does not even roughly approximate to the total number of other speaker turns, which is 99. Secondly it shows that very few of the interpreter's turns are meant to be heard by the court. Thirdly it shows that all of the other speakers' turns are meant to be heard in open court apart from the district judge.

| Court actor | Number of turns | On/off stage ratio |
|------------------|-----------------|--------------------|
| Interpreter | 61 | 5/56 |
| District Judge | 38 | 28/10 |
| Crown Prosecutor | 19 | 19/0 |
| Defence advocate | 19 | 19/0 |
| Court clerk | 14 | 14/0 |
| Defendant | 8 | 8/0 |
| Usher | 1 | 1/0 |

Fig.15: Turn profile for case VFF1

The Vietnamese interpreter performs comparatively little consecutive interpreting. Her turns cannot be easily identified as separate turns, as many of them begin as overlapping speech and

continue when other interlocutors have ended their turns. Where her turns are delivered consecutively, these have been counted as individual turns. Where her turns have started as overlapping speech in simultaneous mode and have ended after the interlocutor has ended a turn, these have also been counted as individual turns.

After the interpreter it is the district judge who has the most turns, and this is attributable to the negotiation of the terms of payment for prosecution costs and fine awarded against the defendant. A face-to-face summary case (cases that are dealt with in the Magistrates Court are called summary cases) is necessarily more complex than a review hearing, even if a defendant pleads guilty to the charge, since previous convictions and often lengthy and detailed explanations of the terms and conditions associated with sentences are involved. The crown prosecutor comes third on the list as far as the number of turns is concerned. All his turns are associated with the narrative of the alleged offence and the application for costs. Again the defendant comes low down on the list of interactants with eight turns. Most of the interpreter's renditions are not meant to be heard in open court as they are mainly addressed to the defendant in the dock using WSI. All other interlocutors are 'on-stage' throughout the hearing apart from the district judge.

4.4.3 Move Analysis

Move 1.1: announcement of case

The female usher announces the case to the court. She calls the case number, the name of the defendant, the name of the defence advocate and the interpreter's name and language. She asks the court clerk whether he is ready to swear in the interpreter, and he agrees to this. Here the usher shows the interpreter the relevant choice of cards and she chooses to take the affirmation.

Move 1.2: interpreter affirms

The interpreter formally greets the district judge, chooses the interpreter's affirmation rather than the oath, announces her name and language to the court, and, unprompted, proceeds to convey the substance of the affirmation to the defendant in Vietnamese.

Move 1.3: confirmation of defendant's details

The court clerk asks the defendant for his address and date of birth. He addresses the defendant directly. The interpreter uses whispered simultaneous mode for the court clerk's turn. The defendant chooses to reply in English and does so with a heavy non-native accent.

Move 1.4: the charge is put

The court clerk proceeds to put two charges to the defendant; he prefixes the accusation with the words "it is said that" to show that the accusation being put to the defendant is as yet unproven:

49 CC /(-)It's said that on the fourteenth of October this year (-) it's said that you failed to
50 provide (.) a specimen of breath for analysis (-) without reasonable excuse (-)
53 INT \Vietnamese
55 CC /It's also said that you used a vehicle without third party insurance (-)
57 INT \Vietnamese

At first, the court clerk's pace appears to accommodate the interpreter by slowing down his speaking pace, but as he reads out the defendant's record, the interpreter appears to be forgotten and a faster speaking rate is resumed.

The two offences are summary offences (in other words they can only be heard in a Magistrates Court). The court clerk asks twice whether the defendant has understood. The first time he asks he does not wait for the interpreter to finish her rendition of the charge at 57, interrupting her (overlapping speech is denoted by shading), then interrupting the defendant's response at 63:

59 CC Sir do you understand these two matters ?
61 INT \Vietnamese
63 D /(.) Vietnamese
65 CC /Sir do you understand these two charges ?
67 INT \Vietnamese
69 D /Vietnamese
71 INT /Yes

The court clerk firstly uses the formal word 'matters' (line 59) commonly used in court to mean 'offences' to a less formal word 'charges'(line 65), perhaps thinking that the interpreter or the defendant did not fully understand the significance of the term 'matters' and that this

was the reason for the defendant's hesitation at 63. The interpreter now uses WCI to interpret the second question from the court clerk to the defendant. The defendant's reply at 71 is whispered and monosyllabic.

Move 1.5: plea is taken

The court clerk asks the defence advocate for information about how the defendant *intends* to plead, when he could have done so by addressing the defendant directly through the interpreter:

73 CC /Thank you (.) and er and mister Ford what are the pleas today (.)
 75 DA Pleas of guilty
 77 CC (*to the D*) I understand sir that you're going to be pleading guilty to both matters (.)
 79 INT \Vietnamese
 81 D /Vietnamese
 83 INT /Yes (.) for both

The court clerk prefixes a reporting clause 'I understand that' before the statement 'you're going to be pleading guilty to both matters' (line 77). This is an interesting pragmatic use of a question in the grammar of a statement commonly used by lawyers in the courtroom (see Atkinson and Drew 1979). The rendition of the defendant's response at 83 seems to indicate that either the interpreter rendered the court clerk's turn as a question, or that the defendant simply recognised it as such and responded to it accordingly. The Move ends with the defendant being asked to be seated. This physical action is the signal for the crown prosecutor to stand and begin his submissions against the defendant on behalf of the Crown.

Move 2.1: crown prosecutor submissions

The crown prosecutor begins his submission by citing the date and location of the offence and proceeds to provide a factual narrative of the crime story. The interpreter begins to use WSI into Vietnamese (line 87) but is temporarily thwarted by the actions of the crown prosecutor who begins his submissions by fragmenting his speech, pausing at the end of each unit of information.

87 CP /Sir on the fourteenth of October (-)
 89 CP /Shortly after three am (-)
 91 INT \Vietnamese
 93 CP /Officers were on Church Lane in Erdington (-)
 95 INT \Vietnamese
 97 CP /They followed and stopped an Audi car (-)
 99 INT \Vietnamese

101 CP /They had seen it coming towards them (-)

Some of his pauses are quite lengthy, and it is possible that he is pausing both to allow the interpreter time to make her renditions, and at the same time to remind himself of what he has to say by looking at his notes. The length of his turns increases (lines 113-160) as he progresses through the circumstances surrounding the offence. This means that the interpreter, who began Move 2 by interpreting in whispered consecutive mode, has to change to WSI in order to keep up with him. On the whole, the crown prosecutor allows the interpreter to finish each simultaneously interpreted turn before beginning a new turn.

Move 2.2

Not applicable.

Moves 2.3 and 2.4: previous offences and application for costs

The crown prosecutor's mention of the defendant's previous record is an indication that his submission is drawing to a close. It precedes the application for costs, which signals the end of this Move (line 160). Both of these turns are rendered in WSI by the interpreter:

154 CP /There are two similar matters sir (.) the last of which is two thousand and two
 156 (-)
 158 INT \Vietnamese
 160 CP /Sir (.) the cost application appropriate today would be a hundred and twenty pounds
 162 INT \Vietnamese
 164 CC /Thank you

Move 3: previous offences read out in detail

Here there is an example of style change from declamatory (as in the crown prosecutor's submission) to non-declamatory (the court clerk). The court clerk's extended turn at 166 is also characterised by its faster pace and lower volume (there are several parts of the turn which are inaudible on the recording), and its style (non-declamatory). This would appear to be evidence that his turn is not designed for the defendant or the interpreter, but for the other court actors (see section 1.11):

166 CC /As to the substantive matters (-) of the matter (-) in two thousand and two (-)
 168 disqualification for (inaudible) twelve months and (.) more recently I think two
 170 thousand and eight there is a (.) six month ban for er using a mobile phone whilst
 172 driving or perhaps not I think he got three points (inaudible) for the mobile
 174 (inaudible) endorsements

190 DJ \ (inaudible) bearing in mind the defendant's history (inaudible)
 192 DA /Sir are you minded to deal with the curfew (.) here and now at court (.)
 194 DJ \Rather than go for a report
 196 DA /I-I am very grateful for the indication sir certainly it was no surprise to
 197 myself in fact I advised the defendant that he would get certainly between three and
 198 five years disqualification (-) he is in fact working sir will you just (.) allow me allow
 199 me a moment to take instructions on the curfew times
 201 DJ \ (Inaudible)
 203 DA /Yes sir there's no benefit (box ticking ?) (.) in fact the defendant is a part time nail
 204 technician (.) sir (.) as in a beautician sir (-)
 206 DJ \ (Inaudible)
 208 DA /Sir yes he travels to Coventry sir (.) just to clarify the morning time of the curfew in
 209 case he has to be at work for a certain time (.)
 210 DJ \He lives in Erdington so (inaudible) travel all the way to Coventry every day
 212 to do a job which is paying him little money (inaudible)

The interaction continues in this manner until the end of the Move which is signalled by the defence advocate as he agrees a payment plan for the fine:

246 DA /Ten pounds per week I'm sure will be fine with the defendant sir

The whole of this Move is interpreted in WSI, with very little respite for the interpreter. The end of Move 4 and the beginning of Move 5 is signalled by the district judge asking the defendant (and by implication, the interpreter) to stand.

Move 5: pronouncement

The beginning of Move 5 (the pronouncement of the sentence) is not marked decisively, as the district judge does not wait for the interpreter to finish her rendition of the previous turn:

246 INT \Vietnamese
 248 DA /Ten pounds per week I'm sure will be fine with the defendant sir
 250 DJ \Mister Tran stand up (.)

The district judge begins this Move by explaining how he has arrived at his decision, and that he has had to take into consideration two previous occasions when the defendant had been convicted of the same type of offence. He continues by explaining what factors he has taken into consideration when making his decision. He explains the terms of the curfew, the licence endorsement, the payment of prosecution costs, the fine, and the conditions for the staged payments of the fine. The district judge, possibly having noticed that the interpreter has used whispered simultaneous interpreting most of the way through the hearing, does not accommodate the interpreter during this phase as can be seen in this example:

289 DJ /A company called “Serkal” will come round to your house tonight (-)
 291 INT \Vietnamese
 293 DJ (*interrupts I*)/They will put the tag on your ankle (.)
 295 DJ /And that sends a signal to a box that’s connected to your house (-)
 297 INT \Vietnamese)
 299 DJ /If you leave the house during the curfew times (.) the signal breaks and you are
 300 straight away reported to the (*inaudible*)
 302 INT \Vietnamese
 304 DJ /Do you understand so far ? (-)

The district judge speaks at normal speed (and in a rather low voice) for 26 turns. The district judge’s style of delivery does not seem to fit either the declamatory or the non-declamatory categories described in section 4.1.11. The interpreter uses mostly WSI for the whole of this Move. Halfway through the district judge suddenly asks the defendant whether he has understood, waits for the interpreter to interpret that turn, then continues with his next turn without waiting for the defendant’s answer:

304 DJ /Do you understand so far ? (-)
 306 INT \Vietnamese
 308 D /Vietnamese
 310 INT [/Yes sir]
 312 DJ [/Er they’ll] be able to demonstrate how it works (-)

When deciding the terms of the staged payments, the district judge asks the defence advocate, rather than the defendant, how frequently he gets paid. The defence advocate does not know the answer and immediately repeats the question to the defendant. It is normal practice for court personnel to address questions *about* defendants to defence advocates or crown prosecutors during their submissions in Moves 3 and 4, but less usual for them to do so during Move 5. The end of this Move is signalled by the district judge’s dismissal of the defendant:

375 DJ /OK you’re free to go

4.4.4 Discussion

In this face-to-face hearing, the Vietnamese interpreter adopts, for the most part, strategy 1, a hybrid of WSI and WCI. The effect of this is to diminish her presence in the courtroom (see fig. 10 at 4.1.9).

In this instance, the district judge's sentence comprises four main interlinked elements: the terms of a curfew, the procedure for tagging, the conditions for the payment of a fine and Crown Prosecution Service costs, and the implications of a driving ban. It takes him nearly four minutes to deliver it. The pronouncement of the sentence is a good illustration of the unwitting complicity between the district judge and the interpreter. The district judge, probably having noticed that the interpreter has used whispered interpreting all the way through the hearing, does not accommodate her during this phase. The district judge begins his pronouncement by explaining how he has arrived at his decision, and that he has had to take into consideration two previous occasions when the defendant had been convicted of the same type of offence. The pragmatic intention of the district judge is to register judicial disapproval and to hold out a threat of what might happen if the defendant comes before the court again for a similar offence, but it is difficult to convey disapproval or threat through WSI used at this (defendant-focused) juncture (see Hale 2007, and her observations on the limitations of WSI in chapter 2, 2.2.2), especially if the interpreter has little training and no interpreting equipment. As the district judge progresses, the fine details of the arrangements for tagging, the consequences of not abiding by the curfew instructions, the driving licence endorsements, the implications for the application for a new licence and the staged payments of the prosecution costs are delivered simultaneously which might have made it difficult for the defendant to remember what he had to do. Halfway through this pronouncement the district judge suddenly asks the defendant whether he has understood, waits for the interpreter to interpret that turn, then promptly continues with his next turn without waiting for the defendant's answer. The interpreter has three choices. She can either continue to render the pronouncement in a whisper, intervene to ask the district judge to accommodate her in consecutive mode, or ask the judge to wait for her to finish her rendition. She can then decide whether to use WCI or CFV. The defendant would then stand some chance of remembering the details of what was said to him. However, the interpreter chooses to continue with WSI. A discussion of the appropriacy of consecutive and simultaneous modes of interpreting follows at the concluding section of this chapter at 4.15.4.1. See chapter 2 for a discussion about the relative accuracy of consecutive and simultaneous modes. The possible consequences of using WSI and CFV are discussed in chapter 8.

4.5 Case 2: Kurdish Sorani (KSFF1 court A)

The hearing is some nine minutes in length and takes place in the same court as case number 5 (UFF). Coincidentally this defendant, who is charged with driving with no licence and no insurance, is also unrepresented. Unrepresented defendants are allowed a much greater latitude than represented persons when it comes to asking questions and giving evidence, as by law they have the same rights of audience as legal counsel under the Courts and Legal Services Act 1990⁴⁰. The defendant in this case appears to fall into the relational category (Conley and O'Barr 1990, see 1.4.1). Because the Magistrates Courts regard such defendants as straying from rule-governed procedures and, as *they* see it, descending into irrelevance because they do not understand how a court of law works, they are helped by court clerks and magistrates to conclude their cases appropriately. This means that such cases may not follow traditional Move structure, and this hearing is an example. The purpose of the hearing is to deal with the defendant's guilty plea and sentence him.

4.5.1 Positions and sightlines

This case takes place in one of the so-called Victorian "heritage" courts in the Victoria Law Courts in Birmingham, UK. The courtroom is vast with a high vaulted ceiling, original Victorian furniture, a very large public gallery with a capacity of some 30 or 40, and a bridewell (a set of steps leading down from the dock to an underground tunnel and eventually to the holding cells under the court). The magistrates' bench towers above the advocate's benches, and it is difficult for observers to hear speakers unless they are in the well of the court, due to the very poor acoustics. I used two recorders, placing one on the dock itself to pick up any instances of simultaneous interpreting and back-channelling, and the other near the centre of the court to pick up the voices of advocates, court clerk and magistrate acting as bench chair. Despite the vastness of the room, the dock is in much closer proximity to the bench than in many other more modern courtrooms I attended. The fact that the dock is at a similar height to the magistrates bench means that the magistrates, the defendant and interpreter are not only relatively close but almost at eye level with each other. What separates them from each other is the cavernous well of the court, where the advocates and the court

⁴⁰ The Courts and Legal Services Act 1990 can be found at http://www.legislation.gov.uk/ukpga/1990/41/pdfs/ukpga_19900041_en.pdf

clerk sit, not facing the Bench, as in most other courtrooms, but facing each other at an angle of 90 degrees to the dock, the court clerk and the magistrates. This is a much more advantageous sightline for the interpreter, as the faces of court actors can much more easily be seen.

4.5.2 Turn profile of the hearing

It can be seen from fig.16 below that the number of interpreter turns (88) is nearly the same as the total number of all other speaker turns (96). The profile also shows that the defendant is an active participant and that the court clerk is next highest on the list of speakers after the interpreter. The last two can be explained by the fact that the defendant is unrepresented and needs the help of the court to put his case. The other feature worthy of note is that there are very few off-stage turns. This can also be explained by the fact that the defendant is unrepresented.

| Court actor | Number of turns | On-off stage ratio |
|------------------|-----------------|--------------------|
| INT | 88 | 88/0 |
| Court clerk | 37 | 36/1 |
| M | 25 | 25/0 |
| D | 23 | 23/0 |
| CP | 11 | 10/1 |
| Defence Advocate | N/a | |

Fig.16: Turn profile of case KSFF1

4.5.3 Move Analysis of case 2

Move 1.1: Announcement of case

Not applicable.

Move 1.2: Interpreter affirms

The interpreter affirms rather than taking the oath, but does not sight translate the affirmation into Kurdish Sorani for the defendant, nor does the court clerk prompt him to do so.

Move 1.3: confirmation of defendant's details

There is a fleeting example of overlapping speech as the interpreter mistakes the court clerk's pause for the end of her turn; in fact she pauses to add the defendant's name as a politeness marker:

53 CC /(.) How long have you been living at that address (.)
 54 [mister Mohammed]
 56 INT /[(*Kurdish Sorani*)]

Using the defendant's name as a politeness marker is a feature of this court clerk's speech, and she continues to do this throughout the hearing.

During the confirmation of the defendant's personal details the interpreter uses CFV.

Move 1.4: the charge is put

The court clerk addresses the defendant rather than the interpreter, and does so all the way through the hearing. When the court clerk reads out the charges she uses a typical formulaic legal construction (my underlining) which is taken directly from motoring law:

83 CC/And that you drove that vehicle otherwise than in accordance with a licence

Move 1.5: the plea is taken

She repeats the formula when taking the defendant's plea:

91 CC /In relation to driving otherwise than in accordance with the licence are you guilty or not guilty ?

The defendant admits the charges. The court clerk needs to establish whether the defendant has a provisional licence, or has ever applied for one; it appears that he has been previously refused. During this Move the interpreter continues to use CFV.

Move 2: outline of case against defendant

This crown prosecutor delivers her submission by fragmenting them into semantically complete units, with two incomplete exceptions:

156 CP /Due to the manner of his driving (.)

180 CP /(.) Of sixty pounds which will go to the police (.)

She pauses for the interpreter, who uses WCI to render them. As the defendant is unrepresented, he is now given an opportunity by the CC to make representations on his own behalf. The court clerk asks him to stand, and this is the signal which marks the end of the previous Move, which is non-defendant-focused, and the beginning of Move 5, which is defendant-focused.

Move 3: previous offences read out in detail

Not applicable.

Move 4: defence representations

The defendant expresses remorse for the offence:

195 INT /I would like to apologise to the court (.) this is my first time (.) and I applied for my
196 licence and I would like to be (.) legitimate on the road

Of particular significance in this Move is the off-stage exchange between the court clerk and the crown prosecutor. The abrupt change of addressee from the defendant (and the wider court) to crown prosecutor from whom the court clerk seeks clarification is marked by a lowered volume and a faster pace. The change of addressee, volume, pace and style of delivery leave the interpreter unable to render the exchange. He makes a sound at 246 as if he is attempting to begin a rendition, but it is lost in the ensuing exchange:

243 CC /A hundred pounds(.)(*addresses CP*) \what was the registration (.) please ?
245 CP \(-) it was (-) FH05 (.)
246 INT /(*sound*)
247 CC \F registration ?
249 CP \Yes
251 CC \Is it ?
253 CP \I think it is anyway

The court clerk then just as suddenly resumes her declamatory tone:

255 CC /(-) Mister Mohammed you've completed a means form (.) I've handed that to the
256 magistrates for them to have a look at (.)
258 INT /(*Kurdish Sorani*)

The interpreter then goes on to render the court clerk's turn at 255. Throughout the rest of the interaction between court clerk and defendant, the interpreter uses CFV, both for addressing the court and for addressing the defendant.

Move 5: pronouncement

The magistrate as bench chair delivers the pronouncement of the sentence and explains how he and his colleagues have taken into consideration his early guilty plea and his benefit status and that he will be fined. There is an intervention from the court clerk during the pronouncement which is not rendered by the interpreter:

327 CC /What band are you at sir

This refers to the bands of fines which magistrates have the powers to impose, and they have these to hand on the bench, using them as guides when making their pronouncements. The magistrate's reply is somewhat puzzling however:

329 M /Band C (.) a hundred and (.) seventy five per cent

The interpreter renders the turn at 329 without asking for clarification but does so at a lower volume than his previous rendition. The rest of the pronouncement is concerned with the method of payment. The magistrate delivers his pronouncement in semantically complete units, for the most part, and pauses after each one. There is an example of a slight overlap of speech caused when the court clerk unwittingly interrupts the interpreter before he has finished rendering the magistrate's turn at 350:

350 M /(.) Right then ten pounds today (.) and ten pounds every two weeks thereafter
 352 INT (*Kurdish Sorani*) [(*Kurdish Sorani*)]
 354 CC \[First payment sir ?]
 356 M /(.) He's making one today (.)
 358 CC /(.) And thereafter ?
 360 M /Er (.) fourteen days
 362 INT /(Kurdish Sorani)

This exchange continues and once again the interpreter is left behind, failing to render the following three turns. The interpreter's renditions are all in consecutive, but he raises his volume slightly when making renditions to the magistrates and lowers it slightly when making renditions to the defendant. Mostly, however, the strategy used by this interpreter is CFV.

4.5.4 Discussion

This unrepresented defendant clearly falls into Conley and O'Barr's (1990) rule-oriented category discussed in section 1.4.1. His interpreter-mediated answers are mainly concise and are, in the court's terms, direct and relevant responses to the questions he is asked by the court clerk. The clerk takes on the role of master of ceremonies and inquisitor (she takes the initiative in moving the case along by asking the defendant about his status as a driver and about the ownership of the car) and as a referee she tries to ensure fairness by asking him on two occasions if he would like to say anything to the magistrates. The defendant avails himself of both these opportunities. In most cases the defendant provides enough information to render any follow-up questions by magistrates or court clerk unnecessary.

Because this defendant is legally unrepresented he has many more turns. The interpreter uses strategy number 5 on the continuum, a hybrid of WCI and CFV. For the defendant-focused Moves 1, 4 and 5 he uses CFV, and for Move 2 (non-defendant-focused) he uses WCI. He could have chosen to use WSI during the crown prosecutor's submission, but the prosecutor chooses a fragmented style of delivery which thwarts any such intention on his part. He thus places himself at the more visible end of the continuum. His presence is enhanced by several factors. Firstly, the layout of the court means that the dock is directly opposite, and at almost the same height as the magistrates' bench. The advantage of this is that the occupants of the dock are in the direct line of sight of the magistrates, and vice versa. The court clerk is also in a direct line of sight of the dock. Secondly, the court clerk and the crown prosecutor show their awareness of the interpreter by pausing and fragmenting their speech. Thirdly the speakers mostly design their turns as semantically complete units. Fourthly, instead of having her back to the interpreter (as in a more modern courtroom) the crown prosecutor is seated at an angle of 90 degrees to the dock, quite close to it, and is on a line of sight with both interpreter and defendant. These factors combine to overcome the disadvantage of the poor acoustics of the court and contribute to the visibility and presence of the interpreter.

The interpreter proceeds deftly from Move to Move, changing his interpreting mode and making appropriate use of CFV whenever the focus is on the defendant, although he does not have a notebook or pen at his disposal. Observation notes show that the defendant turns his head to look at the interpreter at every rendition, but there are no audible instances of back-channelling. In this Victorian dock it is possible to see much more of the defendant than in a modern one; the whole of his body can be seen through its bars. When seated in this dock, the

top bar of the dock is at eye level, a somewhat inconvenient visual barrier to what goes on in the court, whether for the interpreter or the defendant.

4.5.4.1 Changes of addressee in unrepresented hearings

The interpreter is a ratified participant in this hearing by virtue of his having taken the interpreter's oath, although he is not asked to sight translate it for the benefit of the defendant. It seems that the main factor in the speakers' choice of style is that the defendant is not legally represented. This places a formal obligation upon the court to help the defendant through the process. They must ascertain his wishes by direct negotiation, and explain his rights in simple language. Thus a hearing with an unrepresented defendant will have a different profile from one who is represented; the defendant becomes the primary addressee (as does, by extension, the interpreter) throughout most of the hearing.

4.6 Case 3: Kurdish (KSFF2 court A)

The hearing is approximately seventeen minutes long. It takes place in the same courtroom as VFF1 court A. The digital recorder is placed on the dock to enable the defendant's and interpreter's turns to be heard more clearly. The position of the recorder means, however, that the microphone fails to adequately pick up all of the advocates' turns, as they are seated with their backs to the defendant and interpreter. The charge against the defendant is intentional sexual touching of a woman without her consent. The defendant has previously denied the charge and it has been found suitable for summary trial in the Magistrates Court. The purpose of the hearing is to fix a new date for a trial, the previous one having been vacated. The court hears the reasons for the vacation of the trial date and details about the availability of witnesses. Bail with police station reporting conditions for the defendant is set. Since no evidence is being heard, Moves 4 and 5 are absent from this hearing. The striking feature of this hearing is the high number of instances of defendant back-channelling which will be discussed at 4.15.4. The interpreter does not have a notebook or pen during the hearing.

4.6.1 Positions and sightlines

This courtroom has a dock at the centre back of the court, and it is situated at some distance from the well of the court. The male interpreter is standing next to the defendant. The male Kurdish-speaking defendant enters an open dock (i.e. not from custody) situated at the back of the court and the interpreter sits next to him in close proximity. The crown prosecutor and defence advocate are seated in front of the dock and have their backs to the interpreter and the defendant. The court clerk sits facing the court beneath the raised dais where the district judge is seated. There is a distance of some twenty feet between the district judge and the dock.

I started the digital recorder recording *after* the case was announced by the usher, and so this step is absent from the recording.

4.6.2 Turn profile

Fig.17 shows the turn profile of the hearing. It is difficult to count the number of interpreter turns when WSI is being used, and so this is an approximation only. The large number of turns by the court clerk can be explained by the extensive administrative negotiations regarding a new date fix for the trial. District judges appear to have a more active role and thus have more turns than magistrates, which explains the large number of his turns in comparison with hearings presided over by magistrates acting as bench chairs. The large number of defendant turns can be explained by the fact that they are mostly back-channelling turns. It can be seen that there is a large discrepancy between the number of interpreter turns and the total number of other speakers' turns.

| Court actor | Number of turns | On/off stage ratio |
|------------------|--|--------------------|
| INT | 74 (WSI and CFV) | 27/39 |
| Court clerk | 52 | 52/0 |
| District Judge | 32 | 32/0 |
| CP | 21 | 21/0 |
| D | 18 (including 16 instances of back channelling) | 2/16 |
| Defence advocate | 17 | 17/0 |
| Usher | 1 | 0/1 |

Fig. 17: Turn profile of case KSFF2

4.6.3 Move Analysis

Move 1.2: interpreter sworn in

The court clerk omits the swearing-in of the interpreter and begins by asking the crown prosecutor about the nature of the hearing:

- 30 CC /This was to be a refix (---) it's best you know Mister Smith (-) sorry (.) sir could you 31 just
stand up please(.)
33 CC /Do you take an oath or an affirmation
35 INT /er (.) I affirm er I would like to affirm
37 CC /Do you know- do you know it
39 INT /Yes I know it
41 CC /Very well would you like to make the affirmation then

The interpreter, at this time not a ratified member of the court team, is in a difficult position. Should he begin to interpret or not? As soon as the court clerk realises that the interpreter has not been sworn he apologises and asks him to stand up in the dock, which is the signal for Move 1 to begin. He asks the interpreter whether he would like to swear or affirm and he chooses the latter option. The court clerk appears to have mislaid the cards with the form of words on them and asks him if he can recite the affirmation from memory, which the interpreter does. No one reminds the interpreter to make a rendering of the affirmation into Kurdish, and in fact he does not do so.

Move 1.3: confirmation of defendant's details

The court clerk addresses the defendant directly all the way through this Move. There is one instance of back channelling from the defendant. It occurs after the interpreter has repeated the defendant's name (57). The interpreter uses CFV throughout this Move step.

Move 1.4: the charge is put

The court clerk's first turn in this Move signals that he is about to read out the charges against the defendant:

- 87 CC /Sir you're before this court in respect of the following proceedings (87)
89 INT /(*Kurdish*)
91 D (*Kurdish back channelling*)

Immediately after the interpreter's rendition of the court clerk's first turn in this Move step, there is an instance of defendant back channelling at 91.

The CC continues this Move step by prefixing the phrase ‘it is said that’ to the wording of the charge to indicate that the allegation is unproven (93):

93 CC /(.) It's said that on the (.) twenty (.) fourth two four of July this year
 95 INT /(Kurdish consecutive)

The interpreter renders this turn in CFV. The court clerk then proceeds to fragment the six vital elements of the charge into six separate turns. The first unit comprises the date of the alleged offence (93), the second the intentional touching of a woman (97), the third the age of the woman (101), the fourth the sexual nature of the touching (105), the fifth the non-consensual nature of the touching (111), and the sixth the fact that the complainant did not believe that she was consenting (115). All the turns in this Move are rendered in CFV by the interpreter. There are four more instances of back-channelling by the defendant in this Move, making five in total. The first one is immediately after the interpreter's rendition of the fourth element of the charge (the sexual nature of the touching).

105 CC /(.) And that touching was sexual
 107 INT /(Kurdish)
 109 D \ (Kurdish back channelling)

Both the court clerk and the interpreter ignore this back-channelling and the court clerk continues with his next turn. The second instance occurs at 127, after the court clerk has alerted the court to the fact that the defendant is denying the charge.

127 CC [/Now you've denied this matter]
 129 INT /(Kurdish consecutive)
 131 D \ (Kurdish back channelling)

The third instance is at 137, after the mention of the vacated trial date:

133 CC /(.) A trial (.) a trial had been fixed for the twentieth of October
 135 INT /(Kurdish consecutive)
 137 D \ (Kurdish back channelling)

The fourth is at 147, immediately after the court clerk's summary of the point that the case has reached:

143 CC /(.) And the matter brought forward for a date fix
 145 INT /(Kurdish consecutive)
 147 D \ (Kurdish back channelling)

The defendant's not guilty plea has already been taken in the previous hearing, and so the plea is merely referred to and there is no formal re-putting of the charge. Thus step 2 of Move 2 is

absent. The end of the Move is signalled by the court clerk asking the defendant to be seated (150). The interpreter renders all the turns in CFV.

Move 2: outline of case against defendant

The request for the defendant to be seated is the signal for this Move to begin and because it is the start of negotiations about dates for the trial, it is an interaction during which the defendant is not directly addressed. The interpreter switches from CFV to WSI for the whole of this Move.

Since the objective of this hearing is not a trial or a committal to the Crown Court but the fixing of a suitable date when the trial can take place and a review of the defendants' bail reporting conditions, the substance of the interaction is centred on these formalities and not on the narrative of the alleged offence. Rather than making the usual submissions then, the crown prosecutor explains why the original date for the trial was vacated (158).

The formalities alluded to above are conducted in a rapid series of turns, the style of which is designed for the court clerk, the district judge, the crown prosecutor and the defence advocate rather than for the defendant or the interpreter; although the crown prosecutor begins his speech by waiting for the interpreter, the pace of the subsequent speakers gathers momentum to the point where at 239 the court clerk overlaps with the district judge.

| | | |
|-----|----|---|
| 239 | DJ | /(-- Is this alright for a half day then (.) you could have the [interpreter and two witnesses for the prosecution] |
| 242 | CC | /[I'll see if I can find the witnesses (-) for the prosecution] |

There is now a general lowering of speaker volume, some almost inaudible interactions between the court clerk, the district judge and the crown prosecutor, and fewer speaker pauses.

Move 3: previous offences read out in detail

Not applicable.

Move 3(a): administrative matters

This Move does not conform to the Move structure outlined at Fig. 15 (4.3.1). It is a purely administrative Move to do with date-fixing and finding an appropriate courtroom for the next hearing.

There are six instances of back-channelling in this Move. The first one occurs after the interpreted rendition of the court clerk's turn:

286 CC /It's an adult (.) still (.) er do you have an exact age
 288 CP /(.) Er (.) yes sir
 290 INT \(-) (*Kurdish consecutive and D back channelling*)

In the turn immediately prior to the above turn, the court clerk has said that he wants to find a more appropriate courtroom than the one to which the case has been assigned, and now he wants to make sure that the alleged injured party is not under the age of sixteen. The second back-channelling episode occurs after the interpreter renders the crown prosecutor's reading out of the ages of the witnesses:

288 CP /(--)) the dates er (.) for the injured party and the witness are (.) erm (.) nineteen
 289 ninety and nineteen sixty one (.) *although (inaudible)*
 291 D (*Kurdish back channelling*)

The third and fourth occur after the rendition of the crown prosecutor's next turn. Firstly the court clerk reads out the address at which the defendant is required to live and sleep. The fourth occurs after an incomplete turn by the court clerk about reporting requirements:

306 CC /and then er (.) the situation then as to bail (.) yes er (-) currently (.) the
 307 bail form reads as follows (.) the gentleman to live and sleep (.) at one two
 308 four (.) b (.) Ivy Road (.) Walsall
 310 INT \(*Kurdish simultaneous and D back channelling*)
 312 CC /he's also to report to er (.)
 314 D \(*Kurdish back channelling*)

The fifth one occurs after the interpreter's rendition of the court clerk's turn when he specifies the defendant's reporting day and time at the local police station:

325 CC /And Saturday (.) daily (-) at between two pm and five pm
 327 INT \(*Kurdish simultaneous and D back channelling*)

The last instance occurs after the defence advocate has intervened to specify the police station reporting time:

428 DA /Sir I believe it's eleven o'clock in the morning but effectively it's the same day

430 INT \(*Kurdish simultaneous*)
 432 D (*Kurdish back-channelling*)

There appears to be no formal audible marking of the transition between Move 2 and the next Move by any of the speakers, in particular by the district judge.

It is impossible to track the correspondence between the speaker turns and the interpreter renditions of those turns during these rapid exchanges, so we can assume that either the interpreter is left behind or that he condenses a number of previous turns into one rendition for the defendant.

Move 4: defence representations

Not applicable.

Move 5: pronouncement

The district judge does not ask the defendant to stand, as would normally be the case. The interpreter appears to recognise that the district judge is about to deliver his pronouncement because he (the district judge) addresses the defendant by name, and so both interpreter and defendant rise to their feet simultaneously. The district judge raises his voice slightly as he addresses the defendant:

447 DJ /OK Mister Afran the bail conditions are as before

This turn is the signal for the end of the previous Move and the beginning of Move 5. The interpreter immediately changes his delivery from a hybrid of WCI, CFV and WSI that he has used all the way through Move 3 and reverts to CFV for the district judge's pronouncement. The flow of the pronouncement is interrupted by two lengthy interventions, one by the defence advocate and the other by the crown prosecutor.

The first intervention by the defence advocate (473) is to request the district judge to find a reduced reporting requirement for the defendant. During this intervention by the defence advocate the interpreter switches from CFV to WSI. At a certain point in the intervention the district judge puts a direct question to the defendant (497) and the interpreter switches back to CFV:

473 DA /Sir I appreciate you have erm varied his bail conditions instead of a Friday (.)

474 instead of a Saturday sir (.) would it be possible for you to change it to a Friday
 475 you've effectively (?) his immigration matters
 479 DJ /I'm not sure what the difficulty is (*inaudible*)
 481 DA /(inaudible) Could they change it to a Friday instead of a Saturday sir (.) he hasn't got
 482 much money and he's (*inaudible*)
 484 DJ /Exactly (.) that's why I asked (.) I suppose he can walk to the station it's not far
 485 away is it
 487 CP /Sir perhaps Mondays Wednesdays and (.) Fridays could still be three days a week
 488 and spread it out
 490 DJ /I don't want to get into all that (.) (*inaudible*) kind of discussion (.) how long does it
 491 take to get to the police station
 49 INT /(Kurdish simultaneous)
 495 CP /(Inaudible)
 497 DJ /I'll check with you (.) how long does it take to walk to the Police Station
 499 INT /(Kurdish consecutive)
 501 D /(Kurdish)
 503 INT /Ten to fifteen minutes by (.) by (.) on foot
 50 DJ /Same days as before

The district judge continues with his pronouncement after this intervention. His elliptical phrase at 505 might cause some confusion to the defendant. The anaphoric reference to the reporting days may be too far back for the link to have been made by the defendant (in fact it is rather difficult for an observer to remember what days the district judge *is* referring to) and this may make it more difficult for him to comply with the court's decision.

The second intervention is occasioned by the district judge himself having to ask the crown prosecutor for the names of the witnesses that the defendant must keep away from. The crown prosecutor reads out the names (511) and the district judge continues his pronouncement, almost interrupting the interpreter at 519. The interpreter uses WSI for this intervention. As soon as the district judge resumes his direct address of the defendant, the interpreter switches again from WSI to CFV.

The district judge does not explain *who* will give him the bail sheet:

514 DJ /They'll give you a new bail sheet

During the rest of the pronouncement, the district judge has a tendency to start each of his own turns by cutting into the end of the interpreter's previous turn.

The defendant appears to construe the penultimate turn of the district judge at 518 as an opportunity to show his compliance:

518 DJ /The only difference is that er the (.) reporting time is now between eleven and
 twelve on those days
 521 INT /(Kurdish consecutive)

523 D /(*Kurdish*)
 525 INT /Yes
 527 DJ /Usher thank you

The district judge ends the case by looking at the usher rather than by formally dismissing the defendant; presumably it is the usher who will give him the bail sheet.

4.6.4 Discussion

One of the most notable features of this interpreted face-to-face hearing is the back channelling behaviour of the defendant (see research question 3 at 4.2.3). There are fifteen instances of this. The distribution of these instances is shown as follows:

| Move | Instances of back-channelling | Main interpreting strategies | Direct/indirect address of D |
|--------|-------------------------------|-----------------------------------|------------------------------|
| Move 1 | 1 | Consecutive full volume | Direct |
| Move 2 | 6 | Consecutive full volume | Direct |
| Move 3 | 6 | Mostly WSI | Indirect |
| Move 5 | 2 | Consecutive full volume, some WSI | Direct |

Fig. 18: Interpreting strategy and back-channelling behaviour in case KSFF2

We cannot be sure *why* the defendant does this, as we do not have access to his language. The instances recorded in this hearing are all very short. It is possible to say that the instances that I have recorded, together with the observations I have made, show the active participation and understanding of the defendant, signalled by his frequent (yet ignored and uninterpreted) back channelling turns. He sits close to the interpreter and looks at him as he interprets, often nodding his head. Back channelling by defendants can also be explained by the degree of prior contact (pre-court private consultations between advocate and defendant with interpreter present, for example) between the interpreter and the defendant or how well they know each other before the hearing begins and also by the personality of the defendant. Some defendants just seem to back channel more than others.

4.6.4.1 Interpreting strategies

The main strategy used by this interpreter is number 2 on the continuum (see fig.10 at 4.1.9). He clearly marks the different stages of the hearing by using different strategies. He announces his presence to the court by standing and reading the affirmation in a clear and

confident voice. For the defendant-focused Moves at 1 and 5, the interpreter uses mostly CFV. The rest of the court can thus easily hear him. In Move 3 the focus of the hearing moves away from the defendant and on to the administrative minutiae of date fixing, the ages of the witnesses, police station reporting times and bail conditions, and, for the interpreter, this signals the switch from CFV to WSI. Thus his position in a dock situated at the back of the courtroom means that the visible and audible presence so clearly evident in the first two Moves is temporary. The pace of the speakers now increases. The interactants no longer pause for the interpreter to finish speaking as they did in Moves 1 and 2. Sometimes their turns become longer, and at other times there is a rapid series of multiparty interactions and they start to behave as if the interpreter were not present. The digital recorder was placed on the dock, and was roughly the same distance away from the other court actors as the interpreter and the defendant. When listening to the recordings there are several inaudible exchanges at this point, and this would appear to be evidence of a general lowering of volume by these speakers, although this is not to say, of course, that the interpreter could not hear what was happening.

The beginning of Move 5 marks a change to CFV for the interpreter. Taking into consideration the fact that the district judge does not mark the beginning of his pronouncement by asking the defendant to stand up to receive his decision, as is usual, the interpreter seems to be experienced enough to know when a new Move is beginning, that the district judge will be addressing the defendant, and that this will require a change of interpreting strategy from WSI to CFV. He moves deftly between interpreting strategies in Move 5, dealing with interventions by the defence advocate, the court clerk and the crown prosecutor by switching quickly from CFV when the district judge is addressing the defendant, to WSI when he is negotiating with these parties, and subsequently back to CFV when the judge finishes communicating his decision to the defendant. It can be said that he appears to make maximum use of the opportunities to make his presence felt when it is appropriate to do so. The district judge's decision is communicated in a rather haphazard way, with interventions by the defence advocate, the crown prosecutor and the court clerk disrupting his flow and necessitating quick changes of interpreting mode (from WSI to CFV and back again). We do not know what effect these advocate interventions have upon the defendant, but the onus for the clear communication of the decision of the court is surely on the district judge himself. Perhaps if he had briefed himself more thoroughly *before* beginning his pronouncement, the interpreter would not have needed to switch from CFV to WSI, and

the defendant could receive a much clearer and less confusing list of bail requirements which, in turn, would need less explanation by his defence advocate after the hearing.

This interpreter appears to have an understanding that different interpreting modes are appropriate for different Moves, and that this choice is governed by direct or indirect address of the defendant. He shows flexibility in the deployment of these modes and is sensitive to Move transitions, switching quickly from mode to mode to accommodate these transitions.

4.7 Case 4: Bosnian (BFF1 court A)

The hearing is approximately twenty minutes in length, excluding the time taken by magistrates retiring to consider their sentence, and other interruptions. It concerns a male Croatian-speaking defendant who is pleading guilty to drink driving. He is legally represented. When the male interpreter takes the affirmation, he announces his language as Bosnian. The defence advocate for this case also happens to be the duty solicitor⁴¹.

4.7.1 Positions and sightlines

The layout of the court is the same as for (VFF2) and (RFF2) which were recorded in the same court on the same day. In these cases the interpreters *stand outside* the secure dock, whereas the Bosnian interpreter chooses to *stand inside* the secure dock next to the defendant. Both advocates have their backs to him, though he has a good view of the court clerk and the magistrates' bench. The sound is amplified both inside and outside the dock, but although I stood inside the dock myself before the hearing began it was not possible for me to determine how clearly the sound came across from the well of the court once the case had started. Advocates are occasionally allowed to speak from seated positions if audibility issues have been identified when using a sound system. In this court, however, both advocates rose to their feet to speak.

⁴¹ A duty solicitor is on a rota and is available for all defendants who do not have a solicitor of their own and wish to be legally represented.

4.7.2 Turn profile

| Court actor | Number of turns | On-stage/off-stage ratio |
|------------------|------------------|--------------------------|
| Defence advocate | 55 | 38/17 |
| Court clerk | 54 | 46/8 |
| M | 19 | 18/1 |
| CP | 14 | 14/0 |
| INT | 14 audible turns | Mostly inaudible WSI |
| D | Inaudible | Inaudible |
| Usher | 0 | - |

Fig. 19: Turn profile of case BFF1

The large number of turns by the court clerk and the defence advocate are explained by the difficulties encountered in locating the defendant's driving licence. The comparatively few interpreter turns are explained by the interpreter's use of WSI and his position behind the glass screen of the dock; he was effectively inaudible by myself and the court except for his interventions. It was particularly difficult to decide whether the defence advocate was deliberately fragmenting his speech or making use of natural pauses. Because of this the turn profile cannot be regarded as completely accurate and is at best an approximation.

4.7.3 Move Analysis of case 4

Move 1.1: announcement of case

This happened before I could start recording.

Move 1.2: interpreter affirms

The interpreter is asked to go to the witness box to take the affirmation. He reads from a card, but does not sight translate the affirmation into the Bosnian language, nor is he prompted to do so by anyone in the court. He then crosses the court and takes up his position by entering the secure dock and standing next to the defendant and the security officer. There are thus three people in the dock.

The three short following Moves are noteworthy because the court clerk addresses the interpreter rather than the defendant throughout.

Move 1.3: confirmation of defendant's details

55 CC /Could you ask him his name and date of birth
 57 INT /(--) Sorry sir
 59 CC /(.) His name and date of birth
 61 INT /Zoran Arslanovic
 63 INT /Eighteenth of January nineteen eighty

The interpreter intervention at 57 is probably entirely due to the fact that the interpreter is prevented from hearing the court clerk properly because of the barrier of the secure glass dock.

Move 1.4: the charge is put

Move 1.5: the plea is taken

The above two Moves are considered together. In the following extract the court clerk shifts the responsibility for ensuring that the defendant understands the charge onto the interpreter. The interpreter does not hear the court clerk's question at 83, and asks for repetition. Although the court clerk re-poses the question, he does not wait for the interpreter to render that question or its response, but asks another, more complicated one. However, the interpreter only renders the answer to the court clerk's question at 89. The interpreter appears to accept the role assigned to him by the court clerk and is complicit with it, reporting the defendant's answer.

65 CC /Will you tell him that it's said that on the eighth of January this year (.)
 67 CC /He drove a motor car on the Handsworth Road (.)
 69 CC /I've made an error there it's the eighth of December (.)
 71 CC /He drove a motor car on the Handsworth Road (.)
 73 CC /After consuming so much alcohol (.)
 75 CC /That the proportion of it in his breath (.)
 77 CC /Exceeded the prescribed limit (.)
 79 CC /His reading was eighty three (.)
 81 CC /The maximum is thirty five (.)
 83 CC /Does he understand the charge (.)
 85 INT /Say that again sir
 87 CC /Does he understand the charge (.)
 89 CC /And (.) on the advice of his solicitor (-) does he plead guilty or not guilty (.)
 91 INT /He pleads guilty (.)

This is the second intervention that the interpreter makes since the beginning of the case. The rest of the time he is almost completely inaudible to those seated in the body of the court, using WSI to the defendant, who looks at him as he speaks.

During the putting of the charge the court clerk fragments his speech into short turns, each with a crucial element of information. The boundary between Moves 1 and 2 is unclear because of some administrative matters. The court clerk marks the end of Move 2 and the beginning of Move 3 by inviting the crown prosecutor to begin her submission with a rather mysterious turn of phrase:

111 CCif you'll hear the facts then er the interpreter's going to (.) have to do what he can

Move 2: outline of case against defendant

The crown prosecutor fragments her submission into semantically complete units for most of the time. She pauses at the end of each turn to accommodate the interpreter. The court clerk signals the end of this Move with his turn (addressed to the defence advocate):

47 CC/(--) If we can make progress do you want to deal with his driving licence first that
you can't produce (.)

Move 3: previous offences read out in detail

Since this is the defendant's first offence this does not apply.

Move 4: defence representations

Before the defence advocate can begin his submissions, the whereabouts of the defendant's driving licence has to be established so that it can be endorsed. When he begins his submission, he does not accommodate the interpreter, and speaks at a normal pace. The magistrate acting as bench chair notices this and interrupts the defence advocate:

202 M /I'm not sure how well the (.) interpreter is keeping up with you

His next eight turns are fragmented into more or less semantically complete units, with very short pauses in between each one; at his ninth turn he reverts back to his former pace. The rest of his submission is delivered at a fairly normal speaking pace.

Move 5: pronouncement

The magistrate acting as bench chair starts her pronouncement without marking the beginning of the new Move by asking the defendant to stand, which would be more usual. There are

numerous interventions from the court clerk and the defence advocate during the magistrate's pronouncement which interrupt her flow. The foreign language-speaking defendant who is dependent on an untrained interpreter may find rapid multi-party interaction rendered in WSI more difficult to follow than a native English-speaking defendant; many voices are reduced to a single voice, unless of course, the interpreter is trained well enough to be able to mark speaker shifts by varying the intonation. The magistrate does not formally dismiss the defendant, but expresses some anxiety about the defendant's understanding by inviting the defence advocate to explain it all to him after the hearing:

412 M /You're going through (.) the outcome with him (.) again (.)

4.7.4 Discussion

This interpreter places himself firmly towards the invisible end of the interpreter strategy continuum by using WCI and WSI throughout the hearing (strategy 1). This is because of the fact that he chooses to enter the enclosed dock with the defendant. In theory the sound system should enable the interpreter to hear what is going on in court; however this interpreter feels it necessary to intervene four times to ask for repetition or for interactants to speak up. When I was observing him there were long periods when he was not interpreting, although he was one of the few interpreters in my data sample (face-to-face and PVL) to intervene at all. Interestingly, it can be seen from the transcript that this interpreter's interventions occur in both defendant-focused and non defendant-focused Moves.

4.7.4.1 The co-construction of the interpreter's role

Jointly the court clerk, the defence advocate and the interpreter construct this court's view of the interpreter as an 'explainer' and as an advocate. They do this in a range of different ways:

- i) the court clerk addresses the interpreter, not the defendant, all the way through the hearing
- ii) the court clerk asks the interpreter's opinion as to whether or not the defendant understands
- iii) The court clerk asks the interpreter to 'explain' certain matters

- iv) The defence advocate conducts all his private consultations at the dock by addressing the interpreter rather than the defendant
- v) In non-defendant-focused Moves the court clerk speaks in a low voice to other court actors when discussing administrative problems, effectively excluding the interpreter in the secure dock
- vi) the interpreter does not intervene to ask the court clerk to address the defendant
- vii) the interpreter does not intervene when the defence advocate is speaking quickly with his back turned to him
- viii) the interpreter asks the bench for time to make a ‘summary’ for the defendant:

354 CC /Twenty eighth of March (.) yep (--) right now then is he aware of the fines costs and the
 355 dis-ban from driving (.) from today (*to interpreter*)
 357 INT /Yes sir (.) I can explain that once again to him just a summary (.)

The interpreter does not ask for repetition even though it is plain from my observations that he is not keeping pace with other speakers (see 4.7.4 and the magistrate’s comment below):

202 M /I’m not sure how well the (.) interpreter is keeping up with you

Two of the interpreter’s interventions contain apologies. The interpreter apparently does not see it as his responsibility to establish openly and transparently the parameters of his own professional role nor to create for himself the best available working conditions. He may do this for one of two reasons. Firstly he may have insufficient training or lacks awareness about his professional role, and secondly he may see himself as an intruder in the court, as someone who must defer to it in all matters, even those that are properly part of his own professional responsibility.

4.7.4.2 Audience types

In Bell’s (1984) terms, the taking of the interpreter’s affirmation can be regarded as a formal ratification of the presence of the interpreter, so this Bosnian interpreter is certainly a ratified participant as far as the court is concerned. Not only is he ratified, but he is the primary addressee because in all the defendant-focused Moves in this hearing the court clerk addresses the interpreter rather than the defendant. There is a good illustration of the court clerk abruptly switching audience and style as he proceeds from Move 1 (defendant-focused) to

Move 2 (non-defendant-focused). His first addressee is the defence advocate and it is evidenced by the use of two formulaic phrases (my underlining):

93 CC.....for your information the file will be marked as maximum credit whilst it's a second listing first time'

The court clerks's phrase 'if you'll hear the facts' (111, my underlining) is a clear invitation to the crown prosecutor to begin her submissions, but the primary addressees in this instance are the magistrates:

110 CC /Will you mark your file as maximum credit for a guilty plea at the first opportunity
111 (.) and if you'll hear the facts then er the interpreter's going to (.) have to do what he
112 can

The subsequent judicious pauses and speaking pace of the crown prosecutor are an indication of her awareness that her primary addressees are the magistrates, but that amongst her auditors are the interpreter and the defendant.

4.8 Case 5: Urdu (UFF court A)

This hearing, approximately 40 minutes in duration, took place in the same Victorian so-called "heritage court" as the Kurdish Sorani (KSFF1) case number 2. By chance, the chair of the bench of magistrates happened to be someone who had previously been involved with my interpreter training courses over a long period; thus we already knew each other well.

The defendant, an elderly Urdu-speaking male, appears in court without any legal representation (see the discussion about unrepresented litigants at section 1.4.1). The defendant is charged with having erected a sign without planning permission and with repeatedly failing to remove it despite having been ordered several times to do so. The defendant and interpreter sit together in the dock for approximately twenty minutes whilst waiting for the case to start, and during this time they talk to each other (see conclusions at chapter 8).

Before the case begins, the chair of the bench openly and lengthily acknowledges the interpreter's presence:

7 M /Urdu thank you could I er just make a comment to you to start with first of all could
8 I say thank you very much for being the interpreter (.) I have to say that without your
9 services (.) we would be in great difficulty (.) I'm sure your DPSI Diploma In Public

- Service Interpreting has been checked
- 10 M (inaudible)
- 12 INT /Yes it has
- 14 M / (?) and what I would say now is that everything that I've said to you now (.) I would
- 15 like you to er
- 17 INT /Yes
- 19 M /to interpret to the (.) to the er defendant (.) if there's anything that you don't
- 20 understand (.) please put your hand up and just ask
- 22 INT /Okay
- 24 M /And more importantly just to make sure that that (.) the defendant (?) we need to
- 25 make sure that the (.) interpretation of what was said in court was directly and
- 26 properly interpreted into that language
- 28 INT \interprets in Urdu to defendant)
- 30 D \Mhmm

It is possible that, aware of my presence in the court, he may have been making a special effort to impress me.

4.8.1 Positions and sightlines

All comments made about positions and sightlines in case (KSFF1) (case number 2) apply here. The interpreter and defendant are easily visible to the magistrates. The digital recorder fails to pick up some of the magistrate's turns, however, as he is farthest away from it. The defendant looks at the interpreter every time she makes a rendition. Whenever the defendant speaks he addresses the interpreter rather than the court. When the interpreter makes her renditions, the defendant leans towards her and nods occasionally.

4.8.2 Turn profile

| Court actor | Number of turns | On-stage/off-stage ratio |
|-------------|-----------------|--------------------------|
| INT | 322 | 168/154 |
| M | 124 | 124/0 |
| D | 102 | 0/102 |
| CP | 90 | 90/0 |
| Court clerk | 27 | 27/0 |
| Usher | 1 | 1/0 |

Fig. 20: Turn profile of case UFF

Because the defendant is unrepresented, he has many more turns than a represented defendant would normally have. It can be seen that there is a more or less equal distribution of interpreter turns to the defendant in Urdu and to the court in English. It can also be seen that the magistrate is the most prolific speaker after the interpreter, with the defendant coming third on the list.

4.8.3 Move Analysis of case 5

Move 1.2, 1.3: interpreter affirms, confirmation of defendant's details

The interpreter chooses to affirm, but does not appear to sight translate much of the affirmation to the defendant. We can infer this because of her extremely short rendition to the defendant. As the defendant's details are being checked by the court clerk, the interpreter uses CFV.

Move 1.4: the charge is put

Move 1.5: the plea is taken

The court clerk fragments the three allegations into their separate elements, and the interpreter uses a hybrid of WSI and WCI to render them. When asked to enter his plea, the defendant does not answer the question and begins to give excuses. There follows a short interaction where the interpreter uses CFV to render the defendant's excuses. The defendant is reminded by the court clerk that he is simply being asked to enter his plea, and eventually he does so.

Move 2: outline of case against defendant

The crown prosecutor prefaces her opening remarks by saying that she will speak slowly; this prompts a comment to her by the magistrate who reminds her of the interpreter's needs. They both therefore openly acknowledge the presence of the interpreter. The crown prosecutor begins her submissions, often fragmenting her speech. Here are two separate examples:

Example 1

200 CP /And following this complaint
 202 INT \ (Urdu)
 204 CP /A planning enforcement officer
 206 INT \ (.) (Urdu)
 208 CP /Mister Martin Greene

Example 2

230 CP /And according to (.) records
 232 INT \ (Urdu)
 234 CP /That use was authorised
 236 INT \ (Urdu)
 238 D \ (Urdu)

The interpreter uses WCI to render the crown prosecutor submissions. The interpreter intervenes to ask for repetition of a relatively long turn by the crown prosecutor. The crown prosecutor reformulates her previous turn by fragmenting it into three segments:

- 318 CP /And more importantly they [the signs] were detrimental (.) to the building itself and
 319 the wider street scene
 321 INT /I'm sorry I missed the [last sentence ?]
 323 CP /[Sorry they were detrimental]
 325 INT \ (Urdu)
 327 CP /To the building itself
 329 INT \ (Urdu)
 331 CP /And the wider street scene

The interpreter uses mostly WCI to render the CP submissions.

Move 3:previous offences read out in detail

Not applicable.

Move 4: defence representations

Since the defendant is not legally represented, he is now given an opportunity to speak in his own defence. He does so, and begins a long narrative which he fragments into short turns for the interpreter, who renders them in CFV, occasionally using VS. The magistrate, after allowing the defendant's uninterrupted narrative, asks the defendant to clarify whether he said he had been in court on the last occasion. His answer (given in four fragments) is also interpreted in four fragments (747-775). However, the interpreted fragments are evidently not packaged in a form that is acceptable to the magistrates, because the defendant is asked the same question again; the magistrate has a note of impatience in her voice as she attempts to get a more concise answer from the defendant. She does this by addressing the interpreter and makes use of third person at 769:

- 735 M \Mister Hussain did you say that you weren't in court on the last occasion
 737 I \ (Urdu)
 739 D \ (Urdu)
 741 I / (Urdu)
 743 Phone rings
 745 D \ (Urdu)
 747 I /I was in Pakistan
 749 D \ (Urdu)
 751 I /On the fourth of November
 753 D \ (Urdu)
 755 I /Yes returned on the twenty first
 757 D \Twenty one (in English)
 759 I /Twenty first
 761 M /(-) So what's the answer to my question ?
 763 I \ (Urdu)
 765 D \ (Urdu)

767 I /What do you mean
 769 M /He wasn't in this (.) country in the UK on the fourth of November ?
 771 I \(\Urdu)
 773 D \(\Urdu)
 775 I /I wasn't here on the fourth

The magistrates require full financial disclosure from the defendant in connection with fine and costs issues, so there is a series of turns where he describes his financial circumstances, all of which are conveyed in CFV to the bench. The defendant is asked to sit down, and this signals the transition to Move 5.

Move 5: pronouncement

Although this is the beginning of the Move, details about the defendant's circumstances that are being sought by the magistrates. The defendant often replies to questions with an irrelevant answer. For example, the magistrate wants to know if the defendant receives an income from the restaurant; he gives an irrelevant reply about his elderly mother. This is in fact the fourth occasion where the magistrate has asked a question, and has received seemingly irrelevant answers. In example 3 he repeats the question to the interpreter rather than the defendant, presumably in the hope that he will get a more relevant response. Because I do not have access to the defendant's language, it is not possible to know whether or not the indirectness of his answers are interpreter-induced:

Example 1

886 M /Did you fill this in ?
 888 INT \(\Urdu)
 890 D \(\Urdu)
 892 INT /No (.) my son has come with me

Example 2

959 M /Have you Mister erm Hussain any involvement in the business ?
 961 INT \(\Urdu)
 963 D \(\Urdu)
 965 INT /My mum in Pakistan is ninety five years old
 967 D \(\Urdu)
 969 INT /I look after her

Example 3

983 M /So you have no income from the erm restaurant ?
 985 INT \(\Urdu)
 987 D \(\Urdu)
 989 INT /There isn't that much there's just about erm erm covered the expenses
 991 M /Does he receive any income from the restaurant ?

As the magistrate makes his pronouncement, he fragments his speech into units, some of which are complete, and some of which are semantically incomplete. He pauses for the interpreter to finish but occasionally cuts her off. The interpreter uses mostly WSI and occasionally some WCI. As the magistrate delivers lengthier units, the interpreter uses more WSI and less WCI. The defendant may not realise that his sentence is imminent: he addresses the interpreter at 1364 and the interpreter intervenes during the magistrate's pronouncement with a rendition of his turn (1366), an interruption which the magistrate chooses to ignore at 1376 by continuing with his pronouncement:

1358 M /Mister Hussain there will also be presented to you a yellow form
 1360 INT \((Urdu)
 1362 M / (Inaudible)
 1364 D \((Urdu)
 1366 INT /He's just asked (.) erm erm could I appeal
 1368 M /Pardon ?
 1370 INT /Could I appeal
 1372 M /Yes
 1374 INT \((Urdu)
 1376 M /That means that it will be deducted from your pay packet

The magistrate answers the defendant's question about an appeal at 1417. The pronouncement is long and there are many different elements in it. The magistrate ends by accepting his offer to pay the fine in instalments, dismissing the defendant and thanking the interpreter:

1453 M Interpreter (.) thank you very much for your services

4.8.4 Discussion

This case is interesting because this defendant displays features associated with both relational and rule-oriented behaviour in Conley and O'Barr's (1990) terms (see chapter 1, 1.4.1). He begins his defence by formally entering of a plea of guilty with a plea in mitigation, thus showing his orientation as a relational defendant:

CC /hhhhhhh As to the first allegation are you guilty or not guilty
 I \((Urdu)
 D /(Urdu)..... [.....]
 I /[The board had been up] for a very long time
 D /(Urdu)
 I /Well I didn't know
 D /(Urdu)
 I /Had it repaired
 D /(Urdu.....)
 I /Twice it broke
 CC /Well do you (.) er at the moment all you're doing is pleading guilty or not guilty
 I /I had it repaired (Urdu)
 D /(Urdu)

I /Guilty

Throughout the initial Moves he continues to introduce personal details which describe his circumstances, but which do not have a direct bearing upon the case. Interestingly, when he is asked by the magistrate to give his version of events, he does so in a more or less rule-oriented manner (again, see chapter 1.4.1). It may well be that he has learned something of the court process by hearing to the prosecution account of the facts, and that this has influenced his change to a more rule-oriented delivery.

This interpreter uses different strategies for different Moves. She makes most use of strategy 2, a hybrid of WSI and CFV. In Moves 1 and 2, however, the strategy she uses most is WCI. In Move 5, when the magistrate is delivering the sentence of the court, she uses mostly WSI. Unusually, there has been a great deal of interaction between the interpreter, the defendant and the court during this hearing. The boundaries between Moves have become blurred as the defendant tries to tell his story by introducing details of his own life and as the magistrates try to ascertain the facts directly from the defendant instead of through the intermediary of an advocate.

Where interpreters, taking their cues from the speeches they are rendering, clearly mark the boundaries between different Moves by using different interpreting modes, this may help defendants to orientate themselves to the different stages of a hearing (defendant-focused and non-defendant-focused), although they may not, of course, realise the reasons for these shifts of mode. The interpreter's use of WSI may have fostered an unintentional intimacy between herself and the defendant. If an interpreter makes use of whispering throughout the submission phase (which is not defendant-focused) and continues to whisper during the sentencing phase (which is defendant-focused) the defendant may not understand its significance or that the pronouncement of the sentence he will receive is imminent. This could be the reason why he interrupts, and below is a further example of an interruption which may have been occasioned by the interpreter's strategy:

- 1149 M /But also the formal request [to remove that sign]
 1151 INT \[(Urdu)]
 1153 M /It's clear the intention was not to move or take it down
 1155 INT \[(Urdu)]
 1157 D \[(Urdu)]
 1159 INT /The sign has now been removed
 1161 M /And it seems to us that you thought the problem would go away

The fact that the magistrate ignores his response at first, continuing with his own turn, then acknowledges it, shows that he thinks that this interruption by the defendant is inappropriate. Of course, it is not possible to know for sure whether or not the interruption is interpreter-induced without access to the language.

4.9 Case number 6: Polish (PFF court B)

This hearing is approximately 20 minutes in length, and does not follow the usual Move sequence of a remand hearing. Move 1 is present, but Move 2, where the charge is usually put and the plea taken, is absent. This is because the hearing was adjourned from the previous day, and so the hearing starts with the defence advocate summarising the case so far, the crown prosecutor follows with his submission, and the defence advocate ends by making his submission. The defendant is a Polish national who is charged with several offences of burglary. He is brought into the court from custody and sits in the secure dock with a security officer. This court is presided over by a district judge.

4.9.1 Positions and sightlines

The courtroom has a traditional layout with the secure dock situated at the side of the room. I am sitting next to the dock and the digital recorder is near to it. However, the interpreter uses WSI and is almost completely inaudible until the district judge makes her pronouncement at the end of the hearing. The courtroom is wide rather than long, and so, even though the dock is at the side of the court, the defence advocate is seated quite a long way from the defendant and interpreter in the dock, and has his back to them. The crown prosecutor is the furthest away from the dock.

4.9.2 Turns by all court actors

| Court actor | Turns | On/off stage ratio |
|------------------|-----------|--------------------|
| INT | Inaudible | Inaudible |
| District Judge | 41 | 41/0 |
| Defence Advocate | 25 | 23/2 |
| CP | 10 | 10/0 |
| Court Clerk | 2 | 2/0 |
| D | 0 | 0 |

Fig. 21: Turn profile of case PFF

Because the interpreter sits next to the defendant in an enclosed dock, she is inaudible to the rest of the court so her simultaneous turns are omitted from the transcript.

4.9.3 Move Analysis of case 6

Move 1.1: announcement of case

Not applicable.

Move 1.2: interpreter sworn in

The female Polish interpreter is sworn on entering the witness box. She reads an abbreviated version of the oath on the card:

6 INT /I swear by Almighty God that I will interpret in these proceedings to the best of my
7 skill and understanding the language is Polish madam

and then crosses the well of the court to enter the secure dock where she sits next to the defendant. She is not asked to sight translate the oath to the defendant, and does not do so of her own accord after entering the dock.

Move 1.3: confirmation of defendant's details

Not applicable.

Move 1.4: the charge is put

Not applicable.

Move 1.5: the plea is taken

Not applicable.

Move 2: outline of case against defendant

The challenge of interpreting prosecution submissions in the Magistrates Court lies in the fact that the crown prosecutor has before him/her a written summary of the case, parts of which s/he refers to and reads from. This crown prosecutor reads out a list of items from such a summary:

139 CPproperty taken (.) forensics identified (.) fingerprints er (.) matched (.) those (.) of (.) mister (.) Nowakowski (-) er value of items I believe is just over two thousand pounds

He also uses formulaic language, as does the defence advocate in his submission:

'failure to surrender' (63)
'he entered as a trespasser' (65)
'forensics identified' (139)
'That's a residential as well' (141)

The district judge asks the crown prosecutor to slow down his rate of speaking, and this request is immediately echoed by the defence advocate:

67 DJ /If you could could go a little slower
69 DA /If (*name of crown prosecutor*) could go a little slower
71 CP /I apologise I forgot there was an interpreter (-) thirteenth of June twenty ten

The prosecutor slows down his rate of speaking between lines 71 to 85, pausing frequently to allow the interpreter to catch up. After 85 he resumes his former pace. Between 92 and 99 he seems to recall the presence of the interpreter and once again pauses frequently and lengthily until he reaches the end of his main submission. The interpreter uses WSI throughout this Move.

Move 3: previous convictions read out in detail

Not applicable.

Move 4: defence representations

The interpreter uses WSI throughout this Move. The only sound she makes is a faint muffled whisper which is hardly audible. The defendant looks at the interpreter as she delivers her renditions and there are occasional instances of non-verbal back-channelling from him. There are occasional periods of time when the interpreter does not make any renditions at all.

Move 5: pronouncement

In this Move the interpreter changes interpreting mode from WSI to CFV as the district judge gives her decision. The interpreter is audible, albeit somewhat muffled, to the whole court as she renders the district judge's ten turns. The fact that she delivers her renditions at full volume from a standing position temporarily draws attention to her and affords her relative visibility. The district judge refers to the interpreter as 'Madam interpreter' which is the traditional way of referring to a female court interpreter by court actors. When the interpreter responds to the district judge's enquiry about her availability for the next hearing, the interpreter raises her voice to the point where she is clearly audible.

4.9.4 Discussion

The challenges for this interpreter are considerable. She has to listen much more carefully than any of the other speakers in the court because of the thick glass barrier with which she is surrounded in the dock. Complete familiarity with the "outsider" formulaic language of the court is required. In addition to this, she must deal with a series of rapid interactions between crown prosecutor, district judge and defence advocate, deal with the difficulty caused by the crown prosecutor reading out a list of items from his written summary of the case, and make appropriate use of WSI to render long, uninterrupted, and sometimes hesitant monologues by crown prosecutor and defence advocate. The case itself is a fairly complex one, with the defendant having been charged with committing two separate burglaries on different dates and in different places, and where he has been charged with committing one whilst being on bail for another.

There are two aspects of the defence advocate's speech which make it particularly challenging to interpret. Firstly, he speaks at a normal conversational pace and does not pause for the interpreter, nor does he turn towards her. From 162 onwards he ignores his own exhortation to pause more frequently (uttered at 69) for the rest of his submission, and the district judge does not intervene again on this point. Secondly the defence advocate peppers his submission with formulaic language; here are some examples:

'the court declined jurisdiction in relation to that matter [and] put it over to today' (16)

'There is one previous and that's agreed madam' (156)

'the defence is at this stage asks for a readover committal' (169)

'do you know if that's been varied by the solicitors' (246)

'I don't know if that's been formally varied by the other solicitors' (255)

‘there’s likely to be several six two committals’ (282)

The interpreting strategy used by this interpreter (mostly a hybrid of WCI and CFV, strategy number 3) is, on the face of it, appropriate in that she uses WSI for non-defendant-focused Moves and CFV for defendant-focused Moves. She does not intervene for clarification of the formulaic language or take notes. The interpreter does not seem to be making any renditions at all for long periods. Since this defendant does not speak throughout the hearing, the interpreting is all unilateral, ie from English to Polish. The crown prosecutor does not accommodate the interpreter (the district judge and the defence advocate intervene to remind the crown prosecutor to speak more slowly) and so, in common with all hearings where WSI is being used more than any other strategy (and especially where the defendant and interpreter are in a secure dock), she is virtually invisible and completely inaudible until Move 5, where she switches (appropriately) from WSI to CFV, although her volume gradually diminishes as the district judge proceeds with her pronouncement.

Visibility and enhanced presence is a particular advantage for an interpreter during defendant-focused Moves, as these elements alert the court that the case is an interpreted one and that speakers must, to some extent, accommodate the interpreter.

4.10 Case 7: Vietnamese (VFF2 court A)

This hearing is approximately six minutes in length. The two Vietnamese co-defendants appear in a secure dock from custody having been arrested on a charge of cannabis production. The eventual charge is an ‘indictable only’⁴² offence, and so it can only be heard in the Crown Court. There is no reference to a plea, whether indicated or actual. The purpose of the hearing is to withdraw the present charge, put forward a new charge and send the defendants to the crown court for trial. There is a sound system in this court, partly necessary because the public gallery is completely cut off from the rest of the court by a glass barrier. The sound system amplifies (in theory) the sound for the public gallery, the secure dock and the main courtroom.

⁴² An indictable only offence is one that can only be dealt with at the Crown Court.

4.10.1 Positions and sightlines

The interpreter stands directly in front of the secure dock, separated from the defendants by a glass barrier. She stands throughout the hearing. Her position in relation to the defendants and the rest of the court is at a ninety-degree angle. She turns her head from side to side to look at the speakers (the advocates have their backs to her) and then back to the defendants in order for them to hear her. It is necessary for the interpreter to address the defendants by directing her speech through the small holes in the dock. The dock is raised and is situated at the back of the courtroom, but in front of the public gallery. There is a set of steps leading down from the secure dock to the cells below. The court clerk is on the same level as the advocates. There are two security officers in the dock with the defendants, standing one on each side of the defendants. The magistrates sit at a raised dais and look down upon the well of the court.

4.10.2 Turn profile

| Court actor | Turns | On-stage/off-stage ratio |
|------------------|-------|--------------------------|
| Interpreter | 44 | 44/0 |
| Court Clerk | 27 | 27/0 |
| Magistrate | 14 | 14/0 |
| Crown Prosecutor | 7 | 7/0 |
| Defence Advocate | 5 | 4/1 |
| Defendant 1 | 2 | 2/0 |
| Defendant 2 | 2 | 2/0 |

Fig. 22: Turn profile of case VFF2

4.10.3 Move Analysis of case 7

Move 1.1: announcement of case

Not applicable.

Move 1.2: interpreter is sworn in

Although I did not audio-record this Move step, the interpreter is asked to take the oath in the witness box, naming herself and her language when she finishes. She does not sight translate the oath for the benefit of the co-defendants, nor does anyone in the court prompt her to do so. She then signals her readiness to move on to the next step by walking from the witness box to

the secure dock where she takes up her position as described at section 2. She remains in this position throughout the hearing. She does not make use of a note book.

Move 1.3: confirmation of defendant's details

The court clerk addresses the interpreter rather than the defendant:

6 CC/Ask the accused their names and date of birth please

However, the interpreter renders the defendants' responses in the first person. The interpreter takes it upon herself to spell out an awkward name. The defendants can hardly be heard through the holes of the secure dock though the interpreter is clear and audible. She uses CFV for this Move.

Move 1.4: the charge is put

The charge is only referred to indirectly. Again the interpreter is asked by the court clerk:

57 CC right could you (.) tell them they face together (.) one new charge (.)
 59 and
 61 I /Vietnamese
 63 CC /I want you if you will to read it (.) to them

By "it" is meant the charge. The interpreter starts to interpret immediately after the court clerk has paused in line 59, thinking that he has finished his turn, but just as he tries to finish his turn, the interpreter and the court clerk overlap slightly. Note that the court clerk addresses the interpreter rather than the defendant at 63.

How the reading out of the charge (63) is to be accomplished is not clear, as he does not hand the interpreter any documents. The court clerk then proceeds to read out the charge himself, and one can only assume that he means the interpreter to render his own next turn, as *he* reads out the charge himself. During the whole of this step the interpreter uses CFV. The defendants look solemn and worried. They look at the speakers when they are speaking and at the interpreter when she is interpreting.

Move 1.5: the plea is taken

Not applicable. Since the offence is indictable only the case has to be sent to the Crown Court.

Move 2: outline of the case against the defendant

Before the crown prosecutor can make any submissions, there has to be a decision as to what should happen to the original charge (which is eventually abandoned) and the new one, which is triable only in the Crown Court. Whilst this negotiation is being conducted (in low voices, mostly inaudible to all but the court clerk, advocates and magistrates), the court clerk suddenly remembers the non-English speaking defendants and once more addresses the interpreter:

108 CC /could you (.) tell (.) them in your native tongue what the court are doing now

Since these negotiations are audible neither to myself (I am sitting nearer to the court clerk and the advocates than the interpreter) nor to the interpreter, it is difficult to know what the court clerk expects the interpreter to do. It becomes apparent that he is expecting the interpreter to interpret the explanation (that is about to be given by the magistrate) of the stage that the negotiations have reached. Thus the next turn is by the magistrate, who appears to initiate a new Move. She explains that the original charge is being withdrawn and that the defendants now face a new charge, but does not elaborate on what that entails. She assumes that the defendants will be remanded in custody, but is interrupted by the court clerk who checks with the defence advocate that he will not be making any application for bail. The magistrate fragments her speech in the usual way, incorporating one informational element in each turn:

113 M /Mister (.) Trung and Mister (.)Vuong the matters
 114 again-
 116 I /Vietnamese
 118 M /The matters charged you (*sic*) with previously concern the construc-production of a
 119 controlled drug of class B cannabis (.)
 121 I /Vietnamese
 123 M /Those those matters against you (.) are now to be discharged (.)
 125 I /Vietnamese
 127 M /You you are now charged with a new offence
 128 which is

130 I /Vietnamese
 132 M /Section fifty one of the crime and disorder act nineteen ninety eight (.)

The magistrate's turns in lines 114, 123 and 128 overlap with the interpreter's turns. At 170 the court clerk asks the crown prosecutor to outline the reasons why bail should not be granted (overlapping with the interpreter's previous turn). In the exchange which ensues several speakers overlap with the interpreter's turns at 162, 168 and 173:

160 M /And in the interim (.) you are to be remanded in custody
 162 I /Vietnamese
 164 CC \There's no application ?
 166 DA \No no
 168 I /Vietnamese
 170 CC /Can we then follow through with the bail act (.) what do you briefly allege (-) that should
 171 deny them their (.) their bail
 173 I /Vietnamese
 175 CP /The crown would say there are substantial grounds that the defendants will fail to surrender if
 176 bail is granted

The interpreter uses mostly CFV, with occasional use of VS.

Move 3: previous offences read out in detail

Move 4: defence representations

Move 5: pronouncement

Not applicable.

The court clerk's 'Okay' at line 206 is the only signal that the hearing might be over, but this is not obvious to the interpreter, who continues to stand by the dock, and seems to be rather unsure of what to do next since she does not interpret any more turns after line 204.

4.10.4 Discussion

This interpreter has high visibility and audibility, and has a clear and assertive speaking voice. Her posture in the court contributes to this visibility, as she assumes a standing position in front of the secure dock. Her strategy is to use CFV, with some VS, throughout the hearing, number 4 on my continuum at fig.10, 4.1.9). In some ways this hearing resembles a PVL hearing, because the interpreter uses strategies which place her at the most visible end of the continuum. She has narrowed down her own choices on the strategy continuum because of her decision to stand outside the dock, directing her renditions through the holes in the glass screen of the dock.

It can be seen that high visibility interpreting strategies do not guarantee that the court is aware of the interpreter's presence all of the time. Nor does it guarantee that there will be no overlapping speech. Whispered conversations between court actors during non-defendant-focused Moves and interpreter turn overlaps seem to indicate this lack of awareness. The hearing is particularly interesting for the court clerk's consistent habit of addressing the interpreter instead of the defendants, and for the shifting of responsibility upon the interpreter to explain certain elements and read out documents, a clear misperception on his part of the interpreter's role, which he does not correct. In this hearing the boundaries between Moves are not clearly defined, making it difficult for an untrained interpreter to know what is coming next.

4.11 Case 8: Bengali (BFF2 court C)

This is a very short remand hearing: just four minutes and nineteen seconds in length. There is a district judge presiding. Moves 1, 2, 3 and 4 are absent from this hearing. The purpose of the hearing is to commit the defendant to the Crown Court on a sexual offences charge, although the exact nature of the charge is not specified. It can be assumed that the offence is an "either way" one (one which can be heard in either the Magistrates or the Crown Court), but one which is actually destined for the Crown Court. The defendant appears on court bail, and so he enters the secure dock by himself from the body of the courtroom. The male interpreter stands inside the dock next to the defendant. There is a system for amplifying sound, and this is switched on by the court clerk, but audibility (as far as I am concerned at any rate) is not particularly good. The advocates speak from a seated position rather than a standing one. The district judge who presides in this hearing dominates the interaction right from the start. He does this by directly acknowledging the interpreter, asking him what language he speaks and referring him to the court clerk for confirmation of his details, functions usually performed by the court clerk.

4.11.1 Positions and sightlines

The layout of this court is a traditional one, but significantly for the interpreter, the dock is at the back rather than at the side of the well of the court. This means that the interpreter is out of the advocates' sightline and can only see their backs.

4.11.2 Turn profile

| Court actors | Turns | On/off stage ratio |
|------------------|-------|--------------------|
| District Judge | 36 | 36/0 |
| INT | 33 | 33/0 |
| Court Clerk | 5 | 5/0 |
| Defence Advocate | 3 | 3/0 |
| D | 2 | 2/0 |

Fig. 23: Turn profile of BFF2

4.11.3 Move Analysis of case 8

Move 1.1: announcement of case

The court clerk announces the case and the identity of the defence advocate.

Move 1.2: interpreter is sworn in

The interpreter is not sworn in and does not prompt the court to do so. The district judge initiates the next Move step by asking the interpreter for the name of his language. The interpreter responds in a clearly audible voice. The district judge then conflates the identities of interpreter and defendant when he does not make it clear to whom his request to remain standing and to answer the court clerk's questions is addressed.

6 DJ Bengali thank you (-) remain standing and answer the questions from the learned
7 clerk

The interpreter does not interpret any part of this Move step.

Move 1.3: confirmation of defendant's details

The court clerk initiates this Move. Appearing to take his cue from the district judge, the court clerk also does not make it clear whether he is addressing the defendant or the interpreter. The interpreter renders the question, but appears to omit the politeness marker from his rendition. This omission is repeated in the interpreter's next rendition. The defendant replies *in English*, and the interpreter reformulates the defendant's response in a hyperformal manner (see Berk-Seligson 1990/2002), thus:

- 14 D *Twenty five five sixty six(in English)*
 15 INT Born on twenty five five nineteen sixty six (-)

He may have done this because he considered that the defendant's response could not be easily heard by the rest of the court.

Move 1.4: the charge is put

The charge is not formally put, but simply referred to by the district judge.

Move 1.5: the plea is taken

The defendant has already given a not guilty indication to the charge on an earlier occasion.

Move 2: outline of the case against the defendant

Not applicable.

Move 3: reading out of previous offences in detail

Not applicable.

Move 4: defence representations

Not applicable.

Move 4(a): checking administrative details

Before the district judge delivers his decision, he checks a range of administrative details with the court clerk and the defence advocate. Whilst he makes these checks he forgets the interpreter, who only begins to interpret after the district judge's second turn in this Move. Before the interpreter can complete his rendition of the district judge's turn at line 19, the judge starts another turn at line 21. The fact that the interpreter is using VS at this point may be the reason that he fails to render the next district judge's turn; the interpreter's voice may have drowned out that of the judge. The interpreter fails to render the next three turns. As the interpreter attempts to interpret the district judge's turn at 26 (addressed to the defence advocate), the district judge starts a new turn, thus leaving the interpreter even further behind. The interpreter does not render any of the remaining turns during the rest of this Move.

Move 5: pronouncement

The district judge initiates the final Move by addressing the defendant by name (for the first time throughout this hearing). The decision is delivered in a series of turns, each of which

contains an essential piece of information or a requirement by which the defendant must abide. The district judge pauses after each of his first two turns, but does not wait for the interpreter to complete his renditions before beginning his next three turns. At line 44 he pauses just long enough for the interpreter to begin his rendition, which he almost completes by dint of speaking very quickly. The district judge begins his next turn at line 46 by cutting into the interpreter's rendition very slightly. At 50 and 52 the DJ again cuts into the interpreter's renditions. For the following five turns the district judge allows the interpreter to complete his renditions. For the next five turns he reverts to interrupting the interpreter before he has completed his renditions. At line 76 he signals the end of the hearing by asking the defendant to step down from the dock, but realises he may have forgotten an administrative detail. He consults with the court clerk about possible dates for a trial but does not explain to the interpreter or the defendant whether or not the hearing is at an end so that they can safely ignore this part of the interaction. The interpreter decides to attempt a rendition (78), but the court clerk interrupts him. He confirms the date and time of the hearing and invites the defendant to step down, reminding him to pick up a bail notice. He adds a series of other instructions which are not interpreted to the defendant because they are delivered too quickly by the district judge and the interpreter is not assertive enough to interrupt him. Thus the defendant does not receive the following instruction in his own language at the point at which it was uttered:

89 DJ /Once you have that bail notice and any other information (*inaudible*) see your
90 probation officer once you've seen that lady you may go thank you

The district judge's final "thank you" is uttered very emphatically. His tone signals the end of the hearing and a desire to get on with the next hearing as soon as possible.

4.11.4 Discussion

This interpreter uses CFV and VS (strategy 4) all the way through this hearing. However, although he places himself firmly at the visible end of the continuum (he can be clearly heard all the way through the hearing) the court does not accommodate him in any significant way. He is often interrupted by the district judge, whether the Move is defendant-focused or non-defendant-focused, and the interpreter uses the same strategy throughout. This shows that interpreter visibility in this courtroom does not necessarily lead to awareness of interpreter needs by significant court actors. It also illustrates that high interpreter audibility does not

automatically raise the status or profile of the court interpreter as a member of the court team. How interpreters are treated seems to depend entirely on the attitudes, sensitivities and idiosyncrasies of individual court actors, and whether individual court interpreters assert their presence in an effective way.

4.11.4.1 District Judge strategies

The district judge's actions have consequences for this interpreter and the defendant. Firstly the district judge ignores the interpreter when he attempts to render his interaction with the court clerk, using a rapid succession of formulaic phrases such as 'a full committal', 'have the papers been served', 'representation order', 'non-contact', 'no application to vary bail' and 'a charge on the draft indictment'. Secondly, the district judge often interrupts the interpreter, and does not seem to notice whether he (the interpreter) is keeping pace or not. Thirdly, the district judge does not clearly signal the transitions between those Moves which are defendant-focused and those which are not. If he had done so it might have allowed the interpreter to prepare more appropriately for these transitions.

The interpreter himself contributes to the court's insensitive treatment of him and consequently the inadequate interpreting that the defendant may have received as a result. He does not question the fact that he is not asked to swear the oath (or affirm), and as a result of this he does not sight translate the oath into Bengali for the benefit of the defendant. Thus the interpreter does not take steps to make his presence felt. He begins well with his first response to the district judge's query about his language, speaking clearly and at full volume so that everyone can hear, but is soon defeated by the actions and pace of the district judge outlined in the previous paragraph. He chooses not to intervene at any point, either for clarification or for repetition. His interpreting strategy (CFV and VS) is not appropriate where there is overlapping speech, since the interpreter's own voice will often block that of the speaker, preventing him/her from hearing what the speaker is saying and forcing the interpreter to lag further and further behind until he cannot catch up. Thus the defendant does not receive any information about the administrative details of his case, and is not even clear about whether the hearing is over. Worryingly, he may not have fully received the information about his next appearance at the Crown Court in lines 40-43, since the interpreter and the district judge are speaking at the same time. Presumably the interpreter does not use the more appropriate strategy of WSI during the non-defendant-focused Moves because he does not have that skill.

This hearing is an example of unwitting complicity between the district judge and the interpreter. The district judge is unaware of the professional needs of the interpreter (which might appear odd for a Magistrates Court situated in the heart of London where court personnel are well used to interpreted cases), and the interpreter lacks the assertiveness to intervene to make these needs apparent to the court. The result is a confusion of overlapping speech and omitted turns.

One of the challenges for an interpreter is to be able to cope with a transition from one Move to another, since this will not only involve a change of speaker, but a change of style. Interpreters can easily predict the speech in the defendant-focused Moves (1 and 2), but are less likely to be able to predict what will happen when the focus moves away from the defendant. In example BFF1 12-19, we see the end of Move 2 at line 15. At 16 the three-way interaction between the court clerk, the interpreter and the defendant becomes a two-way dialogue between the district judge and the court clerk, with an immediate change of style from simple address to formulaic and a consequent change of addressee from the defendant and the interpreter to the court clerk, and later the defence advocate. The defendant's status has now changed from addressee to auditor. The status (in Bell's terms (1984)) of the interpreter will mirror that of the defendant, and so the interpreter's change of status from addressee to auditor is clearly marked by a style-shift on the part of the district judge. At 31 the focus switches back to the defendant once again, and the formal committal takes place. Although the transcript reveals a style which is less formal than at line 16 onwards, there are some formulaic phrases (underlined) which any defendant (even a native English-speaking one) might find difficult to understand:

- 12 CC /And what is your date of birth please
 13 INT \Bengali
 14 D /Twenty four four sixty seven(in English)
 15 INT /Born on twenty four four nineteen sixty seven (-)
 16 DJ /And the allegation against this man is er (.) under the sexual offences act but this
 17 matter to be dealt with here today is a committal (.)
 18 CC /A full committal
 19 DJ /A full committal and have the papers been served
 20 INT /Bengali
 21 DJ /And do the papers disclose
 22 sufficient evidence (inaudible)
 23 DA /Yes sir (inaudible)
 24 DJ /Right and he has the benefit of a representation order (-)
 25 DA /yes sir
 26 DJ /Good he's on bail with conditions of non-contact
 27 INT /Bengali

- 28 DJ /No application to vary bail no ? and the charge on the draft indictment is it
 identical to or very close to the original charge
 30 DA /Identical sir
 31 DJ /Right mister Hussain

Bell (*ibid.*) asserts that speakers shift their style primarily in response to a speaker's audience, but plainly there is no accommodation of style by the district judge either to the interpreter or to the defendant via the interpreter. I conclude from this that the court in BFF1 does not expect the interpreter to render this formulaic material and that it is not aware of the interpreter's role, which is to interpret everything that is said. The interpreter in BFF1 fails to render these turns consecutively, either because he has missed them, or because he does not take notes, or because he is not trained in simultaneous interpreting techniques, or perhaps a combination of all three. It is worth re-stating that this interpreter was not asked by any member of the court to take the oath, and in fact he did not do so. Taking the oath can be regarded as a formal ratification of the presence of the interpreter; omitting the oath renders the status of the interpreter as a discourse participant in the event somewhat ambiguous, to say the least.

4.12 Case 9: Romanian (RFF1 court D)

This face-to-face hearing is approximately eight and a half minutes long. The defendant is a Romanian national who has previously been granted conditional bail. Reference is made to "eight charges" but there is no direct explanation of the nature of the charges. The defendant appears in court partly because he has given an indication of a not guilty plea at his previous hearing, and partly because the previous bench of magistrates decreed that it was beyond their powers to try the case. The purpose of the hearing is to commit the case for a plea and case management hearing prior to trial at the local Crown Court. There are three magistrates on the bench.

4.12.1 Positions and sightlines

Although this is a fairly modern court the acoustics are not particularly good and not all speech is audible. The Romanian interpreter sits next to the defendant who is in the dock. She has a diary in one hand and her glasses in the other, with a handbag draped over her left arm. This court has a traditional layout, with a secure dock at the side of the room, benches for the

advocates facing the front, the court clerk's bench directly in front of the magistrates' bench, and the three magistrates seated at a raised dais facing towards the court. The magistrates gaze at the defendant for most of the hearing, and the chair of the bench gazes at the defendant all the way through the pronouncement of the decision.

4.12.2 Turn profile

There are only four speakers in this hearing: the interpreter, the court clerk, the magistrate and the defendant. The defence advocate, although present, says only one word "yes".

| Court actors | Turns | On/off stage ratio |
|--------------|-------|--------------------|
| INT | 63 | 4/59 |
| CC | 25 | 25/0 |
| M | 48 | 48/0 |
| D | 4 | 4/0 |
| D A | 1 | 1/0 |

Fig.24 Turn profile of RFF1

4.12.3 Move Analysis of case 9

Move 1.1: announcement of case

My digital recorder was not switched on at this point, so this was not recorded.

Move 1.2: interpreter sworn in

The female interpreter chooses to swear the oath, and proceeds to do so, speaking very rapidly. Her name and language are spoken so quickly that they are unintelligible. The court clerk does not ask her to sight translate the oath into Romanian and the interpreter does not intervene so that this can be done.

Move 1.3: confirmation of defendant's details

The defendant does not wait until the courts clerk asks for his date of birth but provides the information spontaneously without being asked.

Move 1.4: the charge is put

The charge is not formally ‘put’ to the defendant, as he has already ‘indicated’ a plea of not guilty at his previous hearing. However, the court clerk summarises the current status of the case for the benefit of the magistrates. Her turns largely consist of formulaic language, for example: ‘not guilty indication given to all matters at the first appearance’, ‘jurisdiction was declined’, ‘matter listed today for committal’, ‘committal bundle’, ‘eight counts on the indictment’, ‘per the original charges’, ‘content to a paper adjournment’, ‘plea and case management hearing’, ‘pre-conditions on your register’, ‘the conditions are residence’, ‘non-contact’ and ‘if the crown were in a position’. The court clerk is clearly aware of the presence of the interpreter, since she fragments her speech for the interpreter’s benefit. Using this formulaic language (she is reading from the documents in front of her) she chooses to fragment the legal concept of a ‘not guilty indication’ in such a way that the first fragment

34 CC /I have eight charges (-) sir (.) a (.) not guilty indication (.)

cannot be readily understood without the second:

38 CC /given to all matters at the first appearance (.) jurisdiction was declined

unless the end receivers of the message are insiders who are familiar with the language of the court (see discussion of intertextuality in chapter 1, 1.4.2). What she means is that a ‘not guilty’ indication was given by the defendant at the first hearing to all eight charges. The magistrates declined jurisdiction and directed “trial on indictment”- in other words, trial at the Crown Court. This process is known as the “plea before venue and mode of trial”. The interpreter does not intervene to ask for clarification and chooses to interpret the turns of the court clerk just as they are delivered, using mostly CFV, with occasional use of VS.

Move 1.5: the plea is taken

The plea has already been indicated at the first appearance.

Move 2: outline of the case against the defendant

Not applicable.

Move 3: reading out of previous offences in detail

Not applicable.

Move 4: defence representations

Not applicable.

Move 5: pronouncement

Since this is a committal hearing, the decision consists of a renewal of the defendant's bail conditions, an announcement of the date that he must present himself to the Crown Court and an explanation of the severe consequences which will follow should he fail to do so. The magistrate delivers the bench's decision in fragments. Pragmatically speaking, he conveys a tone of judicial threat with a commanding, declamatory tone of voice and a slow, deliberate speaking pace, pausing after words he wants to emphasise and stressing crucial words. Here are some examples (interpreter's turns omitted here):

Example 1

- 219 M /If you break any of those conditions
 223 M /There is a very good chance that you
 will be put in prison
 227 M /Until the fourth of August
 231 M /Do you understand all that

Example 2

- 242 M /And if you don't attend (.) or if you're late (.)
 246 M /That could also lead to punishment

Example 3

- 276 M /And obviously if you're not there (.)
 280 M /You won't be able to do that

The interpreter conveys the fragments of the decision in a hybrid of CFV and VS (strategy 4).

4.12.4 Discussion

This short hearing is particularly interesting because of the heavy use of formulaic language by the court clerk in Move 2.1. Formulaic language is always a challenge for court interpreters, particularly for untrained ones, but when it is delivered in fragments by someone

reading out loud from a document, the challenge can be overwhelming to the point where clarification may need to be sought. We do not have access to the Romanian renditions, and so we do not know what the interpreter made of the examples of formulaic language. The court clerk's turns, however, would be difficult for any native English-speaking outsider to understand, not just an interpreter, and so it is safe to assume that clarification would have been necessary in order to 'well and faithfully interpret' these formulae according to the tenets of the interpreter's oath.

The strategy used by the interpreter consists mostly of a hybrid of CFV and VS (strategy 4), thus firmly placing her at the visible end of the continuum. Although the court is aware of her, it does not accommodate adequately to her presence. The interpreter chooses not to intervene for clarification; her posture in the dock does not seem particularly conducive to such a challenging assignment. She has a bag draped over her arm and interprets whilst at the same time flicking through the pages of her diary with one hand and holding her glasses in the other. She does not take notes.

4.13 Case 10: Romanian (RFF2 court A)

The hearing lasts approximately eight minutes, and concerns three female co-defendants, all Romanian speakers, charged with robbery. They are brought up the steps by two security officers in handcuffs which are removed once they have arrived in the dock. Since robbery is an indictable offence (it can only be tried at the Crown Court) the purposes of the hearing are to commit the case to the Crown Court and to consider bail or custody. This court is the same one in which the Vietnamese case (VFF1) was heard; see section 4.4.1 for details of the layout.

4.13.1 Positions and sightlines

During the conversation that I had with the interpreter when I asked her permission to record the proceedings, I enquired whether she would accompany me into the dock to explain the research to the three defendants and ask for their permission to record the hearing. She reacted negatively to the prospect of entering the dock with the defendants, and said she would only be prepared to interpret whilst standing on the court side of the secure dock, a position which

she maintained throughout the hearing, delivering her renditions through the holes of the security barrier.

4.13.2 Turn profile

| Court actors | Turns | On/off stage ratio |
|------------------|-------|--------------------|
| Interpreter | 48 | 48/0 |
| Court Clerk | 21 | 7/14 |
| Magistrate | 23 | 17/6 |
| Crown Prosecutor | 11 | 11/0 |
| Defence Advocate | 6 | 0/6 |
| Defendant 1 | 2 | 2/0 |
| Defendant 2 | 2 | 2/0 |
| Defendant 3 | 4 | 4/0 |

Fig. 25 Turn profile of case RFF2

4.13.3 Move Analysis of case 10

Move 1.1: announcement of case

The usher announces the case, having first consulted the interpreter in the pronunciation of the defendants' names.

Move 1.2: interpreter sworn in

The interpreter takes the oath in the witness box, but does not sight translate it into Romanian for the benefit of the defendants. The court does not prompt her to do so.

Move 1.3: confirmation of defendant's details

Since this is the same court clerk as case VFF2, he continues with his habit of addressing the interpreter rather than the defendants:

18 CC /Starting with the lady in the green then (.) can you ask names and dates of birth (.)

It is difficult to hear the defendants as they respond to questions about their names and dates of birth because they are speaking from within the secure dock. The transition to the next Move is signalled by the court clerk but it is unclear who he is addressing:

61 CC /Thank you (.) they're all charged with robbery

Negotiations follow between the court clerk, the defence advocate and the crown prosecutor, which the interpreter does not interpret. It is clear from his reduced volume and increased speaking pace that the court clerk does not expect the interpreter to render these. The interpreter uses CFV throughout this Move.

Move 1.4: the charge is put

Move 1.5: the plea is taken

Not applicable.

Because of the nature of the hearing, the magistrate has two pronouncements to make; one is the formal decision to commit the defendants to the Crown Court for trial, and the other is the granting of conditional bail. The magistrate announces the committal first, fragmenting her speech, each turn containing an element of information. The end of the Move is signalled by the court clerk who invites the crown prosecutor to make representations about the question of bail for the defendants.

Move 2: outline of case against the defendant

All the crown prosecutor's submissions, and they are very short, concern the matter of bail, which the Crown does not oppose. At this point the crown prosecutor unintentionally overlaps the interpreter's turn at 131, at 149 and again at 175. The crown prosecutor requests several conditions to be attached to bail, including residence at a particular address and weekly reporting at the local police station. The court clerk's turn below:

183 CC /Well ma'am if you're happy (*inaudible*)

overlaps with the defence advocate's and the interpreter's turns, so the interpreter is unable to render it, but it is an important turn as it functions as the transition to the next Move.

Move 3: reading out of previous offences in detail

Move 4: defence representations

Not applicable.

Move 5: pronouncement

The magistrate's invitation:

191 M /Could you stand up

marks the beginning of the last Move, and the magistrate proceeds to formally explain the bail conditions, fragmenting her speech, with each fragment containing an element of information. At 227 the magistrate overlaps with the CC at 229, thus making it difficult for the interpreter to hear what is being said.

4.13.4 Discussion

The interpreter chooses to place herself at the highly visible end of the continuum (strategy 5) by standing outside the secure dock instead of entering it, having previously expressed to me her distaste at the prospect of entering it. In the event it would probably not have been advisable to do so bearing in mind that there were already five people (three defendants and two security officers) sitting in the dock. Accommodating the interpreter in such a position that she was able to both hear the speakers in the courtroom *and* be heard by the defendants in the secure dock would have been difficult. Her high profile meant that the court was aware of her presence to a greater extent than if she had been inside the dock. There *were* some overlaps of the interpreter's turns, but many of these can be attributed to the court clerk, who had already demonstrated his misperception of the interpreter's role in case VFF2. He frequently enters into dialogue with other court speakers, probably in the belief that it is not part of the interpreter's duties to render these 'asides':

65 CC /Do you want them to be sent under the provisions of section (.) fifty one crime and disorder
act
68 \Inaudible exchanges between the CC and the DA

and he always addresses the interpreter rather than the defendants.

It was very instructive to observe how different interpreters make different choices about whether to position themselves in or out of the secure dock, and to see the impact that this decision has upon interpreter strategies; contrast this case with case number 4 (BFF1 at 4.7) where the interpreter sits next to the defendant in the secure dock and, as a consequence, has to intervene for repetition because he cannot hear the other court actors properly.

4.14. Case 11: Spanish (SFF court E)

This face-to-face Spanish interpreted hearing is some ten minutes in length. The digital recorder is placed in the centre of the courtroom close to the court clerk. All speakers are clearly audible apart from the interpreter and the defendant, who are slightly less audible as they are seated in a secure dock at the side of the courtroom. The charge against the defendant is the illegal importation of seven hundred grams of cocaine by ingestion. It is the first appearance of the defendant after his arrest at Heathrow airport where he was intercepted. Because it is a first appearance the court must ask the defendant for an indication of his plea and then adjudicate on the appropriate venue for the alleged offence to be tried. There is a subtle legal and administrative distinction between *entering* a plea (a formal and binding action) and *indicating* a plea (a non-binding action). They are both speech acts but if the defendant decides not to indicate a plea, or to plead not guilty, then the magistrates will go ahead and decide whether to deal with the case themselves.

The defendant chooses to plead guilty and because of the serious nature of the charge (it is an indictable offence) the magistrates commit the defendant for sentence. Indictable only cases cannot be heard in the Magistrates Court and must be sent to the nearest Crown Court. The hearing moves at a fast pace throughout.

4.14.1 Positions and sightlines

The enclosed dock in which the defendant and the interpreter are situated is at the side of the courtroom. The defendant enters the dock from custody through a special door in the dock. He is accompanied by two security officers who sit beside him. The interpreter enters the dock from the courtroom door and sits beside the defendant. There are thus four people in the enclosed dock, a very small space. The crown prosecutor and defence advocate have their backs to the dock, facing the court clerk, and the three magistrates are sitting on a raised dais

above the court clerk. The defendant addresses the interpreter several times in a low voice. The interpreter nods her head in response. It is highly likely that she would have already met him a few minutes prior to the hearing with his defence advocate where the probable outcome of the hearing would have been explained to him. The interpreter looks at the defendant after each rendition and he looks at the interpreter as she makes her renditions throughout the hearing.

4.14.2 Turn profile

| Court actors | Number of turns | On/off-stage ratio |
|------------------|-----------------|--------------------|
| Interpreter | 71 | 5/66 |
| Crown Prosecutor | 42 | 42/0 |
| Court Clerk | 30 | 30/0 |
| Magistrate | 15 | 15/0 |
| Defendant | 5 | 0/5 |
| Defence Advocate | 4 | 4/0 |

Fig. 26: Turn profile of case SFF

The turn profile for this case reflects the fact that the interpreter is in the secure dock next to the defendant and that their close proximity encourages the use of simultaneous mode, where the interpreter mostly produces renditions that are meant to be heard by the defendant, not the court. The type of simultaneous mode used by this interpreter is voiced simultaneous (VS) as she can be clearly heard even through the secure dock.

4.14.3 Move Analysis of case 11

Moves 1.1, 1.2, 1.3: announcement of case, interpreter sworn in, confirmation of defendant's details

The bench chair greets the court as the magistrates enter, and the court clerk responds to that greeting. When the court clerk announces the case to the court she mispronounces both the defendant's given name (she makes it sound like a female rather than a male name) and his family name. The interpreter is sworn in and is reminded by the court clerk to interpret the oath to the defendant, which she does. The defendant is clearly male, but the court clerk compounds her mispronunciation of the defendant's name by referring to him as *Miss Martin*. Because of the confident manner in which the interpreter takes the oath and makes her renditions without pausing, the interpreter's visibility (which might be thought to have been

diminished by her position in the secure dock) is temporarily enhanced. The court clerk then addresses the interpreter rather than the defendant when asking for the defendant's personal details. The interpreter, who is standing next to the defendant, uses CFV to relay this to the defendant, but her audibility is now somewhat diminished by the fact that she is enclosed by thick security glass. The interpreter begins her renditions slightly before the speakers have finished their turns. Immediately after she has rendered the oath to the defendant, there is an instance of back-channelling by the defendant.

Move 1.4, 1.5: the charge is put, the plea is taken

The court clerk signals the transition from Move 1 to Move 2 by reminding the magistrates of the current status of the case. The interpreter omits to render this turn. She then adds a politeness marker in her rendition of the court clerk's (non-polite) brief turn (see Berk-Seligson 1990/2002 who noted this phenomenon):

36 CC /date of birth
38 INT /(Spanish) *por favor?*

The court clerk now changes footing by addressing the defendant rather than the interpreter. Since the defendant has chosen to indicate a plea of guilty, the court must now consider *where* it is appropriate for the case to be heard, at the Magistrates Court or the Crown Court. The court clerk puts the charge to the defendant, which she does by fragmenting her speech into the seven elements of the charge, and including a different element of the charge in each fragmented turn. The first turn details the number of charges (one), the second the date of the allegation, the third the place where the defendant was arrested, the fourth the fact that the defendant was involved in the importation, the fifth the class of the imported drugs, the sixth the fact that he knew about the importation, and the seventh the fact that he knew that the importation was fraudulent. She thus designs her style of delivery for the interpreter, and the content of her turns for the rest of the court and for the defendant. From 80-92 the court clerk proceeds to read out the standard warning for all defendants who indicate a plea of guilty to this type of offence in a Magistrates Court so that they are aware that they could be sentenced by the magistrates (within the limits of their sentencing powers) or that they could commit him to the Crown Court for a longer sentence - beyond their powers - to be considered). During the whole of this Move the interpreter uses CFV, but precedes each rendition with a feedback token *mmm?* This probably indicates that the interpreter has received the message

and is ready to render it into the foreign language. The court clerk signals the transition from Move 2 to 3 by making a request to the magistrates that the defendant be seated. A request like this generally signals a transition from direct to indirect address and thereby a change of focus, from the defendant to the court. Prior to the beginning of the next Move, the chair of the bench explicitly acknowledges the presence of the interpreter behind the barrier of the secure dock by intervening to ask her to let the court know if she cannot hear what is being said.

Move 2: outline of case against the defendant

The crown prosecutor designs his speech for the interpreter and fragments his speech into what he considers are short enough turns to enable the interpreter to render them easily. For this Move the interpreter lowers her voice and adopts a strategy of using mostly consecutive in a low voice rather than whispered. The crown prosecutor fragments his speech into what are, for the most part, meaningful units. Throughout the Move there are no instances of back channelling by the defendant.

Move 3: previous convictions read out in detail

Not applicable.

Move 4: defence representations

There are no submissions made by the defence advocate because there can normally be no question of bail for such a serious charge. The defence advocate states her intentions to make no formal representations on behalf of the defendant and delivers this speech without fragmenting it. Careful observation of the interpreter shows that she does not render the following five turns:

| | | |
|-----|----|---|
| 258 | M | /once (.) we have dealt with |
| 260 | CP | /certainly |
| 262 | CC | /any observations |
| 264 | DA | /your worships no this matter clearly erm can't be dealt with here erm I can say from |
| 265 | | the outset that I have no erm there will be no bail application (--) |
| 267 | M | /ye- we decline jurisdiction in this matter (.) |

The defendant knows that his defence advocate has spoken but does not know what she has said. He has also not received the magistrates' formal decision to decline jurisdiction, although he does receive the information that the case will be committed to the Crown Court. The interpreter uses the same technique as in Move 3, that is, mostly consecutive in a low voice.

Move 4(a): Objections to bail

The court clerk initiates the transition to the next Move step by asking the crown prosecutor to state the Crown's objections to bail. The crown prosecutor then proceeds to use the formulaic language from the Bail Act (*likely custodial sentence, strength of the evidence, lack of community ties*) typically used by prosecutors when objecting to bail and readily understood by magistrates without the need for further elaboration (see chapter 1, 1.4.2). The crown prosecutor signals the transition from Move 4 to Move 5 with the formula *Madam unless I can assist you further*, which my observation notes show that the interpreter does not render, although there are lengthy pauses by the crown prosecutor (302) and the court clerk (304) where she could easily have done so:

- 307 CP /Madam unless I can assist you further (----)
 309 CC /thank you (----)
 311 M /OK will you stand please miss (*sic*) er- X (.)
 313 M /we're going to send you to Isleworth Crown Court (.)
 315 INT /(*Spanish*)

Here the magistrate initiates the beginning of Move 5 by asking the defendant to stand, signalling a change of focus from court to defendant. The interpreter continues to interpret using consecutive mode in a low voice. She does not interpret two turns by the court clerk (304) and the magistrate (306) at the transition to Move 5.

Move 5: pronouncement

The magistrate communicates the bench's decision in five short turns, all of which are rendered in consecutive mode in a low voice by the interpreter. After the defendant has been dismissed, the chair of the bench formally thanks not only the crown prosecutor for accommodating the interpreter (she implies that other advocates sometimes do not) but the interpreter herself for her services.

4.14.4 Discussion

My view of the interpreter and the defendant in the dock was not an ideal one (I was sitting behind the dock) and it did not allow me to observe in detail the gaze patterns of the occupants (Wadensjö (1997) points out that feedback can be non-verbal as well as verbal) but I was not in a position to observe this.

The interpreter's presence is openly acknowledged by court actors on no fewer than four occasions, both formally by the court clerk when she asks her to interpret the oath to the defendant, and informally by the magistrates during and after the hearing. The interpreter makes her presence felt because of the interpreting strategy she uses: mostly CFV (strategy 5). Her renditions are mostly audible, but occasionally a little muffled, through the slats of the secure dock. The crown prosecutor delivers his speech in meaningful units. The interpreter's choice of consecutive mode may be because speakers pause frequently in order to enable her to make her renditions. Another possible reason for not using WSI mode could be that she does not have this skill. When an interpreter renders defendant-focused Moves from inside a secure dock, her renditions are not clearly heard by the rest of the court. This could tend to detract slightly from the solemnity of these Moves. In my view, it is desirable for an interpreter to actively and publicly maintain the dignified and solemn tone of putting the charge and pronouncements rather than attenuate them by speaking softly or in WSI, where that is possible.

When an interpreter makes almost exclusive use of one interpreting strategy, as in this Spanish case, the boundaries between different Moves are not marked in any audible way. In a very short hearing such as this one, this may not matter very much.

This Spanish interpreter-mediated hearing serves to demonstrate that where court actors work together to accommodate the interpreter and openly acknowledge her presence, her task is made easier.

4.15. Findings and conclusions: interpreter-mediated face-to face hearings

In this analysis of eleven face-to-face hearings, several themes have emerged. It is clear that the physical layout of the court, the choices that interpreters make and the attitudes of significant court actors are crucial in the co-construction of the parameters of the interpreter's role. The over-arching question is whether there is a relationship between interpreter audibility, visibility and presence in the courtroom (elements which are partly the result of interpreters' own choices) and the court's treatment of interpreters (elements which are of significance in both face-to-face *and* prison video link hearings). Some features of Conley and O'Barr's rule-oriented and relational categories are clearly displayed by the two unrepresented defendants in cases 2 and 5 (see 1.4.1). The magistrate's impatience with the defendant as he fails, in the court's terms at least, to give a concise answer to one of his questions, is vented on the interpreter by means of a change of footing. (*Footing* is a term coined by Goffman (1981) to describe a person's alignment as speaker or hearer to a particular utterance:

769 M /He wasn't in this (.) country in the UK on the fourth of November ?

I will now revisit the four research questions I formulated earlier at 4.2 in the light of the evidence of the audio-recordings and my observations in the face-to-face courts.

4.15.1 Research question 1: does the court's open acknowledgement of the interpreter lead to a greater awareness of her presence and therefore a greater accommodation of her professional needs ?

For ease of reference I repeat here the information given at section 4.2.1. Courts can acknowledge interpreters in any of the following ways:

1. Announcement of the interpreter to the court by the usher
2. Legally ratifying the interpreter through the swearing-in or affirmation procedure
3. Prompting the interpreter to sight translate the oath or affirmation to the defendant in the foreign language

4. Greeting interpreters and/or thanking them when the case is finished
5. Expressing concerns about whether the interpreter is able to understand, keep up or hear

By “accommodation” of the interpreter I mean the ways in which court actors make efforts to adjust their behaviour (whether effectively or not) to make the interpreter’s task easier.

Courts can accommodate interpreters in any of the following ways:

- A. slowing down to allow the interpreter to finish
- B. taking care to avoid overlapping speech
- C. speaking directly to the defendant instead of addressing the interpreter
- D. speaking with enough volume to be heard clearly
- E. avoiding interactions which effectively exclude the defendant and the interpreter such as using formulaic speech or speaking rapidly and in lowered voices amongst themselves

It can be seen from fig. 28 at 4.15.1.1 that there is *no* significant relationship between open acknowledgement of the interpreter and the degree to which the court accommodates the interpreter. Interestingly, case 2 (KFF1), which has no instances of open acknowledgment of the interpreter, has the highest score in terms of accommodation. There are two points to be made about this case. Firstly, the defendant is legally unrepresented, so any court is duty bound to make special efforts to accommodate the defendant which may have influenced the interaction with the interpreter. Secondly, the court clerk was one of several who played a large part in the work-based interpreter-training course that used to run in the Magistrates Courts until recently. She not only participated and taught trainees in the mock trials, but was a member of the legal interpreter steering committee which underpinned the work of the course and dealt with interpreting policy issues in the courts. Similarly, the Urdu case (UFF) was presided over by a magistrate who also participated in the same trainee mock trials. Case UFF is also a case where the defendant is unrepresented. The magistrate makes eight open acknowledgements of the interpreter; the court as a whole scores highly on all the accommodation behaviours. By contrast, the Bosnian case (BFF1) has the greatest number of acknowledgements but there is no corresponding accommodation of the interpreter. Out of the eleven cases recorded, only three scored four or more accommodations. The other eight cases showed either one or no instances of accommodation.

Court actors, then, have differing levels of awareness about how to accommodate interpreters. Magistrates showed concern about whether they were keeping pace with the interaction in eight out of the eleven cases recorded. They did so by asking advocates to slow down, or pause more frequently. This concern was heeded by advocates, who took one of two courses of action. They either fragmented the crime narratives into units, sometimes delivering their turns in such a way as to make prediction difficult for the interpreter, or fragmented for a few minutes before reverting to their former pace and delivery, possibly having found the slowness of speech pace too irksome to cope with. Court actors may be very aware of the interpreter's presence, and may try hard to accommodate her, but this does not mean that they will not forget her now and again as they focus on the business of conducting a hearing.

It is possible to conclude, then, that there is no strong relationship between open acknowledgement of the interpreter and accommodation to her professional needs, and that a basic understanding of the interpreter's professional needs can be achieved through training (the magistrate in case 5 UFF and the court clerk in case 2 KSFF1 had frequently participated in training workshops with myself and trainee interpreters over many years).

Mere acknowledgement of the interpreter's presence in the face-to-face courtroom will not necessarily result in a greater awareness of her needs.

4.15.1.1 Formal ratification of interpreter's presence in court

At fig.27, it can be seen that case 2 (KFF1) and case 5 (UFF) score highly on interpreter accommodation. Fig.28 shows that both these interpreters were invited to affirm. There may be two reasons why the court scored highly in these two cases. Firstly both defendants were unrepresented, and in unrepresented cases the interaction between defendant and other court actors can be much less formal and more defendant-focused. Secondly, as mentioned above at 4.15.1, both the magistrate in case 5 UFF and the court clerk in case 2 KSFF1 had participated in interpreter training workshops.

The least ratified interpreter was (BFF2). He was not invited to take the oath or affirm and from the table above we can see that he is not accommodated by the court. However, it can be seen that cases 4(BFF1), 6 (PFF) and 10 (RFF2) were all sworn in or affirmed, yet this did not result in any accommodation to the interpreter. If ratification is one way of openly

acknowledging the presence of the interpreter, there appears to be a very weak relationship between this and the court's accommodation to the interpreters' professional needs. On this evidence, too, research question 1 is *not* confirmed.

| Case number | No. of instances of acknowledgment by the court | Line numbers | Accommodation behaviour | Person ratifying the INT | Affirmation or oath |
|----------------------------------|---|--|-----------------------------|--------------------------|---------------------|
| Case 1 Vietnamese VFF1 | None | | C | Usher | Affirmation |
| Case 2 Kurdish Sorani KFF1 | None | | A, B, C, D,E | Court clerk | Affirmation |
| Case 3 Kurdish Sorani KFF2 | None | | C | Court clerk | Affirmation |
| Case 4 Bosnian BFF1 | 10 | Line 12 Line 16 Line 21 Line 30 Line 202 Line 204 Line 354 Line 410 Line 414 Line 437 | No observable accommodation | Court clerk | Affirmation |
| Case 5 Urdu UFF | 8 | Line 3 Line 7-10 Line 14-15 Line 19-20 Line 24-26 Line 183 Line 187-188 Line 1453 | A,B,C,D,E | Usher | Affirmation |
| Case 6 Polish PFF | 4 | Line 69 Line 71 Line 341 Line 345 | No observable accommodation | Court clerk | Incomplete oath |
| Case 7 Vietnamese VFF2 | 3 | Line 108 Line 223 Line 230 | No observable accommodation | Court clerk | Oath |
| Case 8 Bengali code BFF2 | None | | C | No ratification process | - |
| Case 9 Romanian RFF1 | 1 | Line 306 | C | Court clerk | Oath |
| Case 10 Romanian RFF2 | 1 | Line 78 | No observable accommodation | Court clerk | Oath |
| Case 11 Spanish SFF1 | 3 | Line 100-102 Line 354 Line 343-344 | A, B, D, E | Usher | Oath |

Fig.27 The relationship between behaviour of court actors and accommodation of the interpreter

4.15.2 Research question 2: does the combination of the interpreter's proximity to the defendant and court actors' raised volume have an effect upon the number of interpreter interventions ? Does this depend on whether the Move is defendant-focused or non-defendant-focused ?

The second research question (see 4.2.2) states that the close physical proximity of the interpreter to the defendant in face-to-face cases will mean fewer interpreter interventions (particularly for repetition) in defendant-focused Moves, and that the relative distance between the interpreter and other court actors will necessitate more frequent interventions during non-defendant-focused Moves. For ease of reference, I have reproduced at fig.28 below the table showing the supposed relationship between the proximity and intervention behaviour:

| Type of Move | Face to face interventions | PVL interventions |
|---------------------|--|--|
| D-focused Moves | Less likely to intervene for repetition because of physical proximity to D ? | More likely to intervene for repetition because of physical distance from other court actors ? |
| Non-D-focused Moves | More likely to intervene for repetition because of distance from main court actors ? | Less likely to intervene for repetition because of relative proximity to other court actors ? |

Fig. 28 The relationship between proximity and intervention behaviour

Interpreter interventions are few and far between in these recordings; there are only nine recorded instances in the whole sample of eleven, and six of these instances were in a single case (case 4, BFF1). All of these were for repetition rather than for clarifications of any kind. The requests for repetition were all granted (see fig.29 below). My observations of interpreters training and working in court over many years, including those made for this study, show that interpreters rarely intervene, whether for repetition or clarification, yet administrative exchanges between court actors are often formulaic, elliptical and arcane to an outsider. The interpreters in my sample did not intervene during these often inaudible administrative conversations, nor when there were formulaic exchanges between court clerks, defence advocates and crown prosecutors. It is fair to assume that the courts neither intend interpreters to understand, nor to interpret, these non-defendant-focused interactions. They may consider that interpreter's promise to "well and faithfully interpret *all* such matters and things" only applies to defendant-focused Moves. This is clearly a training issue; if interpreters do not see themselves as professional court actors they may not be treated by the court as such.

If we look at the three cases where interpreters asked for repetition, the two elements of proximity to the defendant and defendant-focus do not seem to be significant in influencing intervention behaviour. We must assume, therefore, that there are other factors at work. Interpreters may be intimidated by the court; they may worry that interpreter interventions are

regarded by the court as a sign of incompetence, or they may not be fully aware of their role to interpret *everything* that is said.

| Case number and code | Number of INT interventions | Nature of intervention | Open or secure dock | Moves during which they occur |
|----------------------------|-----------------------------|------------------------|--------------------------|--|
| Case 1 Vietnamese VFF1 | 0 | - | Open | - |
| Case 2 Kurdish Sorani KFF1 | 0 | - | Open | - |
| Case 3 Kurdish Sorani KFF2 | 0 | - | Open | - |
| Case 4 Bosnian BFF1 | 6 | Repetition | Secure, INT inside dock | 5 defendant-focused, 1 non-defendant-focused |
| Case 5 Urdu UFF | 2 | Repetition | Open | 1 non-defendant-focused, 1 defendant-focused |
| Case 6 Polish PFF | 0 | - | Secure, INT inside dock | - |
| Case 7 Vietnamese VFF2 | 0 | - | Secure, INT outside dock | - |
| Case 8 Bengali BFF2 | 0 | - | Secure, INT inside dock | - |
| Case 9 Romanian RFF1 | 0 | - | Secure, INT inside dock | - |
| Case 10 Romanian RFF2 | 1 | Repetition | Secure, INT outside dock | Defendant-focused |
| Case 11 Spanish SFF1 | 0 | - | Secure, INT inside dock | - |

Fig. 29: Instances of interpreter interventions in face-to-face cases

4.15.3 Research question 3: is defendant back-channelling encouraged by the close proximity of the interpreter to the defendant ? Are PVL defendants less likely to back-channel ?

The third research question (see 4.2.3) is that defendant back-channelling is encouraged by the close physical proximity of the interpreter to the defendant in face-to-face cases, and that conversely, physical distance discourages such back-channelling. Of course, without access to the defendants' languages, it is impossible to know what their back channelling behaviour consisted of, or what they were actually doing; however, it is important to record this behaviour and to see how it is treated by the interpreter and the court.

The table at fig. 30 is reproduced below from earlier in the chapter for ease of reference:

| Type of Move | D back-channelling in face-to-face cases | D back-channelling in PVL cases |
|-----------------------------------|--|---|
| D-focused and non-D-focused Moves | More likely to back-channel because of physical proximity to interpreter | Less likely to back-channel because physical distance from INT and other court actors |

Fig. 30: table showing the hypothetical relationship between proximity and D-back-channelling

In fig.31 below, it can be seen that instances of audible defendant back channelling are rare in my sample of face-to-face courts, and that when they occur, they are ignored by the interpreter and the court alike.

| Case number | Number of instances | Moves in which they occur | How dealt with | Legally represented or not |
|----------------------------|---------------------|--|----------------|----------------------------|
| Case 1 Vietnamese VFF1 | 0 | - | - | Yes |
| Case 2 Kurdish Sorani KFF1 | 0 | - | - | Yes |
| Case 3 Kurdish Sorani KFF2 | 14 | 6 defendant-focused, 8 non-defendant-focused | Ignored | Yes |
| Case 4 Bosnian BFF | 0 | - | - | Yes |
| Case 5 Urdu UFF | 3 | 2 defendant-focused, 1 non-defendant-focused | Ignored | No |
| Case 6 Polish PFF | 0 | - | - | Yes |
| Case 7 Vietnamese VFF2 | 0 | - | - | Yes |
| Case 8 Bengali ? | 0 | - | - | Yes |
| Case 9 Romanian RFF1 | 0 | - | - | Yes |
| Case 10 Romanian RFF2 | 0 | - | - | Yes |
| Case 11 Spanish SFF1 | 0 | - | - | Yes |

Fig.31: Instances of back-channelling in face-to-face cases

The hearings vary in what is at stake for the defendant. The one that generated the largest number of back channels (14) was case 3 (KFF2) where the defendant was pleading not guilty to a charge of sexual touching without consent. Fig. 32 shows that it is not possible make the generalisation that face-to-face defendants who use interpreters back channel more frequently because of their proximity to one another. The research question will be fully investigated in the context of the PVL court in chapter 5, but since only two out of the sample of face-to-face defendants showed any verbal back-channelling behaviour, physical proximity to the interpreter does not seem to encourage it. Such behaviour probably depends upon the personality of the defendant rather than proximity to the interpreter.

4.15.4 Research question 4: do face-to-face interpreters have more interpreting strategies available to them ? Do PVL interpreters have fewer strategies available to them ?

The fourth research question (see 4.2.4) is that face-to-face interpreters will have the full range of five interpreting strategies available to them, and that conversely, PVL interpreters will have only one, that being consecutive interpreting at full volume (CFV). This is because of the constraints placed upon them by the PVL equipment.

A fuller comparison between the two contexts will be undertaken at the end of chapter 5, section 5.15. Once the recordings made in the two contexts are compared, the evidence should demonstrate the strategies that are available to interpreters, and how far these choices are constrained by the proxemics of the courtroom. In face-to-face settings interpreting strategies were observed to be wide-ranging (see fig.10 in section 4.1.9) with various permutations of simultaneous and consecutive modes using both whispering and full volume. Interestingly, the face-to-face interpreters made use of strategies 1-5, with different interpreters using different combinations of interpreting modes and speaking volume.

However, if interpreters do make conscious choices, these choices may not necessarily enhance communication, and may indeed detract from it. In defendant-focused Moves, interpreters who use WSI risk detracting from the solemnity of the occasion (this could be done more successfully with electronic transmission equipment as it allows the interpreter to speak at a higher volume). When using WSI mode there is also a risk of inadequately rendering the details of a complex sentence, details that the defendant is expected to remember. This applies particularly if an interpreter is untrained. In non-defendant-focused Moves, interpreters who make consecutive renditions at full volume risk holding up the court, interfering with the advocates' style, making it difficult for speakers to keep track of what they want to say, and encouraging speakers, especially advocates, to fragment their speech into incomplete units of meaning.

The interpreters in the face-to-face sample used one or other of the five strategies available to them (as explained in fig. 10 section 4.1.9).

4.15.4.1 The communicative relationship between the interpreter and the defendant

Intimately connected with and following on from this fourth research question is whether the strategies used by interpreters have an effect upon the communicative relationship between the defendant and the interpreter, whether it matters what strategy is used for defendant- and non-defendant-focused Moves, and what consequences might flow from using these strategies. I will first consider seating positions in the courtroom and the influence they exert, if any, upon interpreter strategies. I will then consider the possible effect of these strategies.

The table at fig.8 (4.1.6) shows where interpreters are located in the face-to-face courtroom. Only four out of the eleven docks in this sample are open ones, the others are secure (enclosed by thick glass slats or holes). Interpreters can choose to remain outside the secure dock and interpret through the glass holes, or sit next to the defendant inside the dock, where there will almost certainly be one or more security officers. In my sample, two of the interpreters chose to interpret from outside the secure dock, whilst all the rest remained inside the dock. There are problems with each position.

Where there are two or three co-defendants, as in case VFF2 and RFF2, it is impossible to interpret adequately, whether simultaneously or consecutively, for more than one defendant at a time from inside the dock. Those interpreters who choose to stay outside the dock are forced to assume a standing position, and this can be tiring over a long period. The problem of not being able to hear then becomes an issue for the defendants rather than the court, and since defendants are unlikely to intervene, they may well not alert the court to their difficulty.

Remaining *inside* the dock means some degree of difficulty for the interpreter in hearing speakers unless they make a special effort to speak clearly. Rapid administrative exchanges at lower volume will be particularly difficult to hear for this reason. Only one interpreter intervened to ask for repetition from inside the dock and he did so four times. (Obviously where there is an open dock interpreters have no choice but to sit next to the defendant.)

The interpreters in my sample seem to be prepared to put up with poor audibility which is the result of working inside or outside secure docks and trying to hear what advocates are saying when they have their backs to them.

On a practical level, none of the interpreters in my sample have any note-making materials to hand, and so do not take notes of any kind to aid their memory. This means that they are relying entirely on auditory signals rather than on a combination of auditory signals and written notes, a dangerous strategy when it comes to rendering *all* that is said in court. This is obviously a training issue, and the absence of note making materials is perhaps an indicator of the low level of training of the interpreters I observed.

4.15 Summary of chapter 4

The presence, visibility, audibility and impact of interpreters are affected by several sets of inter-connected factors. The first set of factors is their skill and competence in WSI, their ability to move swiftly from WSI to CFV in defendant-focused Moves, and from WSI to CFV in non-defendant-focused Moves, their ability to predict the boundaries between Moves and their ability to cope with the transitions between defendant-focused Moves and non-defendant-focused ones. The second set of factors includes their willingness to intervene for clarification or repetition. The third set includes the physical layout of the courtroom and the choices that they make about seating positions. The fourth set of factors is to do with the level of awareness of the court and how this can hinder or enhance the performance of the interpreter. This complex interplay of factors will affect the communicative relationship between the interpreter and the defendant to a greater or lesser extent. In my estimation, only one interpreter was able to show competence in the first set of factors described above, and that is the one in case 3 KSFF2, although he did not take notes or intervene.

In the next section of this chapter, the same four research questions will be investigated in the context of the PVL courtroom and conclusions drawn about interpreter and court actor behaviour in the two contexts.

Chapter 5: Analysis of ten Prison Video Link hearings

5.1 Chapter overview

5.1.1 Face-to-face courts and PVL courts

In chapter 4 section 4.1.1, I explained that the recordings of the eleven face-to-face interpreter-mediated hearings were to serve as a baseline for comparison with the ten PVL court recordings in my sample. All the information in that section applies equally to PVL recordings, except for two differences. Firstly, the role of the court clerk is expanded to include the tracking of speakers with a hand-held remote control or console (see 5.1.7 for more details) and secondly there is a prison officer, rather than a security officer, sitting next to the defendant (out of shot) in the PVL court at the prison. The four research questions which were formulated in Chapter 4 (4.2) will now be tested in the PVL court context, and comparisons will subsequently be made with conclusions drawn about face-to-face hearings so that the effect of PVL upon the behaviour of court actors can be assessed. The analytical structure will be the same as that used in chapter 4.

5.1.2. Abbreviations and coding conventions

Please refer to Chapter 4.1.2 for explanations of abbreviations of court actors used for extracts from the transcripts. I have assigned codes to the ten PVL cases to make them easily identifiable as Prison Video Link (PVL) cases (see the table at fig.33 below). The case code is used to refer both to the transcript and the analysis of the case. The table below also shows the length of each hearing in minutes and seconds. This information is included to emphasise the short duration of PVL hearings.

| Case number | Case code | Language | Court | Length of hearing |
|-------------|-----------|-------------------|-------|-------------------|
| 1 | BPVL | Bulgarian | A | 11.12 |
| 2 | PPVL | Polish | A | 14.12 |
| 3 | IPVL | Igbo | A | 06.05 |
| 4 | RPVL1 | Romanian | B | 11.51 |
| 5 | RPVL2 | Romanian | C | 04.57 |
| 6 | RPVL3 | Romanian | A | 04.35 |
| 7 | LPVL1 | Latvian | A | 07.21 |
| 8 | LPVL2 | Latvian (2 co-Ds) | A | 12.40 |

| | | | | |
|----|------|---------|---|-------|
| 9 | SPVL | Spanish | A | 07.18 |
| 10 | RPVL | Russian | A | 24.19 |

Fig. 32 Table of cases showing codes, languages, courts and duration of hearings

5.1.3 Background information about PVL hearings in Magistrates Courts

It is important to note that courtrooms in England and Wales with PVL facilities are exactly the same as those *without* PVL. The only difference is the presence of two screens, usually one on each side of the courtroom, and a “private” telephone booth at the back or side of the courtroom for the defence advocate. The same courtroom is used both for face-to-face hearings *and* PVL hearings according to the court list for that day.

Court clerks in PVL hearings have additional duties to those in face-to-face Magistrates Court hearings (see footnote 6 in chapter 4) as they are required to introduce the defendant to the court (and *vice versa*), and operate a remote control in order to track speakers.

These ten hearings were recorded between April 2010 and March 2011 in three different courts in inner and outer London, A, B and C. A wide variety of defendant languages was encountered: Bulgarian (1), Latvian (2), Igbo (1), Polish (1), Spanish (1), Romanian (3) and Russian (1). The hearings ranged from re-remands in custody to committals to the Crown Court. The court where I made eight of the ten recordings was close to one of the major London airports where many defendants are arrested for illegal drug importation offences and are subsequently remanded in custody. This is reflected in the large number (seven out of eight) of such defendants in my sample. It should be borne in mind that, where I was able to record a number of interpreted cases in one morning, some of the court actors remain the same. This means that the same crown prosecutor will present all or most of the cases scheduled for that day. Similarly the bench of magistrates and the court clerk remain throughout the day, whereas defence advocates representing different defendants change after each hearing unless they are representing more than one defendant.

The similarities amongst the seven cases are striking, which renders the PVL cases much more comparable with each other, reducing the number of variables, and resulting in a more homogeneous environment than a non-PVL courtroom. PVL hearings are restricted to particular kinds of second and subsequent hearings, so they are, to some extent, much more procedurally predictable than non-PVL ones.

In chapter 4 (4.1.5) I commented on the asymmetrical power relationships between court actors and defendants in Magistrates Courts which are very apparent when live defendants are brought in from custody into the secure dock (usually in handcuffs and accompanied by one or more security officers) and also when *remote* defendants appear via video link. Participation by defendants in these review hearings is minimal, even in defendant-focused Moves; they simply give their names and dates of birth at the beginning of the hearing, and indicate their understanding of the magistrates' decision at the end. This should be borne in mind throughout this chapter.

5.1.4 When PVL is used

Section 57 of the Crime and Disorder Act 1998 (see footnote 1, chapter 1) marked the introduction of video link hearings in Magistrates and Crown Courts in England and Wales. The types of hearing to be carried out through video link are described in section 57 as “any particular hearing before the start of the trial”, later amended to include the sentencing of defendants by consent. As far as Magistrates Courts are concerned, this includes re-remands (second and subsequent appearances) and committals to the Crown Court, as well as sentencing. Crown Courts hear a wider range of pre-trial procedures by video link. However, this is not the whole story. Defence advocates make use of PVL both before and after their clients' hearings for private consultations. They are usually allotted a fifteen minute slot in a private booth for this purpose. Other agencies such as the Probation Service carry out interviews using video link, and the Immigration Appeals Tribunal conducts most bail hearings using PVL).

Unlike the face-to-face hearings, all the defendants in my sample are legally represented, although it will be seen from the turn profiles that defence advocates actually say very little (or nothing) during the proceedings; they will already have done their work by explaining to clients before the hearing what is likely to happen in court. After the hearing is finished, and before defendants go back to their cells, another private consultation may be held between the defendant and the defence advocate to clarify any misunderstandings or to explain what will happen next.

Nine out of ten of the PVL hearings in my sample involved only one defendant. In one hearing there were two co-defendants. They appeared from the same prison, sitting next to

each other. It is theoretically possible to have several defendants appearing on one screen, all from different prisons, but I did not see any examples of this.

5.1.5 Pre-court briefings with defence advocates in booths

What happens *before* the defendant appears by video link in the courtroom? I was able to observe *pre-court* briefings from two vantage points, firstly that of the defence advocate and the interpreter who were both located in a booth at the Magistrates Court, and secondly, that of the defendant on remand located in a booth at the prison (see chapter 7).

The private booth at the Magistrates Court was approximately the size of a telephone kiosk and contains a small screen. The booth was big enough for one person, but certainly not big enough to accommodate an advocate *and* an interpreter. Because of this, the door had to remain open. 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, 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 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 could only be conducted by addressing the interpreter. The only way the defence advocate could hear the defendant would be to pass the handset between himself and the interpreter for each turn. (In a subsequent interview with this defence advocate after the hearing (see chapter 6, interview DA(i)) he told me that nearly all the booths in Magistrates Courts were the same as the ones I had seen, but he did not appear to be unduly concerned about it. When the same defendant appeared on the screen for his brief court hearing a few minutes after this episode, it was striking that despite his visible distress in the private consultation booth only minutes before, nothing of this was

discernible to the observer in court. My experience serves to illustrate the problem of accurately evaluating defendants' demeanour and state of mind when they appear on the screen. The distress that the defendant had displayed earlier in the pre-court booth was not at all discernible. It is important to point out that the change in the demeanour of this defendant (from pre-court booth to his appearance on the screen) was not due to the presence of PVL, but rather due to the relative formality of the situation. One might expect to find the same anxiety and distress in pre-court consultations whether they are face-to-face or via PVL (see chapter 7 for a description of the defendant's eye-view of pre-court consultations).

To summarise, PVL defendants usually only see and hear their *interpreters*, rather than their *lawyers*, in the private booths. If defence advocates want to speak directly to their clients via PVL they have to take the handset from the interpreter and pass it back again for each interpreted rendition. This finding is addressed in the recommendations in chapter 8.

5.1.6 Seating positions and sightlines in a PVL court

Gobo's study of visual orientation and how it influences interaction is mentioned in chapter 1 (1.5) and in chapter 4 (4.1.12) and has an obvious relevance here. Naturally all court actors must be visible to the PVL defendants, and *they* must be visible to the court. In order to facilitate this, there are video monitors (usually two, sometimes only one) placed strategically in the courtroom. In theory this is supposed to ensure that everyone can see the defendant. However, this is not always the case, and I have been in courtrooms where it is very difficult, and sometimes impossible, to see the monitor. One can only conclude from this that they are there primarily for the benefit of the magistrates and the district judges rather than for the public at large.

Since the dock is empty and cannot be captured in the pre-set camera shots, there is a problem for the interpreter. Where should she sit? In all cases the interpreters were directed to a particular position by court staff and did not exercise any choice in the matter. I observed three different positions used by interpreters:

- i) next to the advocate, sharing the advocate's microphone
- ii) next to the CC, sharing the microphone
- iii) in the corner of the courtroom, using the telephone handset designated for advocates for in-court consultations (no booth)

In the case of position (iii) the defendant has no *visual* contact with the interpreter throughout the hearing. It may be more difficult for interpreters to hear speakers from the back of the court where the handset is usually located, excluded as they are from the *well* of the court.

There *is* a fourth position; sometimes interpreters are requested to attend the PVL suite in person at the prison, in which case they sit next to defendants and appear on the screen with them. Although I have not observed this particular configuration myself, I interviewed an experienced court interpreter who *has* interpreted from a prison for a PVL case. The analysis of her interview can be found in Chapter 6 (see INT(x)). The range of possible sightlines in a PVL court are illustrated in the diagram below at fig. 33 (cf. Chapter 4, 4.2.2 which shows the sightlines for a face-to-face court).

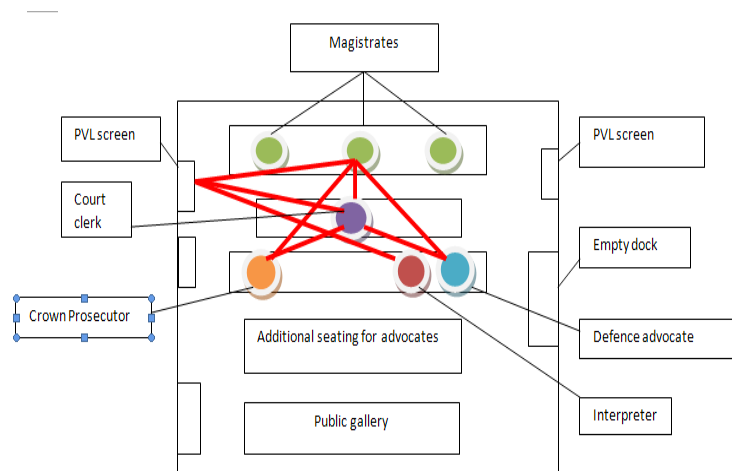


Fig. 33 Usual sightlines in a PVL court (interpreter next to advocate)

In nine out of my ten recorded hearings interpreters were directed to sit next to the advocate. In one hearing, the interpreter was directed to sit next to the court clerk. In a case which I observed but did not record, an interpreter was directed by the court clerk to adopt position (iii). This interpreter told me that she had been asked to do this on other occasions. I interviewed the court clerk (CC3) who had asked the interpreter to adopt this position. She justified her view that this was the best place on grounds of better sound quality via the handset as opposed to the open microphone, which she viewed as more distracting for the defendant (see chapter 6, 6.6.2). These positions, however, are not without consequences for defendants and interpreters alike, as we shall see later in this chapter.

5.1.7 Court clerks and the limitations of camera shots

Court clerks, whose task it is to track each speaker, have a limited number of camera positions: six in all. One is for the Bench (three magistrates or a single district judge), the second is for the court clerk, the third and fourth for the crown prosecutors and the defence advocate, the fifth shows court as a whole and the sixth shows the crest behind the Bench. The sixth position is used when there is a break in proceedings or for privacy considerations. Unless the camera is focused on the advocates' bench where the interpreter usually sits, the defendant will receive the image of the speaker (the court clerk or the magistrates) but only the *sound* of the interpreter. If advocates speak, then interpreters can be tracked within the same shot as the advocate, and the interpreter can be seen by the defendant. If, however, court clerks, magistrates or district judges are speaking, defendants will only have *visual* contact with these speakers and only *sound* contact with interpreters.

Unlike face-to-face hearings, PVL defendants cannot usually see the public gallery (where members of their family or friends may be present) from their vantage point in the prison (see chapter 6, 6.5 for magistrates' views on this. See also Plotnikoff and Woolfson (2000) who mention this as an issue for remand defendants). It also follows that all court actors have to remain seated when speaking in a PVL court because of the presence of the camera (they would be out of shot if they stood up) and the positioning of the microphones (if they stand up to speak they are too far away from the microphones they would not be heard by the defendant).

5.1.8 The defendant on the screen: the court's perspective

There are several issues concerning the way that defendants appear on the PVL screen.

- i) When observers in court see defendants on the screen, their faces are often partially obscured by the PIP (picture in picture) which is usually situated in the top left or right quadrant of the screen (but can be moved to the bottom left or right of the screen according to need). This can be for two reasons. Either the seating distance from the screen in the court/booth at the prison has not been taken into account, or defendants lean forward, perhaps out of anxiety, perhaps because they cannot hear properly. Usually all that can be seen of the defendant are the head

and shoulders, but occasionally defendants can be seen from head to waist. It is the responsibility of the court clerk to correct the positioning of the PIP, but sometimes this does not happen. In the case of the two Latvian co-defendants (case 8, LPVL2) one of them was only partially visible until the magistrate asked him to move his position.

- ii) When black-skinned defendants appear on screen, their facial features can often hardly be distinguished. This is probably because black skin absorbs light more easily than lighter-toned skin, and because the lighting level at the prison is uniform for all defendants. (See Plotnikoff and Woolfson (2000) who point this out in their video link evaluation report, and the comment made by CC(i) in chapter 6 at 6.6, line 42.)
- iii) Finally observers will notice that defendants do not usually meet the gaze of court actors, and often appear to be looking slightly downwards with averted gaze. This is because the camera in the prison booth is situated above the monitor, and in order to meet the gaze of the court defendants would have to look at the camera and not the screen. This was also pointed out by Plotnikoff and Woolfson (*ibid.*)

5.1.9 What the defendant sees

- (i) Unlike defendants in the dock, PVL defendants cannot *choose* where to look; the court clerk controls the gaze of the defendant by deciding the sequence of camera shots of various parts of the courtroom. It is therefore the court clerk who makes the speakers visible to the defendant. Listeners do not always want to *look* at a speaker whilst they are speaking and may wish to look at addressees to see any visible reactions to their speech, scrutinising their facial expressions for signs of approval or disapproval as they do so, for example.
- (ii) In theory the court clerk uses the console to track the speakers (the court clerk, the magistrates and the advocates), but court clerks sometimes forget to do this. The effect of this will be a mismatch of sound and image. (This mismatch was highlighted by Plotnikoff and Woolfson (*ibid.*).

See chapter 8 for a discussion of the implications of these two issues.

5.1.10 The virtual tour of the court by the court clerk

A virtual tour of the court is traditionally conducted by the court clerk and involves formally introducing the defendant to the court, and *vice versa*. Court clerks show images of each court actor involved in the case in turn, and this is carried out by means of a remote control from their desks in front of the magistrates. The objective of this is probably for the defendant to orientate himself in relation to the other court actors. It is generally considered to be best practice, although there is no mention of how the process should be carried out in the PVL national guidance⁴³ for court clerks. Only *two* court clerks out the *ten* PVL cases in my sample actually conducted a virtual tour (Move 1.4), and I include extracts from the transcripts of these hearings to show how it is usually done see (case 4: RPVL1 court B, and case 5 RPVL2 court C).

5.2 Four research questions

5.2.1 Research question 1: does the court's open acknowledgement of the interpreter lead to greater awareness of her presence and therefore a greater accommodation of her professional needs ?

In chapter 4 (4.2.1) verbal acknowledgment of the interpreter by other court actors (such as magistrates, ushers, court clerks and advocates) was seen as a possible indicator of accommodation to the interpreter's needs, although it transpired that there was no evidence for this in face-to-face cases (see 4.15.1). In the case of PVL, I expected the court to make extra allowances for the interpreter because of the remote appearance of the defendant on the screen in terms of seating position, the avoidance of overlapping speech and the assurance of general audibility and intelligibility. I also anticipated that the 'virtual tour' (see 5.1.10) of the courtroom which court clerks are expected to undertake for the defendant would highlight the presence and position of the interpreter in the courtroom. Ratification of the interpreter through the swearing-in or affirmation procedure could also confer status upon the interpreter as a member of the court team and give her an enhanced presence. One might expect, then,

⁴³ See HMCS Prison video links national guidance Version 1.2, August 2010.

that the PVL court might take particular care that the defendant is present on the screen when the interpreter is sworn in, and that the oath (or affirmation) is subsequently interpreted to the PVL defendant. I am predicting that courts which openly acknowledge the presence of the interpreter are more likely to accommodate to the interpreter's professional needs, and that this is more likely to happen in a PVL court where the interpreter already has an enhanced presence because of her prominent seating position and her ratification.

5.2.2 Research question 2: does the interpreter's proximity to the defendant and court actors' raised volume have an effect upon the number of interpreter interventions ? Does this depend on whether the Move is defendant-focused or non-defendant-focused ?

My second research question concerns the relationship between proximity of court actors and interpreter interventions. Because of her seating position in the well of the court, close to other prominent court actors, one might expect fewer audibility problems for the interpreter in non-defendant-focused Moves (i.e. when court actors are addressing each other). The result of this might be a smaller number of interpreter interventions in a PVL court than in a face-to-face hearing. I am also predicting that interpreters might intervene for repetition (or for other reasons) more often in defendant-focused Moves, since the interpreter and the defendant are in different locations and therefore might have more difficulty in hearing each other. I have reproduced the positions in a PVL court for ease of reference below:

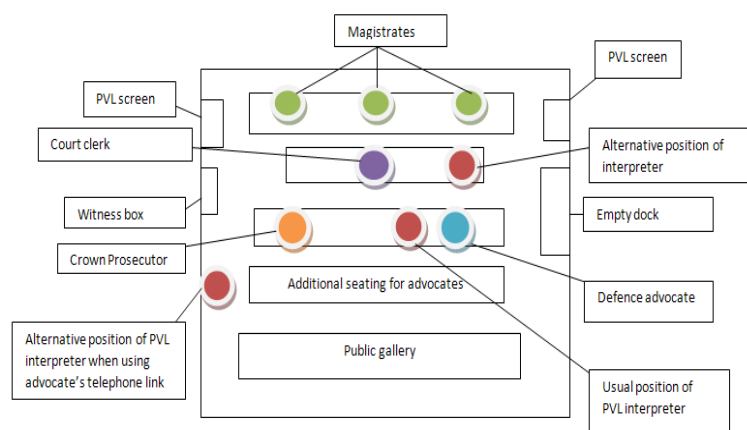


Fig.34: Typical PVL court showing three possible interpreter positions and PVL screen positions

5.2.3 Research question 3: is defendant back channelling encouraged by the close proximity of the interpreter to the defendant ? are PVL defendants less likely to back channel ?

The third research question concerns defendant back channelling. I discussed back-channelling in some detail in chapter 4 (4.2.3). I imagined that defendant back-channelling (also called ‘feedback’), both verbal and non-verbal, would be *encouraged* by the close physical proximity of the interpreter to the defendant in face-to-face cases, and that conversely, physical distance *discourages* such back-channelling. I am thus predicting that when defendant and interpreter are not co-present (as in PVL), there will be *less* defendant back-channelling bearing in mind that that the interpreter might not be able to *hear* and therefore *respond* to the defendant’s back channelling. For ease of reference I reproduce the table below where this research question is summarised:

| Type of Move | Defendant back-channelling in face-to-face cases | Defendant back-channelling in PVL cases |
|---|--|--|
| Defendant-focused and non-defendant-focused Moves | More likely to back-channel because of physical proximity to interpreter | Less likely to back-channel because of physical distance from interpreter and other court actors |

Fig. 35: Table showing the relationship between proximity and defendant-back-channelling

In the face-to-face cases at chapter 4 (4.15.3) only two out of all the defendants were heard to back channel; KFF2 defendant back channelled 14 times, and UFF defendant back channelled 3 times. Such instances will be used to make a comparison between face-to-face and PVL cases in this respect.

5.2.4 Research question 4: do face to face interpreters have more interpreting strategies available to them ? do PVL interpreters have fewer interpreting strategies available to them ?

My fourth research question (see chapter 4, 4.2.4) concerns interpreting strategies. In chapter 4 (fig. 10, 4.1.9) I showed how interpreting strategies were observed to be wide-ranging, with various permutations of simultaneous and consecutive modes using both whispering and full volume. In chapter 1(1.1.2) I showed how the small-scale pilot study I conducted first raised interpreting modes as an issue for PVL interpreters.

I am predicting that PVL interpreters, in contrast to face-to-face interpreters, will not have the same range of interpreting strategies available to them. I anticipate that the constraints that are placed on them by the presence of PVL will narrow down their choice of strategy to just one: consecutive mode at full volume (strategy 5, fig.10 at 4 1.9). Consequently, any strategies used by interpreters will have an effect upon the communicative relationship between the defendant and the interpreter. It is anticipated that consequences might flow from using particular permutations of interpreting strategy. Since the court is aware that defendants are not actually present, and because interpreters will be using consecutive mode throughout the hearing which makes them more audible and visible, it seems reasonable to suppose that speakers are more likely to design the delivery of their turns with the interpreter in mind.

5.3 The nature of the prison video link hearing

As can be seen from the chart at fig.36 below, there are some differences between Move structures of PVL and face-to-face hearings. In Move 1 there are two extra steps: the initiation of contact with the prison by the court, and the virtual tour of the court conducted by the court clerk. Depending on the stage that the case has reached, certain non-defendant-focused steps may be omitted. The actual charge is not put to the defendant, nor is he asked to plead guilty or not guilty.

| | | | |
|---------------|--|---|--|
| Move 1 | 1.1: CC logs on and calls prisoner CC | Initiating contact with D, identification of D, ratification of INT and legal formalities | Intention: Establishing prison court link and checking identity (D-focused) |
| | 1.2: INT affirms or takes oath CC, U, INT | | |
| | 1.3: INT sight translates oath CC, D, INT | | |
| | 1.4: Virtual tour of the courtroom CC, INT | | |
| | 1.5: Confirmation of D's details CC, INT | | |
| Move 2 | 2.1: Background summary and current status of case CC, INT | Outline of case | Intention: Briefing and preparation of Ms for decision making (Non-D-focused) |
| | 2.2: Invitation to CP to outline case against D CC, INT | | |
| Move 3 | 3.1: Read aloud Crown case and account of alleged offence(s) or reasons for bail refusal CP, INT | Crown submissions | Intention: Informing Ms of alleged offence and convincing them of merits of CPS case (Non-D-focused) |
| | 3.2: Crown submissions CP, INT | | |
| Move 4 | 4.1 Make any representations on behalf of D DA, INT | Defence submissions | Intention: to convince the DJ/M of an merits in the D's case, whilst conceding any merits in the CPS case (non-D focused) |
| Move 5 | 5.1: Announce decision to D M, INT | Pronouncement | Intention: to communicate and explain the terms of judicial decision to D |

| | | | |
|--|---------------------------------|--|--------------------|
| | 5.2: Explain decision M, INT | | <u>(D-focused)</u> |
| | 5.3: Dismiss D M, INT | | |

Fig 36: Move analysis of the PVL hearing (after Bhatia 1998)

5.3.1 On and off stage turns

By *on-stage* I mean that the utterances are meant to be part of the formal court hearing and to be heard in open court. By *off-stage* I mean that utterances are not part of the formal court hearing and are not meant to be addressed to the court as a whole. These off-stage turns might include setting up the PVL, finding out where a defendant is located, conversations whilst waiting for defendants to appear and other non-court matters.

5.4 Analysis of the court cases

Case 1 Bulgarian (BPVL, court A)

The defendant is a non-English-speaking male Bulgarian foreign national accused of the illegal importation of controlled drugs by ingesting forty five packages of cocaine. The hearing lasts approximately eleven minutes. The purpose of the hearing is to review the remand in custody and to prepare the paperwork ready for committal to the Crown Court. This committal will take place at the next video link hearing.

5.4.1 Turn profile

The following table shows the distribution of turns across all court actors in this particular hearing and gives some idea of the relative prominence of the actors concerned. It is not surprising that the interpreter has the most turns, but it is easy to see that the number of her turns does not equal the number of the turns of all the other actors added together. Some of the reasons for this will be explained in the analysis.

| Court actor | Number of turns | On/offstage ratio |
|-------------|-----------------|-------------------|
| INT | 50 | 39/11 |
| CP | 24 | 24/0 |
| CC | 14 | 6/8 |
| M | 9 | 9/0 |
| Usher | 9 | 3/6 |
| DA | 8 | 2/6 |
| D | 8 | 4/4 |

Fig. 37 Turn profile of case BPVL

In this hearing the usher plays a prominent part. He presents himself as the initiator of the prison video link, the discoverer of administrative errors and the link between the court office with its associated documentation; not only does he have the power to dismiss or retain the interpreter, he is the one who calls the interpreter into the court, assigns her a seat in the courtroom, swears her in, and subsequently takes it upon himself to ask the interpreter to explain to the waiting defendant the source of the delay caused by the double booking of interpreters. He uses the commonly used court designation “Madam interpreter” which is meant to indicate that he too, although not legally qualified and not strictly a participant in the proceedings, is fluent in the use of the institutional language of the court and, in a sense, that he is *licensed* to use it. To an extent he therefore identifies himself with those who hold the power to make legal decisions. For an administrative court official who plays no part in the formal hearing and has no legal role within it, he seems to wield considerable authority and a strong presence. He is present at six out of the ten PVL hearings I audio-recorded.

5.4.2 Positions and sightlines

The defendant is positioned very close to the camera with only the top of his shoulders in view and is wearing blue prison clothes. He is restless after he takes his seat, rubs his eyes, scratches his head, looks around him and moves his head forward whilst opening and closing his mouth. When the defendant is directly addressed he leans forward even further towards the camera, a common reaction in PVL defendants. His gaze is averted, a fact which can be explained by the position of the camera above the monitor in the prison (see 5.1.8). The picture in picture is in the lower right hand quadrant of the screen and does not obscure the defendant’s face. Once the hearing has started he remains still. Because the interpreter is sitting beside the defence advocate, she can only be seen by the defendant when the camera is focused on that part of the courtroom. When the camera moves to the magistrates for the pronouncement, the defendant sees the magistrates but cannot see the interpreter as she renders their decision.

5.4.3 Move Analysis of case 1

Move 1.1: announcement of the case

The usher does not formally announce the interpreter to the court. Before the hearing begins there is a long discussion between the court clerk, the defence advocate and the usher about the inadvertent double booking of interpreters by the booking office. During this exchange the defendant is on the screen and the usher shows that he is aware of this:

75 U /Madam interpreter could you just inform the gentleman on the other end of the line
 76 who doesn't speak English that there's been we're just discussing an admin problem
 77 (.) I don't want him to think we're discussing his case
 79 INT /Bulgarian
 81 D /Bulgarian
 83 INT /I was just asking whether he could hear me well
 85 M /I see thank you
 87 INT /Bulgarian
 89 D /Bulgarian
 91 INT /Bulgarian
 93 D /Bulgarian
 95 INT /he say [sic] what type of er admin error
 97 DA /If you can just explain it's an admin issue and it's nothing to do with his case
 99 INT /Bulgarian
 101 D /Bulgarian (laughs)
 103 INT /Because he still didn't understand I've explained to him that it was because of a
 104 double booking of the interpreters so the response to that was er there is no problem
 107 DA /thank you

At this stage the interpreter is still not sworn in, and the usher and the defence advocate all address the interpreter, rather than the defendant, in their turns to one another.

Move 1.2, 1.3: Affirmation and sight translation

The interpreter rises to her feet when asked to make her interpreter's affirmation (as would be normal with a live defendant), but is quickly reminded that if she remains standing the defendant will not be able to see her. The interpreter takes the affirmation, but does not sight translate it to the defendant.

Move 1.4: Virtual tour of the court

This court clerk omits the virtual tour of the court. The defendant is not told who is present in court nor are their roles or seating positions explained. The defendant does not request this, so it is safe to assume that he does not know that he has some sort of entitlement to it. From the defendant's point of view the only court actors he can recognise in the courtroom are his own defence advocate and the interpreter, having just completed his pre-court briefing with them. The same can be said for all the other eight cases where no virtual tour of the court takes place.

Move 1.5: Confirmation of defendants' details

The court clerk addresses the interpreter, rather than the defendant, for confirmation of his personal details. The defendant accomplishes this response in a single turn, and the interpreter conveys it in a single turn:

- 118 CC /Thank you very much (.) could you ask him to confirm his full name and date of
 119 birth please
 121 INT /*Bulgarian*
 123 D /*Bulgarian*
 125 INT /Ivan Kuzman Golakov thirteenth of July nineteen sixty eight (-)

The court clerk's "thank you very much" (127) marks the boundary between the end of Move 1 and the beginning of Move 2.

Move 2.1: Background summary

The interpreter renders every turn of the court clerk's short background summary until the court clerk asks the defence advocate if she wishes to make any applications. Then the interpreter omits the rendition of the five following turns:

- 140 CC /Are there any appli[cations today]
 142 DA [No there are no applications today]
 144 CC /Madam if you would like to hear (.) the (.) current reasons for the remand in custody
 145 (.)
 147 M /Yes please (.)
 149 CP /Er (*coughs*) sorry just before that madam (.) er I wonder (.) if the (.) defendant may
 150 benefit from (.) the interpreter (.) er (.) explaining the oath to him as I'm-I'm (.) thinking (.)
 you did not

The omission of the first turn by the court clerk may be explained by the fact that her turn overlaps with the following turn (the response by the defence advocate). It is therefore possible that the interpreter did not fully hear either the end of the first sentence of the court clerk nor the response of the defence advocate. This may have interfered with her concentration to the extent that she missed the exchanges which followed. The omission of the third, fourth and fifth turns may be explained by the fact that, in common with the first turn by the court clerk, a range of different court actors are being addressed in quick succession; firstly the court clerk addresses the defence advocate, secondly the defence advocate responds to the court clerk, thirdly the court clerk addresses the magistrates and

fourthly the magistrate as Bench Chair responds to her question. The fifth uninterpreted turn is an unexpected and belated intervention by the crown prosecutor who hesitantly points out that the interpreter did not convey the interpreter's affirmation in Bulgarian (as would be normal procedure). The interpreter then intervenes on her own behalf, explaining why she has not already done so, and appears to shift the responsibility on to the court:

153 INT /I-I did not er explain it in Bulgarian (.) s-sometimes in court er (.) it is
154 required sometimes it is not

As a reminder, the last Bulgarian rendition the defendant has received at this point in the hearing is:

135 CC /The matter is working its way towards a target committal date of the tenth of August
(.)
136 INT /*Bulgarian*

This is followed by the five uninterpreted turns just described, a turn in English by the interpreter and another uninterpreted turn by the court clerk. The next Bulgarian rendition he hears is:

158 INT (.) /*Bulgarian (holds card and sight translates affirmation)*

The defendant is thus left out of the interaction between these two renditions.

Move 2.2 Invitation to crown prosecutor to begin submission

The magistrate's "thank you" (164) is the signal for the crown prosecutor to begin his submission.

Move 3: crown prosecutor's submission

The crown prosecutor's speech pattern shows that he pauses frequently to allow the interpreter to interpret consecutively. Sometimes his turns are semantically complete units of meaning with main verbs. At other times they are incomplete units of meaning with no main verb. He reads a written police statement out loud and so his speech is not spontaneous. This means that, because of the characteristics of written text, his speech is denser than it would be if it were unplanned and therefore cognitively more difficult for the interpreter to process and

interpret⁴⁴. We might speculate about whether or not there is any pattern in the way that he designs his utterances for the interpreter to render into Bulgarian. On the one hand the way he fragments the text he is reading from could be influenced by the amount of numeric information or proper nouns which he thinks he should include within each turn. On the other hand, he may be thinking that, out of consideration for the interpreter, he should specifically design his utterances so as to include a minimal amount of such information (which I have underlined) in each turn, or he may be prompted by the text to construct his submission in such a way that he makes use of natural pauses (the kind that he would use if the interpreter were not there) to complete each of his turns, without reflecting upon the completeness and comprehensibility of those turns, nor whether these natural pauses will be sufficiently short to allow the interpreter to render them effectively to the defendant. Here are two extracts which demonstrate his pause construction. Firstly:

- 193 CP /Thank you madam (.) “this matter (.) concerns the importation (.) of five
hundred grams of cocaine” (.)
 196 I /Bulgarian
 198 CP (.)”These drugs have an approximate street level value of twenty
thousand pounds”(.)

and secondly:

- 180 CP /”On the twenty fourth of May two thousand and ten” (.)
 182 INT /Bulgarian
 186 CP /”At terminal five Heathrow” (.)
 188 INT /Bulgarian
 190 CP /”The defendant was intercepted” (.)
 192 INT /Bulgarian
 195 CP /”Arriving on a flight (.) from Buenos Aires Argentina “(.)

The crown prosecutor’s submission comes to an end after he has finished listing the reasons why the defendant should not be granted bail. The magistrates are now in possession of two pieces of information; firstly that that the defence advocate is not going to make any representations on behalf of the defendant (she has already said so at line 142 and this means that Move 4 is omitted), and secondly that the crown prosecutor’s turn at line 262 quoted below:

- 262 CP /”And lack of community ties in the UK” (.)

is usually the last item on the list of requirements for the granting of bail. This is recognised by the magistrate as the signal to deliver the pronouncement.

⁴⁴ Texts which are lexically dense (lexical density being a concept formulated by Brazil in 1969) have been found by Stubbs to be characterised as being more unpredictable because they contain a large number of lexical words, as opposed to predictable grammatical words (Stubbs 1986).

Move 5: Pronouncement

After a short period of silence the magistrate makes the pronouncement: an adjournment. The magistrate who chairs this Bench has nine turns, all of which are on-stage. In a sense the outcome of the hearing is something of a foregone conclusion, since the alleged offence is an *either way* one, already destined at an earlier hearing for the Crown Court. It is the task of the magistrates to commit the case to be heard there. The case cannot be formally committed until the Chair of the Bench makes a pronouncement to that effect, and this she does, choosing to refer only indirectly to the reasons for the refusal of bail:

- 277 M /(.)And you will be remanded in custody (.)
 279 INT /*Bulgarian*
 281 M /For the reasons that were just read out in court (.)
 283 INT /*Bulgarian*

Slightly later the magistrate asks:

- 287 M /OK did you understand everything ?

Before the defendant can reply, there is an off-stage interaction when the usher asks the defence advocate (sitting next to the interpreter) if a post-court visit is required; the defence advocate indicates non-verbally that this will not be needed. Since the interpreter is fully occupied with her rendition to the defendant, this exchange remains uninterpreted. The defendant's reply:

- 296 INT /Yes yes

is his response to the magistrate's question at 287, and not to the usher's question about a post-court visit.

5.4.4 Summary of case 1 and findings

My observations of other interpreted hearings and experience of training court interpreters demonstrate that they often falter when faced with transitions from monologues to dialogues and *vice versa*, or a series of rapid exchanges (see Move 2.1 lines 140-150). It may well be that any disruption of a rhythm and flow which has been established and sustained through a prolonged series of triadic consecutive exchanges between the same speakers is sufficient to interfere with the interpreter's cognitive processing abilities, especially if that interpreter has

little training. This may explain the interpreter omissions in this particular Move. I comment on this at 5.15.7.

There seems to be some confusion over the court interpreter's role (lines 149-154). The CP obviously thinks it is the interpreter's role to interpret the affirmation, whilst the interpreter thinks it is the court's.

5.4.4.1 Turn design by the crown prosecutor

The crown prosecutor's submission is a good example of how court actors can design their turns for three types of interlocutors simultaneously: the interpreter, the defendant and the magistrates. The police statement which forms the basis of the crown prosecutor's speech is typical of the language used to narrate a succession of events in both face-to-face and PVL cases, and he addresses the magistrates using this narrative form so that the magistrates can gain information in order to arrive at a decision. He simultaneously modifies the form in which he presents the narrative (fragmenting it into smaller units) in order to enable the interpreter to render that narrative into Bulgarian and to minimise the errors he imagines the interpreter might make if he were to include too much information. The unintended consequence of this fragmenting of narrative is that the interpreter might, for lack of thinking time, be tempted to use the grammatical order of English in the target language, especially if the interpreter has little training. If the source utterance is semantically complete, it will be straightforward to process, for example:

Example 1

171 CP (.) / "These drugs have an approximate street level value of twenty thousand
172 pounds"(.)

Example 2

203 CP / "He stated he purchased his own ticket and no-one had given him anything to bring
204 to the UK"

Example 3

208 CP / "Officers' suspicions were aroused (.) when his passport showed two trips to South
209 America in two months" (-)

but if the utterances are very short without any main verb, this may cause cohesion problems for a minimally trained interpreter and ultimately for the defendant. For example:

Example 1

238 CP / "On one ground" (.)

Example 2

254 CP /(.) “The strength of the evidence” (.)

5.4.4.2 Open acknowledgment of the interpreter

On the whole court actors in this courtroom accommodate adequately to the interpreter’s presence, speaking at a reasonable pace and volume with few overlaps. It may be that the open acknowledgement of the interpreter shown by the usher at the beginning of the case and the interpreter affirmation, together with the crown prosecutor’s request that the interpreter relay that affirmation to the defendant, play some part in this.

Linked to the question of open interpreter acknowledgement is the interpreter ratification process. The interpreter affirms, but does not relay it to the defendant. The interpreter makes four interventions, with only one of them taking place during the actual hearing. All her interventions serve the same purpose: to inform and explain to the court the nature of the defendant’s responses. In all four of them she uses reported speech:

Example 1

83 INT /I was just asking whether he could hear me well

Example 2

95 INT /he say (*sic*)what type of er admin error

Example 3

104 INT /Because he still didn’t understand I’ve explained to him that it was because of a
105 double booking of the interpreters so the response to that was er there is no problem

Example 4

162 INT /*Bulgarian* I just exp- explained that er that was the er oath I needed to take (.)

The first three instances take place before the hearing proper, and the last one just before Move 3. Her use of reported speech may be reflecting the fact that the usher and the court clerk have, up until now, addressed *her* rather than the defendant. The interpreter, then, is expected by court actors to give an explanation in her own words of what has transpired. Another reason for her reported speech could be her lack of training. Interestingly none of these turns shown above involves any interpreting of source texts on her part; the interpreter simply responds to a request from the usher and uses her initiative accordingly.

There are three instances of audible defendant back channelling during this hearing; one is a laugh, another a throat clearing and the third an unidentifiable sound and may function as non-verbal markers of acknowledgement. All of them are ignored by the interpreter and the other court actors.

5.4.4.3 The interpreter's strategy

The strategy used by the interpreter is CFV (strategy 5) all the way through the hearing. Her seating position next to the defence advocate, her clear speaking voice, her ratification as a member of the court team and her belated sight translation of the affirmation make her highly visible and audible.

Although it is the responsibility of the court to ensure that the oath/affirmation is conveyed in the defendant's language, this interpreter could easily take the initiative in this respect and the consequence of her not doing so is that the defendant is left out of the interaction and does not know what is happening. Her inaction in this regard is compounded by the fact that the sight translation of the affirmation is not carried out at the appropriate juncture. It makes more sense for the interpreter to explain to the defendant in her own words what she is about to do before sight translating the affirmation into Bulgarian. However, she reverses the process, choosing firstly to affirm and secondly explain her action to the defendant. This leaves the defendant to work out for himself what is happening.

This interpreter, then, has a considerable impact upon the proceedings in that she enters into the interaction on her own behalf, takes it upon herself to construct explanations to the defendant, does not affirm in Bulgarian at the appropriate time (thus disrupting the normal sequence of steps in a review hearing) and does not interpret some turns.

5.5 Case 2 Polish (PPVL, court A)

This hearing is just over 5 minutes long. The charge is only referred to indirectly by the court clerk as "customs evasion". The case has earlier been deemed too serious for disposal in the Magistrates Court, and so the purpose of the hearing is to commit the defendant to the Crown Court. The defendant has not indicated a plea (meaning that he has not even entered a

provisional non-binding plea⁴⁵, despite having been given the opportunity to do so.) Because this is a standard committal, Moves 3 and 4 are omitted, and when the defence advocate is invited to make submissions on behalf of the defendant in Move 4, she makes none. Thus the hearing can be divided into three Moves; firstly the announcement of the case, swearing in of the interpreter and the confirmation of the defendant's details, secondly a summary of the stage the case has reached by the court clerk followed by an invitation to the defence advocate to make any representations, and thirdly the communication of the decision by the magistrate to the defendant. The acoustics in this court were particularly good, and all speakers could be clearly heard.

5.5.1 Positions and sightlines

The court has a traditional layout, with a dock at the side of the court. The interpreter is asked to sit next to the defence advocate on the front bench, directly in front of the court clerk's bench. The interpreter looks at the defendant on the screen all the way through the hearing. The defendant sits still and impassive throughout.

5.5.2 Turn profile

| Court actor | No. of turns | On/off stage ratio |
|-------------|--------------|--------------------|
| INT | 27 | 27/0 |
| CC | 22 | 22/0 |
| M | 8 | 8/0 |
| DA | 7 | 6/1 |
| D | 3 | 3/0 |
| CP | 1 | 1/0 |

Fig. 38: Turn profile of case PPVL

It can be seen from the above chart that the ones who speak most in this hearing are the interpreter and the court clerk. There is only one instance of an off-stage turn. There is a considerable gap between the total number of interpreter turns (27) and the total of all other court actors' turns (41). The magistrates enter the court for the hearing, but there is no verbal acknowledgement of their arrival by the court clerk. The camera is not focused on the magistrates' bench so the defendant is not aware of their entry into the courtroom.

⁴⁵ Defendants can either 'enter a plea', which is binding, or 'indicate' a plea, which is not binding.

5.5.3 Move Analysis of case 2

Move 1.1: announcement of case

The usher announces the case and the fact that there is an interpreter. The court clerk asks the interpreter to be sworn.

Move 1.2, 1.3 : Swearing-in of the interpreter and sight translation of oath

The interpreter takes the oath at her seat by the defence advocate rather than in the witness box. The interpreter reads the oath in a clear and assertive voice, and without being prompted, proceeds to sight translate it to the defendant in Polish.

Move 1.4: Virtual tour of the court

There is no virtual tour of the court.

Move 1.5: Confirmation of defendant's details

The court clerk addresses the interpreter, referring to the defendant as “the gentleman”. The interpreter makes a mistake with the date of birth, and is subsequently corrected, not only by the defendant but by the court clerk. The phrase “thank you” by the court clerk signals the end of defendant-focused Move 1 and the beginning of non-defendant-focused Move 2.

Move 2.1: Background summary

The court clerk begins this Move with an indirect reference to the charge:

27 CC/Thank you ma'am the gentleman faces one allegation of (.) erm (.) customs
28 evasion (.)

There are some formulaic phrases used by the court clerk which might cause an interpreter some difficulty because they are uttered at speed. Some examples are: *no indication of plea*, *set down for committal*, *both parties are happy for a section six two and live witness requirements*. Again the phrase “thank you” at line 57 signals the end of the Move; the magistrate knows this and that it is her turn to speak next. Before the court clerk quite finishes her turn, the defence advocate intervenes. She makes a request for a ‘proper paginated bundle’

of all the documents involved in the case, and does so at this juncture because she wants it to be included in the magistrate's pronouncement, thus changing its status from a formal request into a direction:

57 CC /[Thank]
 58 DA /[Can I just ask] the court to give one direction er to my learned friend er for
 59 the Crown (.) if the er proper (.) paginated bundle (.) of er committal statements and
 60 exhibits could be (.) er DXed to our offices within the next seven days (-) cos at the
 61 moment we're working from draft papers which have not been paginated (.) and for
 62 the purposes of the plea and case management hearing and subsequently (.) for er
 63 (inaudible) the legal services commission we are required to have paginated bundles
 64 (-)
 65 CP /Your worships we have no (.) no problems with that (.)
 66 CC /Thank you
 67 INT / *Polish* (-)

Interestingly the defence advocate does not pause for the interpreter as the other speakers have done, and delivers her request in one lengthy turn. The interpreter waits until she has finished and after two brief turns by the crown prosecutor and the court clerk, then delivers a rendition in CFV.

Move 5: Pronouncement

The “thank you” of the court clerk (66) and that of the magistrate (68) both serve as indicators that the Move is about to end, and that the focus is back on the defendant: the magistrate formally announces the court's decision and includes an order for the ‘paginated bundle’ to be provided. She fragments the pronouncement into the various elements comprising that decision. Two of her fragments at lines 70 and 74 are semantically incomplete:

68 M /Thank you (.) Mr Zawaski (.) you will be remanded in custody (.)
 69 INT /*Polish*
 70 M /Until the seventeenth of July (.)
 71 INT /*Polish*
 72 M /When you will appear at Snaresbrook Crown Court (.)
 73 INT /*Polish*
 74 M /For plea and directions (.)
 75 INT /*Polish*
 76 M /We're going to make a requirement (.) that the (.) CPS (.) provide (.) a proper
 77 paginated bundle for your (.) representative (.)
 78 INT /Er (.) *Polish*
 79 M /Do you understand
 80 INT /*Polish* (-)
 81 CC /Thank you
 82 D / [*D appears to affirm then clears throat*]
 83 INT /[ye...]

The magistrate asks if the D understands at line 79, but does not wait for his answer before her “thank you” at line 81 signals the end of the hearing.

5.5.4 Summary and findings

Although the court actors involved in this hearing accommodate reasonably well to the presence of the interpreter, the defendant misses the formality of the magistrates’ entrance into court because he is not shown it on camera, nor is this action referred to verbally by the usher or the court clerk. This illustrates the impossibility of showing *everything* that is happening in court through a fixed camera position. Everyone *assumes* that the defendant knows what is happening, but because court actors are too pre-occupied to imagine the defendant’s perspective, they are not motivated to monitor it. A similar event occurs during my observation period at Wormwood Scrubs prison (see chapter 7.4.7). Since in a courtroom power relations are constructed by physical means and spatial elements (architecture, layout and seating positions), the semiotic and symbolic significance of the magistrates’ entrance is not available to the defendant.

In addition, he is not given a virtual tour of the court by the court clerk and is thus at a disadvantage compared to his face-to-face counterpart; the first time he sees the magistrates who are making a decision about his case is at Move 5, at the very end of the hearing.

5.5.4.1 Interpreter strategy

This interpreter is highly visible and audible throughout the hearing (to the court at least). She speaks clearly, has an assertive manner, and does not appear to omit many turns; those she does omit appear to be condensed into single renditions at a later stage. There are no fast-paced administrative exchanges between court actors, although there is some formulaic language which the interpreter is expected to deal with. There are no audible instances of verbal back-channelling by the defendant in this hearing, unless we count the defendant’s throat-clearing at line 82. The arrangement where the interpreter shares the microphone with the defence advocate means that the interpreter uses CFV (strategy 5) throughout the hearing, whether the proceedings are defendant-focused or non-defendant-focused. Thus the interpreter’s mistake over the defendant’s date of birth is heard by everyone in the court; it could perhaps have been avoided if the interpreter had been taking notes (she had no note-

taking materials to hand). There are no submissions or representations by advocates, and so no opportunity to observe any interaction between them and the interpreter. We can surmise that defence advocate will more fully explain the outcome of the hearing at the post-court interview which subsequently takes place with the defendant and the interpreter.

5.6 Case 3 Igbo (IPVL Court A)

This hearing is very short (some five minutes in length). The courtroom has good acoustics and everything can be heard clearly. The charge in question (illegal importation of cocaine by ingestion) has, at an earlier hearing, been deemed too serious to be tried at the Magistrates Court, and so the defendant appears by PVL from the prison to be committed to appear at a later date at the Crown Court.

5.6.1 Positions and sightlines

The male Igbo interpreter sits next to the defence advocate (sharing his microphone) on the front row of the advocates' bench. He is in full view of all the court actors and firmly in the well of the court as part of the court team.

5.6.2 Turn profile of the hearing

| Court actor | Number of turns | On/off-stage ratio |
|-------------|-----------------|--------------------|
| INT | 39 | 39/0 |
| CP | 18 | 18/0 |
| CC | 16 | 16/0 |
| M | 10 | 10/0 |
| Usher | 5 | 3/2 |
| D | 3 | 3/0 |
| DA | 1 | 1/0 |

Fig. 39: Turn profile of case IPVL

The interpreter does not appear to omit any turns. Although the usher has five turns, most of these are not strictly part of the case hearing and take place before the interpreted case begins. As is normal in these hearings, the defendant has the smallest number of turns. All the turns are on-stage and are meant to be heard in open court, with the exception of two of the usher's turns.

The crown prosecutor narrates the circumstances surrounding the offence. He mostly pauses after delivering complete units of meaning, although he does fragment some of his turns. The defence advocate does not make any submissions in this hearing.

5.6.3 Move Analysis of the hearing

Move 1.1: announcement of the case

The usher initiates the link with the prison, and announces the case and the identities of the defendant and the interpreter to the court.

Move 1.2, 1.3: Affirmation and sight translation of affirmation

The interpreter chooses to affirm rather than take the oath, and, unprompted, conveys the affirmation to the defendant into the Igbo language. The magistrate appears to be unfamiliar with the name of the language and asks the interpreter to repeat it. The interpreter seems to be well used to this and, without being prompted, spells it out, letter by letter. This interchange is not interpreted to the defendant. The court clerk appears not to have noticed the interpreter repeat the affirmation into Igbo, and asks him if he will now do so:

- 61 CC / (-)Could you explain to him the oath you've taken
 63 INT (-) *Igbo (in English)* that's what I did
 65 CC /Did he understand that yeh
 67 INT /*Igbo*
 69 D /Yes (.) I understand (*in English*)

Interestingly, all three of the defendant's turns are in English.

Move 1.4: virtual tour of the court

The court clerk does not conduct a virtual tour of the court for the defendant. She seems to have temporarily forgotten that this is an interpreted case and begins to ask the defendant for his name and date of birth before the interpreter has actually affirmed, inadvertently addressing the defendant as she does so (this court clerk typically addresses interpreters rather than defendant s). Realising that the defendant cannot be seen on the screen, she interrupts herself, later remembering that the interpreter has not affirmed:

- 36 CC /Mister Ukwu can you confirm to the Ms (.) (*to the defendant*) sorry sir can
 37 you move a little to your (.) right (.) please
 39 INT /(.) *Igbo*
 41 CC /Thank you (-) or did I mean left
 43 INT /*Igbo*(-) ah ha (.) (*laughs*) eh heh (.)
 45 CC /Sir (.) erm (.) if the interpreter could take the oath please

Move 1.5: Confirmation of defendant's details

The court clerk, recalling that the case is an interpreted one, now resumes her normal method of communicating with a limited English-speaking defendant, which is by addressing the interpreter:

- 73 CC /Thank you very much could you ask him to confirm (.) to the court his full name and
 74 date of birth

Her “thank you very much” is a marker of the beginning of a new step in this Move, although the normal order of Move steps has now been disrupted by the court clerk herself. She concludes the Move with another “thank you very much”:

- 78 D /(*In English*) OK my name is Nweke Ukwu and I was born in seven October
 79 nineteen seventy eight
 81 CC /(-)Thank you very much
 83 INT /*Igbo*

Whenever the court clerk addresses the interpreter her voice drops slightly, changing her style and volume from declamatory to conversational; she probably does not intend the defendant to hear what she is saying.

Move 2.1, 2.2: background summary and invitation to crown prosecutor to begin submission

The court clerk outlines the status of the case, and asks the defence advocate if she wishes to make any representations:

- 97 CC /Are there any applications today
 99 DA /No
 101 INT /*Igbo*
 103 CC /Madam if you could hear the matter briefly that's been scheduled for committal to
 104 formulate your reasons (.) for the remand

Although the court clerk directly addresses the magistrates at 103-104, this is a way of signalling to the crown prosecutor that she is approaching the end of her Move and that the

floor will soon be his. The crown prosecutor can then begin his representations on behalf of the Crown as to why the defendant should not be granted bail.

Move 3: crown prosecutor submissions

The crown prosecutor fragments his submission into short turns. These turns vary in their semantic completeness. His first turn seems to bode well:

108 CP /thank you (-) madam (.) this matter concerns the importation (.) of (.) eight hundred
109 and thirty nine grams (.) of cocaine (.) at one hundred per cent purity

However his next turn fragments a number, causing problems for the interpreter, who fails to render the number accurately; his rendition of that number in English rather than Igbo is the clue:

114 CP /(-) These drugs have a street level value (.) of one hundred and forty thousand
115 (.)
117 INT /*Igbo*
119 CP /Five hundred and fifteen pounds (.) fifteen pence
121 INT /*Five hundred and fifteen pence (in English)*

The crown prosecutor's next eight turns are semantically complete units. However, once the crown prosecutor begins to summarise the reasons for his detention in custody, some of them are incomplete:

165 CP /(.) the reasons for these fears (.)
167 INT /*Igbo*(.)
169 CP /(.) Are due to the nature and seriousness of the offence
171 INT /*Igbo*(.)
173 CP /(.) The strength of the evidence
175 INT /*Igbo*
177 CP /(.) The likely custodial sentence if convicted
179 INT /(.) *Igbo*
181 CP /(.) And the lack of community ties (.)

Move 5: Pronouncement

It is the duty of the magistrates to ascertain whether or not the defendant understands the proceedings in court; the most common method is to *ask* defendants if they have understood. This is, in fact, what the chair of the bench does immediately before announcing her decision. After the Igbo interpreter renders this question to the defendant, he replies in English:

185 M /(--))Thank you very much (-) thank you (.) Mister (.) Ukwu (.) did you hear and
186 understand everything that was goin (*sic*) on
188 INT /*Igbo*

190 D /Yes (.) [I understand](*in English*)
 192 M /[Right]

Her turn at 192 above is the signal for her pronouncement to begin, and she proceeds to do so, fragmenting the decision into short semantically complete turns. The “thank you very much” is the phrase which marks the end of her Move, the end of the hearing and the formal dismissal of the defendant:

210 M /Thank you very much you may go (.)

The interpreter’s presence is explicitly acknowledged by the magistrate by thanking him as he leaves the court.

5.6.4 Summary and findings

The interpreter has high visibility and audibility, and uses strategy 5 (CFV) all the way through the hearing. His presence is felt even before the case begins because of the explicit acknowledgment of the interpreter by the usher, who uses him to explain the delay in the start of the case hearing.

Lists with intertextual references to laws (i.e. Move 3, see chapter 1, 1.4.2) are often difficult for untrained interpreters to render, especially when read out in court. The greater the number of examples in a list, the greater is the time lapse between the introductory phrase and each succeeding example. This means that it is more challenging for the defendant (and the interpreter) to make any link between the short introductory phrase and the list of reasons which follows. When crown prosecutors make their submissions, the representations they make to the magistrates as to why they should refuse to grant bail are often repeated by the district judge or the magistrate in Move 5. The ability to make notes of listed material is likely to be crucial here, but the Igbo interpreter did not have any note-making materials to hand.

The review of the case is occasioned by the need to comply with custody time limits, so the outcome of the hearing (as exemplified by the pronouncement) is a foregone conclusion. The court clerk, in effect, tells the magistrates what to say in their pronouncements in PVL cases. Pronouncements in the Magistrates Courts are linguistically interesting, in that they are examples of explicit performative utterances in Searle’s terms (Searle 1962). Decisions do not become directions nor are they legally binding unless the magistrate or district judge formally utters them. The elements of this pronouncement are (i) the adjournment at line 194:

194 M /(-) We're going to adjourn this (.) until the fourth of September (.)

(ii) the committal to the Crown Court at line 198:

198 M /(.) When you are being committed to Snaresbrook Crown Court (.)

(iii) the remand in custody at lines 202 and 206:

202 M /In the meantime you're remanded in custody
 204 INT /*Igbo*
 206 M /For the reasons that were just read out in court
 208 INT /*Igbo*

(iv) and the dismissal of the prisoner at line 210:

210 M /Thank you very much you may go
 212 INT /*Igbo*

Thus four performative speech acts are accomplished within the magistrate's five turns.

5.7 Case 4 Romanian (RPVL1 court B)

The hearing is some eleven minutes in length. Unlike the other PVL hearings, this defendant is on two charges of burglary rather than of drugs importation. This category of offence is an "either-way offence"⁴⁶. A previous bench has evidently decided to direct a committal to the Crown Court, and the purpose of this hearing is to have the defence advocate confirm that a case to answer is conceded and to make all the procedural and administrative arrangements to lead to a committal to the Crown Court. Because the defendant has not yet indicated a plea, the crown prosecutor's task is restricted to an assessment of the state of the documentary evidence required for committal. The crown prosecutor makes no submissions, and there are no references to the circumstances of the alleged offences.

⁴⁶ This means that it can be tried either in the Magistrates Court or in the Crown Court, and it is for the magistrates to make a decision as to where disposal should take place. Should the defendant give an indication of guilty, magistrates might decide either that it is too serious for them to deal with, or if the defendant is found guilty, they would then commit him for sentence at the Crown Court. If they decide that their powers *are* sufficient then the defendant will have the choice of having the case heard in the Magistrates Court or in front of a jury for trial in the Crown Court.

5.7.1 Turn profile

| Court actors | Number of turns | On/off stage ratio |
|--------------|-----------------|--------------------|
| INT | 46 | 46/0 |
| CC | 23 | 22/1 |
| M | 19 | 19/0 |
| D | 12 | 12/0 |
| DA | 5 | 5/0 |

Fig. 40: Turn profile of case RPVL1

It can be seen from the table above that this defendant has more turns than in most other hearings. Once again, the number of interpreter turns does not equal the total of other court actors' turns.

5.7.2 Seating positions and sightlines

The hearing is notable for the unusual seating position of the interpreter who is directed to sit next to the court clerk rather than next to the advocates. She thus has a prominent position, facing the advocates, and with her back to the magistrates' bench. Unusually, she has access to an independent microphone. We might surmise, then, that the interpreter is working under relatively favourable conditions from the point of view of visibility, audibility and acoustics.

5.7.3 Move Analysis of case 4

Moves 1.1, 1.2, and 1.3: announcement of case, oath and sight translation of oath

The court clerk calls the case rather than the usher, and she does this *after* the interpreter has taken the oath. In doing so the interpreter speaks very quickly without any pauses. The PVL defendant appears and then sits down *after* the interpreter has taken the oath, so he has not seen or heard the procedure. Just before Move 1.4, the court clerk addresses the magistrate but intends the interpreter to be the primary recipient of her turn:

25 CC /Sir (.) before we begin we might need the (.) the interpreter (.) the translator to
26 translate the oath

The interpreter recognises this as an invitation to sight translate the interpreter's oath.

Move 1.4: Virtual tour

The court clerk conducts a virtual tour and introduces the court layout to the defendant:

30 CC /Er (.) good morning I will just introduce you to everyone in court (.)
 32 INT /*Romanian*
 34 CC /I'm the legal adviser here this morning and I assist the magistrates (.)
 36 INT /*Romanian*
 38 CC /These are the magistrates who will hear your case this morning (.)
 40 INT /*Romanian*
 42 M /Good morning
 44 INT /(-)*Romanian*
 46 CC /And there you see your advocate Mr Patel (.)
 48 INT /*Romanian*
 50 CC /And the prosecutor Mr Brocklehurst (.)
 52 INT /*Romanian*

Interestingly the court clerk omits any mention of the *interpreter* who is sitting next to her and who is so clearly visible to everyone in the court.

There is an odd change of footing halfway through the court clerk's next turn, making it difficult to know whom she is addressing (presumably the defendant):

55 CC /OK(.) if at any time you can't hear us then (.) he needs to indicate to us somehow

Since the defendant's reply to this is "yes" it may be that the interpreter turns this statement into a question, or that the defendant understands it as a question which needs an affirmative reply.

Move 1.5: Confirmation of defendant's details

The court clerk asks for confirmation of the defendant's personal details, and does so by directly addressing the defendant rather than the interpreter:

63 CC /(-) Can I ask you please to confirm your full name and address

The direct address of the defendant by the court clerk may be a logical and natural consequence of her virtual tour of the court, also conducted in the first person (see above at Move 1.4).

There is an interruption by the magistrate:

86 M /Can we just (.) be clear (.) which is the family name (.) and which is the given name please

After this is clarified, the court clerk's "thank you" signals the end of Move 1.

Move 2.1, 2.2: Background summary, invitation to begin prosecution submission

There is audible defendant back channelling at 118 after the interpreter's rendition of the court clerk's turn at 113:

- 113 CC /Thank you (.) sir (.) Mister Stanasila (.) er (.) is charged with two offences of
 114 burglary (.) no indication was made as to plea (.)
 116 INT /Romanian
 118 D /Back-channelling

The court clerk indicates the boundary between Moves 2.1 and 2.2 with her "thank you" at 148, but then appears to ignore the interpreter to deliver an extended turn to the magistrates. The evidence for this is the formulaic speech later on in her turn which is illustrated by her rapid summary of the reasons for the defendant's remand in custody, plainly intending the magistrates as primary addressees:

- 148 CC /Thank you (.) also can I invite you then please to adjourn this case (.) to a plea and
 149 case management hearing (.) Snaresbrook Crown Court (.) four weeks time that's the
 150 third of July (.) er-to be listed in the morning or at a time to be confirmed by the
 151 Crown Court (.) er- Mr (.) Stanasila is (.) remanded in custody (.) reasons given (.)
 152 sorry exceptional (*inaudible*) reasons given failure to surrender nature and gravity of
 153 offence and likely sentence (.) and lack of community ties

Previous analyses have shown that the phrase "lack of community ties" usually denotes the approaching boundary between Moves, and so it is in this case. The magistrate recognises that it is his turn to take the floor and, after asking the defence advocate if he wants to make any representations on the defendant's behalf, he begins his pronouncement. Having missed the previous two turns, the interpreter cuts in quickly at 156 with her rendition, not having spoken since 142, and probably anxious not to miss any more turns, although she appears to miss the magistrate's turn at 158 and the defence advocate's turn at 160:

- 158 M /Umm (.) Mr Patel (.) anything to er (.) add (.) at (.) this moment
 160 DA /Er not really sir (*inaudible*)
 162 M /Fine (.) er (.) so (.) Mr Stanasila (.) erm you (.) are required (.) to be (.) produced (.)
 164 at Snaresbrook Crown Court for committal (.) on the (-) er (-) third (.) of July (.) at a
 165 time that they will notify you (.)
 166 INT /Romanian

Move 5: Pronouncement

The magistrate's "fine (.)" at 162 above marks the beginning of Move 5. Unusually at 185 a question of clarification is posed by the defendant from the prison. The defendant's intonation sounds as though he has finished his question, prompting the interpreter to render it to the

magistrate. However he continues with his turn, resulting in speech which overlaps with that of the interpreter. The magistrate has implied that there are three charges rather than one, rather confusing for the defendant, and thus prompting his question. Rather than the magistrate answering it, the defence advocate answers it, and supplements it with a request that the magistrate remind the defendant that there is now only one charge to be tried, not two:

- 181 M /Is that all clear (.)
 183 INT /*Romanian*
 185 D /*[Asks a question]*
 187 INT /*[So will it be just] for the (.) burglary for (.) on (.) the fourth of*
 188 May ?
 190 DA /Yes and there's only one matter (.) you might mention this too that-
 192 M /I'm sorry yes one matter (.) one matter remains (.) yes (.)
 194 INT /*Romanian*
 196 D /*Romanian*
 198 INT /Yes I understand

The court clerk now goes on to deliver the standard warning for defendants who want to produce witnesses at their trial. An interesting feature of the court clerk's speech at 204 is that not only does she pause at the end of the turn, but she uses a rising intonation at the end of the turn which serves two purposes at once. It is both a clear signal to the interpreter that what she is about to say is important and must be interpreted (whose style of delivery is designed for the interpreter), and secondly it denotes the formality of the standard written notice which the court requires her to read out:

- 204 CC /Thank you (.) sorry sir I (*inaudible*) the er statements that have been provided here
 today (.) (*rising intonation*)
 206 INT /*Romanian*
 208 CC /Er (.) form the evidence that will be given at your trial (.)
 210 INT /*Romanian*
 212 CC /If you require any of the witnesses who have made statements to attend to give live
 evidence (.)
 214 INT /*Romanian*
 216 M /Then you must notify the (.) Crown Court and the Crown Prosecution Service within
 fourteen days of today's hearing (.)

The magistrate asks the defendant if he has understood on two occasions during the hearing. Finally the magistrate acknowledges the interpreter and thanks her. More defendant back channelling takes place at 238 after the magistrate's final turn:

- 234 M /Right (.) so you will appear at Snaresbrook on the third of July (.) thank you
 236 INT /*Romanian*
 238 D /*Back-channelling*

His "thank you" is intended simultaneously as an indication that the hearing is at an end and as a dismissal of the defendant, and because of this the defendant may have thought that the

hearing was over. However, the court clerk now needs to know whether the defence advocate requires time with his client, and the magistrate takes the opportunity to reassure the defendant that he can have a post-court consultation with his lawyer:

244 M /Er yes your lawyer will talk to you after this (.) er in a separate place (.)

5.7.4 Case 4 summary and findings

The interpreter uses CFV (strategy 5) all the way through the hearing. This case is unusual because of the interpreter's seating position. Firstly, her presence is enhanced by the prominent position she occupies next to the court clerk. Secondly, because her presence is so obvious she might expect the court to be more aware of her role and her professional needs. However the court clerk introduces everyone in the court to the defendant - apart from the interpreter. We might speculate that the above-mentioned features afford the interpreter some advantages and that the enhanced presence of the interpreter might lead the court to accommodate her professional needs; a closer examination of the transcript is useful here to see if this is borne out.

The interpreter begins her rendition after missing two turns at 144 and 146, and interprets only after the court clerk's turn at 148. There are more omissions immediately after this, where she misses two turns at 158 and 160 (the magistrate and the defence advocate respectively). The interpreter has no note-taking materials to hand nor does she intervene at any point to ask for repetition, even though this would be less disruptive in a PVL court than in a face-to-face one where she might have more difficulty in attracting the attention of the speakers from her position in the dock. The evidence of the formulaic language used by the court clerk and others in the non-defendant-focused Moves together with the increased pace of speaking, the lowered volume and the more intimate style of delivery would seem to imply that the court is less influenced by the enhanced presence of the interpreter than might be imagined.

Overall, it is possible to say that the behaviour of court actors in this court is not particularly affected by the enhanced presence of the interpreter. In defendant-focused Moves, court actors certainly make allowances (as they see it) for the interpreter by fragmenting their utterances into short turns, whereas in non-defendant-focused Moves it seems that the

enhanced presence of the interpreter makes very little difference to the style and pace of their delivery.

5.8 Case 5 Romanian (RPVL2 court C)

This hearing is less than four minutes long, and this is the defendant's second appearance in court. Its purpose is to re-remand the defendant in custody prior to his trial at the Magistrates Court. No reference is made to any charges or to their nature, but we can assume that they are deemed by the court to be suitable for summary disposal and that he has pleaded not guilty. There is a district judge, rather than a bench of magistrates presiding.

5.8.1 Positions and sightlines

Here the interpreter is invited by the district judge to sit at the front bench next to the defence advocate in a court with a traditional layout. This interpreter thus has an enhanced presence by virtue of her seating position.

5.8.2 Turn profile of the hearing

| Court actor | Number of turns | On/off stage ratio |
|-------------|-----------------|--------------------|
| INT | 29 | 29/0 |
| CC | 22 | 22/0 |
| D | 13 | 13/0 |
| DJ | 12 | 13/0 |
| CP | 5 | 5/0 |
| DA | Not present | - |

Fig. 41: Turn profile of case RPVL2

What is immediately noticeable is the large disparity between the number of interpreter turns (29) and the total turns of the other court actors (53). It is possible that the interpreter condensed several turns into one turn, of course.

5.8.3 Defendant turns and back-channelling

This hearing is interesting in that it has six instances of defendant back-channelling, and these instances are included in the total number of 13 defendant turns. This is the highest number of defendant turns I recorded in all my ten samples of PVL hearings, possibly due to his defence

advocate not having turned up for his hearing. The defendant evidently understands some English as five of his turns are made in that language.

5.8.4 Move Analysis of case 5

Moves 1.1, 1.2, 1.3: Announcement of case, oath and sight translation of oath

The interpreter came into the courtroom after contact with the prison had been established, and was directed by the district judge to sit next to the defence advocate. However, she did not take the oath nor sight translate it for the defendant, and no-one in the court requested her to do so.

Move 1.4: Virtual tour

This court clerk conducts a thorough and comprehensive virtual tour of the courtroom. He is the only court clerk in my sample who includes the *interpreter* in the virtual tour, thus openly and explicitly acknowledging her presence:

| | |
|--------|--|
| 13 CC | /Mr Cosmescu (.) |
| 15 INT | /Mr Cosmescu (.) |
| 17 D | /Yes |
| 19 CC | /You're appearing this morning at the Thames Magistrates Court (.) |
| 21 INT | /Romanian |
| 23 D | /Yes |
| 25 CC | /As you can see that's happening by way of the video link (.) |
| 27 INT | /Romanian |
| 29 CC | /(.)If there are any problems this morning (.) |
| 31 INT | /[Romanian] |
| 33 CC | /[For example if you can't hear what's being said] |
| 35 INT | /Romanian |
| 37 D | /Da da...(Romanian) |
| 39 INT | /Yes I can hear everything |
| 41 CC | /Good okay yes well-(.) you let us know if there's any difficulty (.) |
| 43 INT | /Romanian |
| 45 D | /Romanian |
| 47 CC | /I'll move the camera round the courtroom so that you can see who's here |
| 49 INT | /[.....Romanian] |
| 51 CC | [I'm the clerk this morning (.)] |
| 53 INT | /Romanian |
| 55 CC | /And here is the district judge dealing with your case |
| 57 INT | /Romanian |
| 59 DJ | /Good morning |
| 61 D | /(.) Good morning |
| 63 CC | /Here's Miss Sehmi for the Crown Prosecution Service (.) |
| 65 INT | /Romanian |
| 67 CC | /(.) And the court interpreter |
| 69 INT | /Romanian |
| 71 D | /(.) Good morning |

There is no defence advocate present. The defendant responds to the district judge's "good morning" in similar fashion in English (and 62), and this marks the transition from Move 1 to 2, which would normally be initiated by the court clerk, but since a district judge is presiding, he interpolates with a question about legal representation (72) and a short discussion about this ensues. Interestingly, despite the enhanced presence of the interpreter occasioned by her prominent seating position at the advocates bench, the discussion is at a fast pace, sometimes inaudible, and at a greatly lowered volume, indicating that the speakers do not expect the interpreter to interpret it nor the defendant to understand it. The effect of this faster pace is that the interpreter is left behind and misses seven subsequent turns. At (88) she begins to interpret but is interrupted by the court clerk. He ignores her attempt to catch up and uses a formulaic phrase (underlined):

86 CC /It's right to say that i-i-on pre- on(.)

88 INT /*[Romanian (simultaneous)]*

90 CC /[call over dates] since the first occasion he's not been represented but then I think
the court wouldn't expect that

The interpreter continues with her rendition, and the defendant follows with an instance of back-channelling. Interestingly, Move step 1.5 (the identification of the defendant and confirmation of his personal details) is omitted, the only time I ever encountered this.

Move 2.1: Background summary

At 99 the court clerk starts Move 2.1 by stating the purpose of the hearing:

99 CC /Today sir is er (.) essentially a necessary remand hearing

101 INT /*Romanian [Romanian]*

103 CC/ [It being a twenty eight day date (.) since his first remand in
custody]

105 D / [*back channelling*]

The court clerk interrupts her with his next turn at 103 and the defendant back channels, all at more or less the same time.

There is another instance of back-channelling at 115 which overlaps with the crown prosecutor's next turn:

113 CP /(.). Could you (.) could you just clarify that (.) I have the eighteenth on my file

115 D /*[back channelling]*

117 CP /[it's definitely] the fourth?

What follows is a rapid exchange between court clerk and crown prosecutor, with one overlap, followed by another overlap between the court clerk and the interpreter's rendition, followed by another instance of back-channelling by the defendant.

- 121 CC /No (.) beg your pardon (-) I have two dates I think it's clear actually that the
eighteenth is the date
123 CP /Is it ?
125 CC /[Yes]
127 CP /[Cos that's what we've warned all our witnesses]
129 CC /Twenty second of July is at court six at ten o'clock
131 CP /Right thank you
133 CC /[And somewhere else in error]
135 INT /[Romanian]
137 D /[Da da da] da da da
139 INT /Yes

Move 5: Pronouncement

There does not seem to be any audible or recognisable transition from Move 2.1 to the next Move which is Move 5, and the district judge begins the Move with:

- 142 DJ /Mr er- Cosmescu (.) I now (.) remand you in custody until next week (.)

This is the only PVL sample I recorded where the defendant is asked questions by the district Judge:

- 161 DJ /As far as you know are you ready for your trial ?
163 INT /Romanian
165 D /(-) Da (Romanian)
167 DJ /Good (.) er- and-and your solicitors have been in touch have they ?
169 INT /Romanian
171 D /Romanian (.) [yes yesterday] (English)
173 INT /[Yes yesterday]
175 DJ /Right (.) jolly good (.) OK (.) well then erm (-) until next week (.)
177 INT /Romanian
179 D /Thank you (English)

The defendant's response to the last question overlaps with the interpreter's rendition of it. Unusually the defendant himself ends the hearing with his final "thank you". In this Move there is more interaction between the district judge and the defendant than would normally be the case; this could be explained by the fact that the defendant's legal representative did not attend the hearing resulting in the district judge having to make more checks on the status and readiness of the defendant's case.

5.8.5 Case 5 summary and findings

Firstly, the evidence shows that the enhanced presence of the interpreter does not necessarily contribute to a greater awareness of the court to her professional needs. Court actors do not refrain from overlapping speech, make an effort to slow down their pace of speech nor ensure that they speak at a reasonable volume in non-defendant-focused Moves, despite the fact that the presence of the interpreter is explicitly acknowledged by the court clerk during the virtual tour of the court at (68). Secondly, the presence of PVL and the remoteness of the interpreter does not, as might be imagined, discourage back-channelling by the defendant.

One of the reasons why she is not afforded much accommodation by court actors could be because she is not requested to take the interpreter's oath, and is thus not perceived as a ratified member of the court team. Taking the oath in the witness box means that the interpreter comes to greater prominence. Having credentials checked in public also attests to her credibility as a professional amongst professionals.

The lack of accommodation to the interpreter is evidenced by several instances (during non-defendant-focused Moves) of overlapping speech, as well as rapid and sometimes inaudible exchanges between speakers. Of course, it is not known how well the interpreter was able to cope with this challenge because of lack of access to the Romanian renditions, but, in common with many of the interpreters I recorded, these rapid exchanges are often a source of difficulty amongst untrained interpreters (see reference to this in the analysis of case 1 at 5.4.2.1).

As far as the notion that PVL might discourage defendant back-channelling, this hearing seems to prove the opposite. There are six instances of this in the recording. There are many possible reasons for this: one is the way that the interpreter renders the source utterances which may invite the defendant to make a response; another reason might be a behaviour trait specific to this defendant; yet another is not being represented by an advocate at the hearing. The likeliest explanation is probably a combination of these factors.

5.8.5.1 Interpreter strategy

This interpreter is at the visible end of the continuum using strategy 5 (see chapter 4, 4.1.9). Although there are instances of overlapping speech between the interpreter and other

speakers, my observations convinced me that, in this case at least, the interpreter did not use VS as a deliberate strategy, but rather that her consecutive renditions were interrupted by others. Although the defendant seemed to indicate his understanding through his back-channelling, there were several instances in this hearing where the overlapping turns in the main courtroom must have made it difficult for him to hear. I noted that during these periods the interpreter lowered her voice significantly, possibly so that her own voice did not drown out those of other speakers.

To conclude, an analysis of this hearing shows that, like the previous four hearings, the interpreter's choices are narrowed down to the visible/audible end of the continuum, that the enhanced presence of the interpreter does not necessarily lead to a greater awareness of her professional needs by the court in non-defendant-focused Moves, and lastly that PVL does not necessarily inhibit back-channelling by the defendant.

5.9 Case 6 Romanian (RPVL3 court C)

This PVL hearing is approximately eight and a half minutes in length, although some of this time is taken up with waiting. It takes place in a court in outer London. There is no mention of the offence, but it is safe to assume that it is an either-way offence (can be heard in either court) or indictable only (can be heard only in the Crown Court: see footnote 45, 5.7). In any event, the purpose of the hearing is to re-remand the defendant so that a future bench of magistrates can commit him to the Crown Court. Because of the purely administrative nature of the hearing, several Moves are absent. After the court clerk summarises the status of the case so far at Move 2.2, Moves 3 and 4 are omitted before going straight to Move 5. The defendant is a Romanian male who is on remand at a so-called Young Offenders Institution (a prison for offenders and those on remand between the ages of 18 and 21).

5.9.1 Seating positions and sightlines

The court clerk asks the interpreter to sit on the front bench with the advocates. Thus the interpreter has an enhanced presence compared with a dock interpreter. The PVL screens are on either side of the court, one to the magistrate's left, and one to their right.

5.9.2 Turn profile

| Court actor | Number of turns | On/off stage ratio |
|-------------|-----------------|--------------------|
| INT | 22 | 22/0 |
| M | 14 | 14/0 |
| CC | 13 | 13/0 |
| D | 6 | 5/0 |
| DA | 4 | 4/0 |
| CP | 0 | - |

Fig. 42: Turn profile of RPVL3

There is a discrepancy between the number of interpreter turns (22) and the total turns of the other court actors (37).

5.9.3 Move Analysis of case 6

Move 1.1: Announcement of case

I started to record a few minutes before the hearing began (there was a delay in establishing contact). Although the defendant appears on the screen, the court is not ready to deal with him. The usher acknowledges the defendant's presence by using the interpreter to reassure him:

33 U /Right OK tell the gentleman we're not discussing his case we're just getting
 34 ourselves sorted out and we're very sorry for the delay
 36 INT /*Romanian*
 38 D /*Romanian*
 40 INT /No problem

Move 1.2, 1.3: Affirmation and sight translation of affirmation

The interpreter chooses to affirm rather than take the oath. He does not go to the witness box to do this, but stays at his position with the advocates on the front bench. The court clerk invites the interpreter to "explain the oath" (81) and he does so, but very hesitantly, suggesting that he is indeed explaining it rather than sight translating it. The defendant back channels at 85:

81 CC /Will you explain to him the oath you've just taken (.)
 83 INT /Yes (*English*) (er-affirmation in *Romanian*)
 85 D /*back-channelling*
 87 INT /*Romanian*

Move 1.4: Virtual tour

The court clerk does not conduct a virtual tour of the courtroom.

Move 1.5: Confirmation of defendant's details

The court clerk addresses the interpreter rather than the defendant, as can be seen below. His “thank you” marks the transition point from Move 1.3 to 1.5 :

89 CC /Thank you (.) could he confirm to the court his full name (.) and date of birth please (.)

A rather confusing interchange follows, since the interpreter renders the date of birth into English, but omits the defendant's name, which can be clearly heard in the defendant's response. At this point the magistrate intervenes to check the name, but is interrupted by the court clerk who thinks the year of his birth is incorrect, giving it as “nineteen seventy” (twenty years prior to the date given). The interpreter takes it upon himself to check the year of birth again:

104 INT /Born (.) third of the fourth (.) nineteen ninety
 106 CC /(-) Thank you very much
 108 M /Nineteen ninety ?
 110 INT /(*inaudible*)
 112 M /Can I just check his name please
 114 CC /Nineteen seventy
 116 M /Oh nineteen seventy
 118 INT /*Romanian*
 120 D /*Romanian*
 122 INT /Ninety
 124 M /He does look young (.) and the name (.) is it ?

All this is significant as the defendant is on remand in a Youth Offenders Institution which is only for offenders and remanded defendants between the ages of 18 and 21. So far there have been no instances of overlapping speech.

Move 2.1 Background summary

In this Move step there is an example of overlapping speech which occurs as the court clerk forgets to accommodate the interpreter. The interpreter begins his rendition, and the court clerk hears this and stops to allow him to complete his rendition of her previous turn:

132 M /Oh right (.) we've got the wrong date of birth then
 134 CC /Nineteen ninety yeh (---) thank you very much (.) madam the matter is scheduled
 135 for(.) committal on the twentieth of July (.)
 136 CC /[The matter can]
 138 INT /[*Romanian*] *Romanian*
 140 CC /The matter can be remanded directly over to the (.) twentieth of July for committal

The interpreter misses two turns at 143 and 145, largely because it is a rapid administrative exchange between the court clerk and the defence advocate, always a challenging moment for untrained interpreters. The interpreter renders the court clerk's turn which lists the reasons, in formulaic language, why bail was refused by the previous bench, and we do not know whether he includes the previous missed turns in his rendition:

151 CC /And your colleagues (.) have remanded previously (.) for fail to surrender (.) given
152 the serious nature of the offence (.) and likely (.) sentence (.) his lack of community
153 ties (.)

The defence advocate's "no" at 163 is the signal for the magistrate's pronouncement to begin:

161 CC /Is there anything to add ?
163 DA /No

and so we go directly to Move 5.

Move 5: Pronouncement

The magistrate begins by committing the defendant to the Crown Court, but is corrected by the court clerk, as there must be one more appearance by video link in order for that committal to take place. The interpreter misses the exchange between the magistrate and the court clerk, but possibly renders them both together after the magistrate's next turn:

172 M /Ah (.) right (.) OK (.) well (.) we're adjourning this for a committal (.) on the third of 173
August (-) we'd like to see you back on this video link on the third (.) of August

The magistrate seems to be acknowledging the presence of the interpreter at 178 with her "thank you" after a particularly long rendition from the interpreter, or she may be simply indicating a Move change:

172 M /Ah (.) right (.) OK (.) well (.) we're adjourning this for a committal (.) on the twelfth
173 of August (-) we'd like to see you back on this video link on the twelfth (.) of August
176 INT /*Romanian*
178 M /Thank you in the meantime you'll be remanded in custody (.)

The magistrate ends the Move and the hearing:

186 M /Do you understand ?
188 INT /*Romanian*
190 D /*Romanian (almost inaudible)*
192 INT /Yes
194 M /Ok thank you very much
196 INT /*Romanian*

5.9.4 Case 6 summary and findings

This is a very short hearing lasting no longer than a few minutes, since most of the time is taken up with delays of one sort or another. The non-defendant-focused Moves contain only short administrative exchanges, admittedly with some formulaic language that might present difficulties for the interpreter. When the court clerk summarises the list of reasons why bail is refused on the previous occasion, she does so knowing that the other court actors will understand exactly what she means (see 151-153) and may not expect the interpreter to either understand or interpret these turns.

Court actors seem to be particularly prone to forget the interpreter when there are sudden and rapid changes of addressee; for them the instinctive need to respond to a question is stronger than their awareness of the need to accommodate the interpreter.

5.9.4.1 Interpreter strategy

The interpreter uses CFV (strategy number 5) throughout the hearing and can be heard clearly at all times. He has an enhanced presence as a ratified member of the court team and because of his prominent seating position, but this does not prevent the court clerk from using formulaic language during non-defendant-focused Moves and especially when listing the reasons for refusal of bail on a previous occasion. The interpreter sounds somewhat hesitant in his renditions but does not intervene at any point to ask for clarification or repetition and does not have any note-making materials to hand, perhaps a sign of minimal training.

There is one example of defendant back channelling.

5.10 Case 7 Latvian (LPVL1 court A)

This hearing lasts about fourteen minutes, but some of this is taken up with waiting. The hearing is particularly interesting as it is the only one in my sample of PVL hearings where two co-defendants appear at the same prison. They are charged with the illegal importation by ingestion of one kilogram of cocaine between them. They are presently being held at a nearby

Young Offenders Institution⁴⁷. Moves 1, 2, 3 and 5 are mostly complete (Move 4 is omitted). This means that there is a skeleton outline of the case against the defendants in the circumstances surrounding the offence narrated by the crown prosecutor in his representations against bail at Move 3.

5.10.1 Positions and sightlines

The two young defendants appear side by side on the screen, but the face of the one on the right is completely obscured. This is not acted upon until the court clerk apologises (line 54) and the magistrate comments on it. The court clerk then moves the PIP from the upper right hand to the lower right hand quadrant and this remedies the situation. Because there are two defendants sitting side by side, they have to sit further away from the camera than if there were only one. This means that their facial features cannot be seen in as much detail. Their gaze is averted downwards throughout the hearing. The interpreter is directed by the usher to sit next to the defence advocate.

5.10.2 Turn profile

| Court actors | Number of turns | On/off stage ratio |
|--------------|-----------------|--------------------|
| INT | 57 | 57/0 |
| CC | 22 | 22/0 |
| CP | 21 | 21/0 |
| DA 1 | 7 | 7/0 |
| DA 2 | 6 | 6/0 |
| D 1 | 4 | 4/0 |
| D 2 | 5 | 5/0 |

Fig. 43: Turn profile of case LPVL1

It can be seen from the above table that the interpreter's total number of turns (57) roughly approximates to the total number of turns of all the other court actors (65). The small difference may be attributed to some missed turns by the interpreter.

5.10.3 Move Analysis of case 7

Move 1.1, 1.2, 1.3: Announcement of case, oath and sight translation of oath

⁴⁷ A custodial establishment where all defendants (and offenders) between the ages of eighteen and twenty one are detained.

This particular usher plays a prominent part in contacting the prisons, calling the cases and directing the interpreters where to sit. The court clerk appears to forget that this is an interpreted case and speaks directly to both defendants, firstly addressing each defendant rather than the interpreter. There is some overlapping speech as the interpreter starts her rendition of the court clerk's turn just as the court clerk notices the one defendant's image which is obscured by the PIP. Her "oh sorry" may be for two reasons. Firstly she realises that one of the defendants cannot be seen properly, and secondly that she has started the case without swearing in the interpreter:

- 50 CC /Mister Zemlinskis (.) can you give the court your full name please
 52 INT /*Latvian* [.....]
 54 CC /[Oh sorry](*CC realises that one of the co-defendants cannot be seen*)
 57 D /*Latvian*
 59 M /We can't see (.) and (.) she needs to be sworn in

However, the interpreter does not render the defendant's response at 57, nor any of the subsequent three turns. The court clerk has to be reminded by the magistrate to swear in the interpreter at 59. The interpreter is not asked to stand in the witness box to take the oath but is sworn in at her seat by the defence advocate. When the interpreter is asked to "explain" the oath to the defendants she does so very hesitantly.

Move 1.4: Virtual tour

The court clerk omits the virtual tour of the courtroom.

Move 1.5: Confirmation of defendant's details

The court clerk reverts to her normal practice in interpreted cases and addresses the interpreter:

- 80 CC/Would you ask both defendants to confirm (.) to the court (.) their full names (.) and
 dates of birth please (.)

She does not specify which co-defendant should be addressed first, so there is some hesitation on the part of the defendants as to which of them should respond first. There is some confusion as the interpreter begins to render each of the defendants' dates of birth but then asks follow-up questions of each defendant to check she has the right information:

80 CC /Would you ask both defendants to confirm (.) to the court (.) their full names (.) and
 81 dates of birth please (.)
 83 INT /Latvian
 85 D /Latvian
 87 INT /Nineteenth er of nineteenth er (Latvian?)
 89 D /Latvian
 91 INT /Ninth-ninth of February nineteen ninety three
 93 CC /And his name
 95 INT /Name's Mihalje Zemlinskis
 97 INT /Latvian
 99 D /Latvian
 101 INT /Igor's Valdemars
 103 D /Latvian
 105 INT /Third of December
 107 D /Latvian
 109 INT /Latvian
 111 D /Latvian
 113 INT /Nineteen ninety two

Thus it takes seventeen turns to elicit information concerning their names and dates of birth. This could be because she cannot hear the defendants properly, or because she has no note-taking materials to hand to aid her memory.

Move 2.1: Background summary

The court clerk addresses the two defence advocates to check which clients they represent, and the court clerk's "thank you" at line 123 is the signal for the transition to Move 2.1:

115 CC /(-) Thank you very much (.) sorry mister Patel you represent mister-
 117 DA1 /Mihalje Zemlinskis
 119 CC /(-) Thank you very much (.) and you represent mister (.) Valdemars
 121 DA2/ I do yes
 123 CC /Thank you (-) madam there's a target committal date of the twenty first of
 124 September (.)

These four turns are not rendered by the interpreter. The court clerk then summarises the stage the case has reached, addressing the magistrates. The length of the speakers' turns here indicates that their primary addressees are each other (court clerk, defence advocate 1 and defence advocate 2), and that they do not design their speech delivery for the interpreter. They may not be expecting the interpreter to render their turns because of the purely administrative nature of the content, although defence advocate 2 appears to acknowledge the presence of the interpreter who, by implication, is expected to "explain" the charge replacement to the defendants:

150 DA2/I'm happy for it to replace but if it can just be explained to erm- the defendants (.)
 that it's simply (.) joining the two of them together in a single charge

Later on in Move 2.1, administrative exchanges between court actors using formulaic language are obviously problematic for the interpreter; she has to wait for the crown prosecutor to finish the court clerk's sentence at 184 to make the unit semantically complete. Without access to the Latvian language, it is not possible to know whether or not the interpreter combines several prior turns together in her rendition at 192:

| | | |
|-----|-----|--|
| 175 | CC | /(--))Thank you madam (.) madam (.) formally for the sake of the record I know (.) |
| 176 | | that (.) the court has said (.) it's e-effectively (.) the same (.) indications on mode of |
| 177 | | trial so there's (.) no indication (.) for-of plea (.) |
| 178 | INT | /Latvian |
| 180 | CC | /And the Crown representations would be (--) |
| 182 | CP | /Mode of trial |
| 184 | CC | /Mode of trial |
| 186 | CP | /Indeed (.) er the representations on mode of trial would be (.) exactly the same (.) |
| 187 | | the-the nature and seriousness of this and the (.) likely sentencing (.) that is likely to |
| 189 | | be beyond the er (.) realms of |
| 190 | | [that with the Ms] |
| 192 | INT | [Latvian] |

Move 3: Crown prosecutor submission

The administrative details now completed, the crown prosecutor signals the transition to Move 3, although the court clerk is assuming, somewhat prematurely perhaps, that the defendants will remain in custody before actually hearing the details of the charges:

| | | |
|-----|----|--|
| 229 | CP | /Thank you (.) ma'am (.) could I (.) set out the er Crown representations (.) as to bail |
| 230 | | er just (.) very (.) briefly (.) the matter (.) concerns (.) er (.) the importation of (.) |
| 231 | | approximately (.) one kilogram (.) of cocaine (.) <u>between</u> the two defendants (.) |

He speaks rather haltingly in a low voice, and it is rather difficult to know whether this is his normal mode of delivery or whether he is trying to accommodate the interpreter by pausing frequently. In his subsequent turns he delivers more or less semantically complete units of meaning as he proceeds with the crime narrative. There is one instance of overlapping speech, caused by the crown prosecutor pausing, then finishing his turn rather unexpectedly while the interpreter is rendering it:

| | | |
|-----|-----|--|
| 288 | CP | /Are (.) due to the nature and seriousness (.) [of the matter] |
| 290 | INT | [Latvian] |

The crown prosecutor's turn below signals the transition to Move 4, and the other court actors know this (the magistrate follows the crown prosecutor's turn by thanking him). The issue of community ties tends to be the final element in any representations on the matter of bail:

| | | |
|-----|----|--|
| 300 | CP | /And the <u>lack</u> of community ties in the UK (.) |
|-----|----|--|

302 INT /*Latvian*
 304 M /(.). Thank you very much

Move 4 : Defence submissions

Neither of the defence advocates wants to make any representations as to bail.

Move 5: Pronouncement

The magistrate's turn at 304 is the signal for her to take the floor:

304 M /(.). Thank you very much

The magistrate proceeds to formally adjourn the hearing until the next appearance on video link, first asking the defendants if they have understood everything:

312 M /Right erm- mister (.) Zemlinskis and erm (.) Valdemars (.) did you both hear (.) and
 313 understand everything that was being said ?
 315 INT /*Latvian*
 317 Ds (*Inaudible reply*)

Ironically the defendants' responses are inaudible; the interpreter does not render them, and the magistrate does not wait for her to do so before moving on. The brief pronouncement made by the magistrate consists of short, semantically complete units, all of which are rendered in CFV by the interpreter.

5.10.4 Case 7 summary and findings

There is evidence from the recording to show that, on the whole, court actors *do* refrain from overlapping speech in this PVL court. There are only two instances: the first occurs because the court clerk realises that the defendant's face cannot be seen properly, and the second because the interpreter thought a speaker had finished his turn when he had not. The interpreter uses CFV (strategy 5, see chapter 4, 4.1.9) throughout the hearing, and this affords her (together with her seating position next to the defence advocates and the fact that she is sworn in specifically at the request of the magistrate) an enhanced presence in the courtroom. All the court actors are audible, including the interpreter. The court clerk is the least interpreter-aware of all the speakers (she has to be reminded by the magistrate to swear in the interpreter), and the defence advocate's exchange with the court clerk at Move 2.2 shows a temporary lack of interpreter awareness on his part. There are no instances of back-channelling by defendants in this hearing. The interpreter is not carrying a NRPSI registration

ID⁴⁸, and there seems to be some doubt as to her registration status (see the usher's comments at lines 7-13).

5.11 Case 8 Latvian (LPVL2 court A)

This hearing is some seven minutes in length. It takes place in the same court and with the same court clerk and usher as the previous Latvian hearing but on a different date and with a bench of magistrates presiding. The purpose of the hearing is to commit the defendant to the Crown Court, since the charge has, on a earlier hearing, has been deemed too serious to be finalised in the Magistrates Court. The matter of bail is also reviewed. This was the only court where I was asked to stand up and make a request directly to the magistrates to audio-record in open court.

5.11.1 Positions and sightlines

The interpreter is asked by the usher to sit next to the defence advocate at the front bench. The Latvian defendant is sitting at some distance from the camera, and so the PIP does not obscure his face. Because he is further away from the camera, his facial features are not easily distinguishable. He appears on the screen with an averted gaze, looking downwards. The interpreter does not maintain much eye contact with the defendant.

5.11.2 Turn profile

| Court actors | Number of turns | On/off ratio | stage |
|--------------|-----------------|--------------|-------|
| INT | 34 | 34/0 | |
| CC | 11 | 11/0 | |
| CP | 11 | 11/0 | |
| M | 11 | 10/1 | |
| D | 3 | 3/0 | |
| DA | 1 | 0/1 | |

Fig. 44: Turn profile of case LPVL2

The total number of interpreter turns (34) approximates roughly to the total number of turns by other court actors (36).

⁴⁸ Up until February 1st 2012, all interpreters used in the courts are supposed to wear their ID badge and be members of the National Register of Public Service Interpreters formerly administered by the Institute of Linguists and now administered by interpreters themselves. Details of the register can be found at <http://www.nrpsi.co.uk>

5.11.3 Move Analysis of case 8

Move 1.1 Announcement of case

The usher calls the case, announces the case to the court, and initiates contact with the prison.

Moves 1.2, 1.3: Oath, sight translation of oath

The usher swears in the interpreter, who takes it upon herself to sight translate the interpreter's oath to the defendant into Latvian.

Move 1.4: Virtual tour

There is no virtual tour of the court.

Move 1.5: Confirmation of defendant's details

The court clerk addresses the interpreter directly rather than the defendant:

43 CC /Could you ask him to confirm to the court please his full name
44 [and date of birth]
46 INT /[Latvian]
48 INT /[(---)Latvian]

There is some overlapping speech as the interpreter starts her rendition at 46, believing that the court clerk has finished speaking, and again at 48. Here the defendant has not responded, and so the interpreter repeats her question at the very moment that the defendant chooses to respond:

43 CC /could you ask him to confirm to the court please his full name (.)
44 [and date of birth]
46 INT /[Latvian]
48 INT /[(---)Latvian]
50 D [Bendiks] Namnieks

The defendant does not immediately respond to the interpreter's rendition of the court clerk's request for the date of birth, again prompting the interpreter to ask a follow-up question in order to gain the information she needs:

54 CC/and his date of birth
56 INT /[Latvian]
58 D /Latvian(-)

60 INT /(*---*)*Latvian*
 62 D /*Latvian*
 64 INT /my date of birth *ith (sic)* fourteenth of June nineteen ninety (-)
 66 CC /thank you very much (.)

Move 2.1: Background summary

The court clerk's turn at 66 is the signal for the transition to Move 2 where she summarises the case so far. There is some overlapping speech where the crown prosecutor intervenes with a formulaic phrase (73) to inform the court clerk what type of committal is involved:

70 CC/sir the matter is scheduled for a committal to take place today I understand that the 71 [parties]
 73 CP \[section six two]
 75 CC / are ready for committal (.)
 77 CC /if you'd like to hear very-]
 79 INT /*Latvian*]

The interpreter, possibly anxious that the court clerk is about to launch into an extended turn at 77, and conscious of the fact that she has not rendered the three previous turns, interrupts the court clerk at 79, prompting her to stop and allow her to complete her rendition.

Move 2.2: Invitation to crown prosecutor to begin submission

The court clerk's turn at 81 is the transition point for Move 3:

81 CC /if you'd like to hear briefly the matter scheduled for committal whilst (.) I check the
 82 committal bundle (--)

Move 3: Crown prosecutor submission

The crown prosecutor begins her submission at 86 with an incomplete unit of meaning. The interpreter hesitates at 88, as if she were waiting for the crown prosecutor to complete an unfinished turn:

86 CP /"sir (.) this case concerns the importation" (-)
 88 INT /(.) *Latvian*

The crown prosecutor continues to fragment her submission into short turns. She sounds very much as though she is reading a text out loud, making the possibility of prediction more challenging for an untrained interpreter:

90 CP /of two point four four kilograms (.) of total powder(.)
 92 INT /(.) *Latvian*
 94 CP /with (.) one point zero seven kilograms (.)
 96 INT /(.) *Latvian*
 98 CP /of diamorphine at a hundred per cent(.)
 100 INT /*Latvian*
 102 CP /with an estimated street value(-)
 104 INT /*Latvian*

106 CP /of ninety two thousand seven hundred and fifty one (.) pounds. (.)
 108 INT /Latvian
 110 CP /the crown are in a position to commit the case today (.)
 112 INT /Latvian
 114 CP /and have handed up the original witness statements(.)
 116 INT /Latvian
 118 CP /we also make the application to retain the original exhibits until trial (.
 120 INT /Latvian
 122 CP /and produce them at trial (.)

The magistrate's request for a summary of the bail position at 135 marks the approach of the transition to Move 4:

128 CC /sir the- your committal date will be the twenty fifth of May Snaresbrook Crown
 129 Court at ten am (.)
 131 INT /Latvian [Latvian]
 133 CC /the c-]
 135 M [the previous bail position please] (.)
 137 INT /Latvian
 139 CC /sir the committal bundle is in order and the there's a remand in custody (.) failure to
 141 surrender (.) serious nature of the offence (.) lack of community ties (-) and the strength of
 evidence

It appears that the court clerk wants to indicate to the magistrates the details of the committal date *before* the previous bail position has been explained.

Move 4: Defence representations

There are two instances of overlapping speech at Move 4, where the interpreter is temporarily forgotten in a rapid two party exchange between the magistrate and the defence advocate. The first two turns overlap, followed by the second two turns, which also overlap.

143 INT /[Latvian]
 145 M \[no representations ?]
 147 DA \[no sir]
 149 INT /[Latvian]

As there are no representations from the defence advocate in the matter of bail, we go directly to Move 5.

Move 5: Pronouncement

There are two instances of overlapping speech, both attributable to the magistrate, as he makes his pronouncement. In both cases he interrupts the interpreter before she has completed her rendition. He speaks rapidly throughout the pronouncement. The first example shows him interrupting the interpreter's rendition at 159:

151 M /Mr Namnieks (.)
 153 INT /*Latvian*
 155 M /we commit you to stand your trial at the Crown Court
 157 INT /[*Latvian*]
 159 M /[sitting] at Snaresbrook
 161 INT /*Latvian*

In the second example, he interrupts the interpreter's rendition at 179:

175 M /you will remain in custody (.)
 177 INT /[*Latvian*]
 179 M /[for the same] reasons you were given on the previous
 180 occasion
 182 INT /*Latvian*

Interruptions aside, he fragments his pronouncement into short and mostly semantically complete turns. He does not formally dismiss the defendant or thank the interpreter at the end of the hearing.

5.11.4 Case 8 summary and findings

This interpreter has an enhanced presence in the court due to the fact that she is introduced by the usher, is appropriately sworn in, sight translates the oath to the defendant without being prompted, sits beside the defence advocate on the front bench, uses CFV (strategy 5), speaks in a very clear, calm and measured voice and has an authoritative presence all the way through the hearing. She takes it upon herself to interrupt the court clerk at line 79 as she participates in an administrative exchange, silencing the court clerk by doing so. She does not have any note-making materials to hand.

There is little evidence to suggest that court actors refrain from overlapping speech, make an effort to slow down their pace of speech and ensure that they speak at a reasonable volume *because* of the enhanced presence of the interpreter in this case.

There are instances of overlapping speech that appear to be the result of speakers not allowing the interpreter to complete a rendition. There are some rapid exchanges with lowered volume between court clerk and defence advocate in the non-defendant-focused Moves where the interpreter seems to be temporarily forgotten. The crown prosecutor adopts the usual practice of fragmenting her submission without attempting to make her turns into complete units of meaning. Where the Moves are defendant-focused the court seems to be aware of the interpreter and accommodates appropriately to her, although the magistrate does interrupt the

interpreter during the pronouncement, and does not thank her after the hearing is finished. It seems, then that the court's open acknowledgment of the interpreter does not mean that she is afforded greater consideration.

5.12 Case 9 Spanish (SPVL court A)

The hearing lasts for approximately seven minutes from the time that the case is announced. In common with nearly all the other recordings in my sample from this outer London court, the defendant is charged with the illegal importation of drugs (cocaine), although the details of the actual charge are not discussed. The interpreter in this recording is the only one who is a native English speaker. The purpose of the hearing is to commit the defendant to the Crown Court, as it has been deemed too serious to be tried in the Magistrates Court.

5.12.1 Positions and sightlines

The defendant is standing up behind the table in the video room at the prison, and the usher has to invite the interpreter to ask the defendant to sit down, as he cannot be seen. The interpreter is visible to the defendant on the screen. After he is asked to sit down, he leans forward with his elbows on the table in front of him. The PIP does not obstruct his face however, although from an observer's point of view his facial features are not clearly visible. The interpreter is asked to sit by the defence advocate at the front bench by the usher.

5.12.2 Turn profile

| Court actors | Number of turns | On/off stage ratio |
|--------------|-----------------|--------------------|
| INT | 44 | 44/0 |
| Ms | 11 | 11/0 |
| CC | 10 | 9/1 |
| CP | 10 | 10/0 |
| D | 3 | 3/0 |
| DA | 3 | 0/1 |

Fig. 45 Turn profile of case SPVL

There appear to be two off-stage turns where the defence advocate and the court clerk have a brief whispered exchange at lines 110-112, obviously not intended to be heard by anyone else

in the courtroom. The number of interpreter's turns (44) approximates roughly to the total turns of other court actors (37).

5.12.3 Move Analysis of case 9

Move 1.1, 1.2, 1.3, 1.4: announcement, oath, sight translation of oath and virtual tour

Before the case starts, the usher notices that the defendant is standing up rather than seated, and thus cannot be seen. He asks the interpreter to tell him to sit down, and does so, but adds the two given names of the defendant.

9 U \tell the gentleman to take a seat sir (----)
11 INT /(Spanish)⁴⁹

The usher swears in the interpreter at his seat next to the advocate rather than from the witness box. The interpreter reads out the oath very fast and rather mechanically with only one pause. Again without pausing, he appends all three of his given names as well as his surname. By doing this he creates the impression that he is experienced, competent and part of the court team and creates for himself an enhanced presence. The usher prompts him to repeat the oath in Spanish for the defendant. There is no virtual tour (Move 1.4) of the court for the defendant by the court clerk.

Move 1.5: Confirmation of defendant's details

The court clerk now addresses the interpreter rather than the defendant, and her "thank you" is the signal for the transition to the next Move step:

24 CC /thank you could you ask him to confirm to the court please his full name and date of
25 birth

The interpreter's rendition retains the formality of the original, and he includes the politeness marker in the court clerk's original turn. The court clerk's "thank you" marks the end of Move 1 and the beginning of 2.1 as she announces the status of the case so far.

⁴⁹ The interpreter rendered line 9 as "*siéntase José Pedro*" in Spanish. The addition of the defendant's given names is testament to the fact that he has already interpreted for the defendant in the pre-court booth with his defence advocate, and this informal address of the defendant by the interpreter shows that he has established a prior relationship with him.

Move 2.1 Background summary

In the excerpt below the court clerk pauses at the end of line 39, allowing the interpreter to begin his rendition during which he hesitates. The court clerk presumably thinks he has finished his turn and starts her next turn without realising that he has not yet completed his rendition. At 45 the interpreter combines both his own unfinished rendition and the rendition of the court clerk's later turn at 43.

39 CC /sir the matter is scheduled for committal (.)
 41 INT /Spanish.....(-)
 43 CC /to Isleworth Crown Court
 45 INT /Spanish

Move 2.2 Invitation to prosecutor to begin submission

There are two instances of overlapping speech. Firstly the court clerk asks both prosecution and defence advocates if their paperwork is complete, and their responses overlap:

47 CC /((---) can I just confirm whether (.) the (.) committal bundle is ready for today
 49 CP /[Er yes madam]
 50 DA /[done]
 51 INT /Spanish
 53 CC /((---) so perhaps whilst I er (.) consider the committal bundle (.) I can ask the court
 54 be told (.) the matter that's for committal (.)
 56 CP /[yes madam]
 58 INT /[Spanish]

Secondly the crown prosecutor replies to the court clerk's question (56) at the same time as the interpreter begins his rendition of her question (58). The court clerk then invites the crown prosecutor to make her submission.

Move 3 : Crown prosecutor submission

The crown prosecutor fragments her submission into both semantically complete and incomplete units. At 96, the magistrate questions the street level values given by the crown prosecutor:

96 M \it won't affect those here today....but can I just query that street value (.)
 98 CC /yes
 99 M /because we commonly hear forty thousand pounds a kilo in this court (.)day in day
 100 out and it appears to be (.) a hundred thousand a kilo for the adulterated version (--)

- 103 INT /(*---*) *Spanish*⁵⁰
 105 CP /could I (.) could I (.) just take (-) some instructions thank you
 107 INT /*Spanish*
 109 DA \is that is that the committal date (.) the twenty-twenty fourth of June
 111 CC \(*inaudible*) (-----)
 113 CP /sir erm (.) I understand (.) that (.) generally (.) erm (.) when cases are first
 114 heard (.)
 116 INT /*Spanish*
 118 CP /it's an estimate in relation to the (.) purity (.)

The magistrate starts his intervention by speaking very quietly, as if he were not expecting the interpreter to render his turns. The court clerk and defence advocate respond in like manner, but the crown prosecutor continues using her former declamatory style, fragmenting her submission into short turns, and pausing at the end of each of her turns in order to accommodate the interpreter. The interpreter does not render the four following turns; the speed of the exchanges and the lowered volume of the speakers means that the presence of the interpreter is temporarily forgotten:

- 141 DA \(--)was (.) it happened last time it happened last time it was fifty two per cent sir so
 142 I'm guessing (.) that puts it sort of in the top quartile ? (-)
 144 M /it's (.) it doesn't matter today (*inaudible*)
 146 M /twenty fourth of June then
 148 CC/twenty fourth of June ten am (.) sir er I will remind the parties of the warning (.)
 149 regarding statements being used instead of live evidence

The explanation for this omission is probably that the interpreter considers that his summary (as in footnote 7 below) is sufficient to cover the uninterpreted turns.

Move 5: Pronouncement

The interpreter seems to recognise that the magistrate's pronouncement has begun. The magistrate cuts into the end of each of the interpreter's renditions, until at 172 he overlaps with the end of the interpreter's rendition of his previous turn. When the magistrate lowers his voice and, speaking rapidly, asks the crown prosecutor to discuss the bail position at line 176, the interpreter fails to render his turn.

- 167 M /the (.) prosecution will retain the exhibits in the case
 169 INT /*[Spanish]*
 171 M /*[upon their undertaking]* to produce them at your trial
 173 INT /*Spanish*
 175 M /could we hear the formal bail position
 177 CP /yes sir the crown are objecting to bail on one ground (.)

⁵⁰ The interpreter is heard to say in Spanish to the defendant: "they're talking about the estimated value of the drugs".

The following exchange shows more examples of overlapping speech; here the interpreter is interrupted as he attempts to render the magistrate's turn at 209, and then interrupted again as he attempts to render the court clerk's turn.

206 DA /unless I can assist any further (.)
 208 M [(*inaudible*) on another occasion]
 210 INT /[*Spanish*]
 212 CC /[yes I understand so sir]
 214 INT /[*Spanish*]

5.12.4 Case 9 summary and findings

This interpreter uses CFV (strategy 5) all the way through the hearing. Despite the interpreter's enhanced presence due to his prominent seating position, his confident manner, his ratification as a member of the court team and his sight translation of the oath to the defendant, court actors do overlap with the interpreter's renditions and indulge in rapid exchanges which effectively leave the interpreter out. They evidently do not expect him to render these exchanges. The interpreter chooses not to intervene at any time to ask for repetition or clarification of any turns he has missed, nor does he have any note-making materials to hand. Court actors do seem to make an effort to speak clearly and pause for the interpreter; where this good intention breaks down is during rapid information exchanges between court actors, usually about administrative matters. When one court actor (for example, the magistrate) lowers his volume as a preliminary to a rapid informational exchange, other court actors appear to follow suit, lowering their volume and increasing their speaking pace as a consequence.

The defendant coughs twice during the hearing, but there are no other instances of audible verbal back-channelling.

5.13 Case 10 Russian (RPVL) court A

This hearing is approximately six minutes long. The male Russian-speaking defendant is charged with illegal drugs importation and the purpose of the hearing is to commit him to the Crown Court.

5.13.1 Positions and sightlines

This hearing takes place in the same courtroom as SPVL, and so all positions and sightlines are the same. The interpreter is asked to sit by the defence advocate on the front bench, apparently standard practice in this court.

5.13.2 Turn profile of the hearing

| Court actor | Number of turns | On-off/stage ratio |
|-------------|-----------------|--------------------|
| INT | 52 | 51/1 |
| CP | 26 | 26/0 |
| CC | 11 | 11/0 |
| M | 11 | 11/0 |
| D | 6 | 6/0 |
| DA | 0 | 0 |

Fig. 46 Turn profile of case RPVL

As can be seen from the above table, nearly all of the turns are on-stage and meant to be heard in open court. Although the defence advocate is present he does not speak at all during the hearing. The number of interpreter turns (51) roughly approximates to the total number of other turns (54).

5.13.3 Move Analysis of case 10

Move 1.1, 1.2, 1.3, 1.4, 1.5; announcement of case, oath, sight translation, virtual court tour and confirmation of defendant's details

The usher has already made contact with the prison before the recording has begun. The interpreter takes the oath in a confident manner, and, unprompted, translates the oath into Russian for the defendant. He appears to ascertain that the defendant has understood his translation, which the defendant confirms. The court clerk does not provide a virtual tour of the courtroom. The court clerk addresses the interpreter rather than the defendant, in order to gain information about the defendant. She has done this consistently in all the other recordings in which she figures.

22 CC/Could you ask him to confirm to the court please his full name (.) and
23 (.) date of birth

As is common in many languages, the defendant gives his surname first, and the interpreter reverses this order, giving his first name first, the usual way in which people in the UK state their full names. Believing the defendant has finished giving his date of birth, the interpreter cuts into his turn. The defendant then finishes giving his date of birth and the interpreter completes his own turn.

27 D /Alexandrov Vladimir (.) er-
 29 INT /Vladimir Alexandrov
 31 D /*Russian*
 33 INT /Twe-
 35 D /*Russian*
 37 INT /Twenty seventh of February (.) nineteen (.) eighty five

Move 2.1, 2.2: Background summary

This interpreter is alert enough to cope well with the transition from Move 1 (defendant-focused) to Move 2 (non-defendant-focused) and does not miss any turns, although the court clerk has made it easy for him by making her turns short. In fact, he is in such a high state of readiness that the court clerk is not expecting him to begin interpreting, and is only reminded of the interpreter when he cuts in at 53, and her voice dies away as she allows him to continue:

51 CC /I understand the committal [is ready- (.)]
 53 INT /[*Russian*]
 55 CC /I have the committal bundle (.)
 57 INT /*Russian*
 59 CC /If I could have a moment to (.) consider the bundle whilst you hear very briefly the
 60 matter (.) that's been sent up (.)

The interpreter proceeds smoothly, using CFV, through Step 2 of Move 2 where the court clerk invites the crown prosecutor to begin his submission at 60.

Move 3: Crown prosecutor submission

The crown prosecutor fragments his submission into short and often semantically incomplete turns. Here is one example where a long number is split up into two turns, which could be confusing for the defendant (and of course, for the interpreter):

73 CP /These drugs have an estimated street level value (.)
 75 INT /*Russian*
 77 CP /Of (.) two hundred (.) and forty four thousand (.)
 79 INT /*Russian*
 81 CP /Two hundred and nine pounds (.)

83 INT /*Russian*

At 85, the crown prosecutor's next turn, his voice, always low and rather difficult to hear, suddenly becomes even softer. Some of his turns are very short:

- Example 1: 97 CP /On the fourth (.) of July
 Example 2: 121 CP /Officers also noted (.)
 Example 3: 137 CP /On one ground (.)
 Example 4: 145 CP /The reasons for this are (.)

The defence advocate is not making any application for bail and so Move 4 is omitted. The advocate ends his submission in a manner which is typical(165). It is traditional for the chair of the Bench to thank the advocate after the ending of a submission, and this she does, marking the end of Move 3:

- 165 CP /Unless I can be of any further assistance (.)
 167 INT /*Russian*
 169 M /Thank you

Move 5: Pronouncement

There is a possible instance of back-channelling from the defendant at 178, although in truth it is difficult to tell from listening to the audio-recording:

- 173 CC /Madam your plea and directions date is the twenty ninth of September (.) the bundle
 174 (.) is in order
 176 I /*Russian*
 178 D (*Sound from the D*)

The magistrate then asks a question of the court clerk before making her pronouncement (she has forgotten which Crown Court the case is being committed to), and the interpreter, uncertain as to what is happening, is silent for four turns before continuing to interpret. The magistrate proceeds to her pronouncement. She mispronounces the defendant's surname, then corrects herself. She fragments her pronouncement into mostly semantically complete turns. Her final "thank you very much" at 228 is obviously meant as a formal dismissal of the case. She does not acknowledge the interpreter.

5.13.4 Case 10 summary and findings

The interpreter has an enhanced presence due to his prominent seating position next to the defence advocate, his taking of the oath, his translation of the oath into Russian for the benefit of the defendant and his use throughout of CFV (strategy 5). His manner is confident, and he

seems to be alert to the challenges posed by the transition from defendant-focused Moves to non-defendant-focused Moves and vice versa, although he has no note-taking materials to hand. The court contributes positively to the interpreter's task by speaking at a relatively measured pace, by not having any off-stage exchanges and by speaking clearly with only one overlapping turn. Any administrative exchanges seem to be audible and at a pace the interpreter can cope with. On the other hand the court, particularly the crown prosecutor, makes the interpreter's task more challenging by fragmenting his submissions. The effect of this could be to make an untrained interpreter's renditions confusing for the defendant to process.

Although a sound can be heard from the defendant at 178, it is not possible to say whether this is an instance of back channelling or not.

5.14. Discussion of findings

5.14.1 Research question 1: does the court's open acknowledgement of the interpreter lead to greater awareness of her presence and therefore a greater accommodation of her professional needs ?

To return to my four research questions, I will first examine whether there is any evidence to support the view that open acknowledgement of the interpreter by court actors leads to an awareness of her professional role. From the table below it can be seen that, in all but two cases, there is some sort of open acknowledgement of the interpreter. This acknowledgement can take the form of announcing the interpreter's presence, asking for the interpreter's assistance, reminding the interpreter or the court clerk to do something such as swearing the oath or sight translating it, asking the interpreter to adopt a certain seat in court, pointing out the interpreter alongside all the other court actors in the virtual tour of the court and formally thanking the interpreter at the end of the hearing. An important element in this acknowledgement is the swearing-in or affirmation process, conferring ratified status upon the interpreter.

| Case number | Instances | Line numbers in transcript |
|-----------------------|-----------|----------------------------|
| Case 1 Bulgarian BPVL | 4 | 7, 75, 149, 156 |
| Case 2 Polish PPVL | 3 | 9,11,98 |
| Case 3 Igbo IPVL | 3 | 6,45,216 |
| Case 4 Romanian RPVL1 | 3 | 12,25,254 |
| Case 5 Romanian RPVL2 | 3 | 7,11,68 |

| | | | | |
|---------|----------|-------|---|----------|
| Case 6 | Romanian | RPVL3 | 0 | - |
| Case 7 | Latvian | LPVL1 | 3 | 10,31,59 |
| Case 8 | Latvian | LPVL2 | 1 | 10 |
| Case 9 | Spanish | SPVL | 0 | - |
| Case 10 | Russian | RPVL4 | 1 | 6 |

Fig. 47: Instances of open acknowledgement of interpreter by court actors in PVL hearings

Does this acknowledgement, though, lead to any degree of accommodation to the interpreter's professional needs? A court interpreter, whether face-to-face or PVL, needs a good auditory signal and acoustics. Because she is normally expected by the interpreter's professional code to interpret everything that is said in court, court actors need to make a special effort to refrain from overlapping speech and rapid exchanges of "insider" speech. The seating position of the interpreter in PVL courts has an undoubted effect upon her visibility and audibility which, in turn, has advantages for the interpreter as well as for the court. Interpreters can see the faces of court actors as they speak, and it is much easier to understand what people are saying if their facial expressions and lip movements can be clearly observed. Sitting in the well of the court amongst the most prominent court actors can also be seen as providing the interpreter with added status. The virtual tour of the court also provides an ideal opportunity for the court clerk to highlight the presence of the interpreter, but this procedure is more often omitted than practised. In my sample of ten video link cases, only two courts provide this virtual tour, and, strangely enough, during these tours, the court interpreter is named and shown on camera by one court clerk, but ignored by the other, even though she is sitting in full view of the court. Interestingly, it is the magistrates' task to ensure that the court treats defendants fairly and interpreters professionally, but they and other court actors in my sample do not intervene to ensure that defendants exercise their right to an explanation of the court layout. In hearing RPVL2, despite having the advantage of being named in the virtual tour of the court by the court clerk, the interpreter is to all intents and purposes ignored by court actors in the course of the hearing.

Ratification of the interpreter can be an important way of highlighting and acknowledging the presence of the court interpreter, especially if the swearing-in procedure is formally conducted in the full view of the court from the witness box. Ratification in these terms includes the swearing-in process as well as the virtual tour of the court. My observations and audio-recordings have shown that the swearing-in procedure, like the virtual court tour, does not always take place, and although my recordings contain only one instance of the interpreter not being sworn in, I have observed many others. Ratification, though, does not appear of itself to

lead to a greater accommodation to the interpreter's needs, as we see from the fragmentation of submissions, the speech overlaps and the rapid administrative exchanges of formulaic language by court actors.

| Case number | Person ratifying interpreter | Affirmation or oath |
|-----------------------|------------------------------|---------------------|
| Case 1 Bulgarian BPVL | CC | Affirmation |
| Case 2 Polish PPVL | CC | Oath |
| Case 3 Igbo IPVL | CC | Affirmation |
| Case 4 Romanian RPVL1 | Unclear recording | Oath |
| Case 5 Romanian RPVL2 | - | - |
| Case 6 Romanian RPVL3 | CC | Affirmation |
| Case 7 Latvian LPVL1 | CC | Affirmation |
| Case 8 Latvian LPVL2 | U | Oath |
| Case 9 Spanish SPVL | U | Oath |
| Case 10 Russian RPVL | U | Oath |

Fig. 48: Formal ratification of interpreter's presence in court in PVL cases

Court actors *do*, however, try to accommodate the interpreter by modifying their delivery. It is extremely common in both face-to-face and PVL cases for crown prosecutors, defence advocates and magistrates to fragment their speech in the belief that they are accommodating interpreters, when in fact, they might be hindering them by providing incomplete units of information which become incoherent when interpreted. It may also be the case that any carefully constructed rhetorical arguments of advocates, especially defence advocates, are sabotaged by this fragmentation. The fragmentation of submissions becomes particularly problematic in crown prosecutor representations on bail matters. This is because crown prosecutors have to list the reasons why the Crown thinks someone should not be granted bail, and these reasons can be numerous. Lists of reasons why a defendant might fail to surrender to the court are usually preceded by a short phrase such as:

- 165 CP/(.) the reasons for these fears (.) (IPVL)
- 145 CP /"the reasons for this are" (.) (RPVL4)
- 195 CP /this is due to (.) (SPVL)
- 284 CP /the reasons for that fear madam (.) (LPVL1)

followed by the reasons themselves, generally cited formulaically. Occasionally it is the court clerk, rather than the crown prosecutor, who summarises the previously given reasons for refusal of bail, reading them out from a prepared text and making heavy use of ellipsis. Here is an example from RPVL3:

- 147 CC (*addressing the Ms*) /And your colleagues have remanded previously (.)
- 148 failed to surrender (.) given the serious nature of the offence and likely sentence (.)

149 his lack of community ties

Lists are particularly challenging for an untrained interpreter to process, since they are typical of written rather than spoken discourse for three reasons. Firstly references to the Bail Act are often elliptical and difficult for an outsider to understand; secondly the interpreter might have to complete each fragment to link it to the introductory phrase in order to make it more coherent; thirdly the interpreter has to process text which has features typical of written discourse (an introductory phrase followed by a list) and render it in a style more typical of oral discourse (see footnote 43 at 5.4.2 with regard to lexical density and discussion of simultaneous and consecutive modes in chapter 2).

Interpreters can take one of two courses of action to deal with the fragmentation of submissions bearing in mind the problems of cognitive processing for the interpreter on the one hand and the coherence of the renditions for the defendant on the other. They can either ask the speaker to deliver complete units of meaning all in one go, or use ‘long consecutive’ technique if the speech is a relatively long one. This would have the effect of ensuring greater coherence for the defendant and would certainly aid the speaker to keep track of what s/he is saying. By long consecutive I refer to the technique in which the speaker continues for up to ten minutes without pausing while the interpreter takes notes in such a way as to make a full and complete rendition of the speech. Naturally this has implications both for the improvement of the basic training and continuing education of interpreters (bearing in mind that interpreters in the UK do not normally receive much, if any, training in court interpreting), and for the in-service training of all court actors, including crown prosecutors, defence advocates, district judges, magistrates, ushers and court clerks.

5.14.2 Research question 2: does the interpreter’s proximity to the defendant and court actors’ raised volume have an effect upon the number of interpreter interventions ? Does this depend on whether the Move is defendant-focused or non-defendant-focused ?

For the second research question I surmised that during non-defendant-focused Moves the PVL court interpreters might tend to intervene *less* frequently than in face-to-face hearings because there would be fewer audibility problems due to her prominent seating position in the well of the court. I also predicted that during defendant-focused Moves they might have to

intervene *more* frequently than in face-to-face hearings simply because interpreter and defendant are not co-present and the interpreter might not be able to hear the defendant very well. By ‘intervention’ I mean that the interpreter enters into the interaction on her own account to ask for clarification or repetition, rather than simply rendering the turns of others into the foreign language.

At RPVL1, RPVL 3 and LPVL 2 we can see that, as I predicted, interpreters *do* intervene to ask follow-up questions in order to clarify defendants’ dates of birth, addresses or names. (The nature of the interpreter’s interventions at PBVL are really instances of third person interpreting rather than interventions for clarification or repetition.)

| Case number and code | Number of INT interventions | Nature of intervention |
|-----------------------|-----------------------------|------------------------|
| Case 1 Bulgarian BPVL | 4 | Informing the court |
| Case 2 Polish PPVL | 0 | - |
| Case 3 Igbo IPVL | 1 | Informing the court |
| Case 4 Romanian RPVL1 | 1 | Request for repetition |
| Case 5 Romanian RPVL2 | 0 | - |
| Case 6 Romanian RPVL3 | 1 | Request for repetition |
| Case 7 Latvian LPVL1 | 1 | Request for repetition |
| Case 8 Latvian LPVL2 | 1 | Request for repetition |
| Case 9 Spanish SPVL | 0 | - |
| Case 10 Russian RPVL4 | 0 | - |

Fig. 49: Instances of interpreter interventions in PVL cases

As I predicted, interpreters *are* less likely to intervene during Moves which are non-defendant-focused, but rather than this being a result of some feature of PVL, it applies equally to face-to-face cases. Location of the interpreter (inside or outside the dock, remote or co-present) does not seem to be factor in their intervention behaviour; most interpreter interventions, whether in PVL or face-to-face hearings, happen during defendant-focused Moves. This means that on the whole they do not intervene during crown prosecutor or defence advocate submissions or court clerk’s background summaries. This may stem from an untrained interpreter’s desire to please the court rather than the non-English speaking defendant.

5.14.3 Research question 3: is defendant back channelling encouraged by the close proximity of the interpreter to the defendant ? are PVL defendants less likely to back channel ?

For my fourth research question I surmised that there might be less defendant back-channelling in PVL cases where defendants and interpreters are not co-present. I expected that the intimacy of the dock together with the proximity of the interpreter in relation to the defendant in face-to-face cases might encourage back-channelling and that the physical absence of defendants in PVL cases might discourage it. There seems to be no evidence for this, indeed there seems to be *more* back-channelling in my sample of 10 PVL cases than in the 11 face-to-face cases: 16 in the PVL sample and only 13 in the face-to-face. My prison observations (see chapter 7) indicate that defendants frequently back channel in the prison video link suite. It is possible that when I was making my PVL recordings from my location in the courtroom, my audio-recording equipment did not pick this up.

| Case number | | Number of instances | How dealt with | Legally represented or not |
|------------------|-------|---------------------|-------------------------------|----------------------------|
| Case 1 Bulgarian | BPVL | 3 | Ignored | Yes |
| Case 2 Polish | PPVL | 1 | Ignored | Yes |
| Case 3 Igbo | IPVL | 0 | - | Yes |
| Case 4 Romanian | RPVL1 | 2 | Ignored | Yes |
| Case 5 Romanian | RPVL2 | 6 | 1 interpreted, rest ignored | No |
| Case 6 Romanian | RPVL3 | 1 | Ignored | Yes |
| Case 7 Latvian | LPVL1 | 1 | Ignored | Yes |
| Case 8 Latvian | LPVL2 | 0 | - | Yes |
| Case 9 Spanish | SPVL | 0 | - | Yes |
| Case 10 Russian | RPVL4 | 2 | 1 interpreted, second ignored | Yes |

Fig. 50: Instances of back-channelling in PVL cases

5.14.4 Research question 4: do face to face interpreters have more interpreting strategies available to them ? do PVL interpreters have fewer strategies available to them ?

For PVL cases I expected that interpreters would have no choice but to use short consecutive mode at full volume because of the open shared microphones. This research question turned out to be confirmed. As expected, PVL court interpreters have to speak at full volume in order to be heard at all times by the remote defendant, and it is the responsibility of the court to ensure that court actors do not overlap their speech if the defendant is to hear what is happening in the court.

| Case numbers and languages | Code number | Main interpreting strategies used (see fig.10 at 4.1.9) |
|----------------------------|-------------|---|
| Case 1 Bulgarian | BPVL | 5 |
| Case 2 Polish | PPVL | 5 |

| | | |
|-----------------|-------|---|
| Case 3 Igbo | IPVL | 5 |
| Case 4 Romanian | RPVL1 | 5 |
| Case 5 Romanian | RPVL2 | 5 |
| Case 6 Romanian | RPVL3 | 5 |
| Case 7 Latvian | LPVL1 | 5 |
| Case 8 Latvian | LPVL2 | 5 |
| Case 9 Spanish | SPVL | 5 |
| Case 10 Russian | RPVL4 | 5 |

Fig. 51 Table of hearings and interpreter strategies

The effect of using CFV all the way through a hearing, whether Moves are defendant-focused or non-defendant-focused, is not only to render the interpreter more visible and audible, but also to render her performance more transparent. Other court actors can observe the degree of hesitation and multiple missed turns for themselves, phenomena which would normally be inaudible outside the dock. It means also that non-defendant-focused Moves, normally rendered in WSI, are now rendered in CFV.

5.14.4.1 The communicative relationship between defendant and interpreter

It is conceivable that the PVL system might interfere with the communicative relationship between the interpreter and the defendant. In the chapter on face-to-face hearings, I discussed the possible consequences of using WSI in defendant-focused Moves and the use of CFV in non-defendant-focused Moves. What is the consequence of using CFV all the way through a PVL hearing, in both defendant-focused and non-defendant-focused Moves?

Firstly, any fragmentation by advocates of their submissions may have an effect upon their pragmatic and rhetorical force. Secondly there may be a negative effect upon the interpreter's renditions into the foreign language, partly because an untrained interpreter may be tempted to follow the grammatical order of the speaker, making it more difficult for the defendant to process the renditions.

5.15. Conclusions: a comparison between face-to-face and PVL interpreting

5.15.1 Introduction

At this point I shall make a comparison between the two interpreting contexts, face-to-face and PVL. I have selected what I consider to be significant elements of each, so as to draw some conclusions about the problems, challenges, advantages and disadvantages of each context for all court actors and the defendant.

5.15.2 Open acknowledgement of the interpreter and its consequences

Open acknowledgment of the interpreter's presence by court actors in both face-to-face and PVL courts does not lead to a greater effort on their part to accommodate their professional needs. One of the manifestations of this lack of accommodation is the transition point between defendant-focused and non-defendant-focused Moves, characterised by sudden rapid exchanges of information between several court actors using formulaic language, sometimes difficult for an outsider to understand and where the defendant or the interpreter are not the primary addressees. This creates a processing problem for untrained interpreters where they can often be heard to falter. This happens in face-to-face as well as PVL hearings, and so cannot be attributed to the presence of PVL.

Usually the only concession made by court clerks, magistrates, defence advocates and crown prosecutors to the interpreter is to fragment submissions, summaries and pronouncements at random into sometimes semantically complete, and sometimes incomplete turns. Court actors do this in both types of courts, but they are more likely to do it in PVL courts because they know that defendants will not be able cope with overlapping speech. Although this can be a helpful strategy, court actors do not realise the effect of this random fragmentation upon the coherence of a rendition. The effect of inappropriate fragmentation might be that the interpreter has to strive harder for coherence in the foreign language, firstly to re-order the grammar of the source utterance, and secondly to complete a semantically incomplete fragment. It must be stressed, however, that coherence for a defendant is also a problem in WSI, as here interpreters have even less time to think before speaking and composing their

renditions; fragmentation of source speech is therefore not just a cognitive processing problem for the interpreter, but also a problem for the defendant when trying to make sense of the interpreter's fragmented renditions occasioned by the simultaneous mode.

5.15.3 Legal ratification of the court interpreter

Linked to the question of open acknowledgement of the interpreter is the question of her formal legal ratification as a crucial court actor. My data sample revealed that two courts, one face-to-face, and one PVL, failed to formally ratify the interpreter by means of the interpreter's affirmation or oath. If this does not happen (and my observations in other courts have shown that this omission is common) the credibility of the interpreter as an expert linguist may be compromised. For an interpreter to be sworn in at the witness box is vital for her status and visibility. There was no difference in the data sample between the practices of face-to-face and PVL courts in this respect.

5.15.4 Interpreter interventions

Interpreters intervened *more* frequently during PVL hearings than during face-to-face ones, and their interventions were usually limited to defendant-focused Moves and were most often requests for repetitions, especially repetitions of personal details where numbers were concerned. This is understandable as when defendants and interpreters are not co-present it is much more difficult for them to hear each other than when the interpreter is sitting next to the defendant. The presence of the technology, then, does not seem to inhibit this practice. The interpreters in my sample do not appear to intervene in non-defendant-focused Moves when interventions for the purposes of clarification might be appropriate. This is probably because because of their perception that interventions are more disruptive during these Moves, or because of their desire to please the court by not interrupting.

5.15.5 Defendant back channelling behaviour

PVL technology does not seem to inhibit defendants from back channelling during a hearing and the fact that interpreter and defendant are not co-present does not seem to be a hindrance. Observations of hearings made in Wormwood Scrubs Prison as I sat next to prisoners (see chapter 7) shows that they audibly back channelled freely throughout the hearings. It is quite

probable that the digital recorder back in the courtroom had not picked up this back channelling. Defendants seem to vary individually in the manner and degree to which they back-channel, and there is no conclusive evidence to suggest that PVL inhibits this activity. However, the back channelling itself was ignored by the interpreter and the other court actors.

5.15.6 Interpreter strategies

Perhaps the most interesting and unexpected finding to emerge from this study is the wide range of interpreting strategies that is used by interpreters in face-to-face courts and the narrow range available to interpreters in PVL courts: just one, in fact (CFV). In theory, then interpreters have more choice as to the strategy they want to use in face-to-face courts, however, the apparent random and unconsidered use of these non-standard permutations of volume and mode could be problematic, depending on whether they are used in defendant-focused or non-defendant-focused Moves.

If WSI is used during defendant-focused Moves, there is a risk that non-content features of speech such as tone, intonation, register, hesitations and backtracking are not captured, especially by untrained interpreters (see Hale 2007), although not all agree with Hale's contention that these features are lost. My interpreter interview data at chapter 6 demonstrates disagreement about modes as to whether these features can be successfully captured or not). Such features might be important, for example, in a magistrate's pronouncement of sentence. If CFV is used in non-defendant-focused Moves, court actors might be encouraged to fragment their speech into incomplete turns. There appears to be no difference between PVL and face-to-face hearings as to the frequency with which court actors fragment their speech, however.

5.15.7 Enhanced presence of the court interpreter in the PVL court

Throughout this analysis I have emphasised certain key concepts such as enhanced presence, visibility and audibility, as though these were positive and necessary elements in the court's accommodation to the interpreter's professional needs. The installation of PVL unintentionally creates an environment in which all three are facilitated. This is not so in face-to-face courts, where interpreters are relegated to the dock. The dock interpreter can create enhanced presence, audibility and visibility for herself by insisting on being sworn in, and by

intervening appropriately. Ultimately it is more difficult to do this if court actors do not play their part in accommodating the professional needs of the interpreter.

5.15.8 Issues of interpreter competence

PVL interpreting may well be *easier* than face-to-face interpreting for an inexperienced and untrained interpreter, as there is no use of simultaneous mode, although the omissions of the Bulgarian interpreter at 5.4 show that she is unable to keep up with the rapid exchanges in Move 2.1 between four court actors. Her unwillingness to intervene so that the exchanges could be repeated in order for her to render them to the defendant reflects upon her competence as an interpreter. This lack of intervention skills on her part must have been confusing for the defendant and excludes him from full participation in the conduct of his case. It is possible to say that many of the phenomena observed (lack of intervention skills, missed turns, for example) are due to lack of training. Where court actors fragment their discourse, (provided that the semantic units are meaningful) well-trained and competent interpreters should be able to cope with these challenges. If they do not take notes to support memory, or are inexperienced or untrained in court interpreting, then this will be more difficult for them, to the detriment of non-English-speaking defendants.

5.15.9 Some advantages of PVL hearings

There are elements in an interpreter-mediated PVL hearing which could easily be exported to a face-to-face hearing to the advantage of the defendant and interpreter alike. A tour of the court, available to PVL defendants but often omitted, could provide a useful orientation for any foreign-language speaking defendant not used to the layout of an English courtroom. The prominent seating position of the PVL interpreter could also be exported to the face-to-face court together with the installation of appropriate electronic transmission equipment. This obviates the need for WSI or *chuchotage*, and would create better working conditions for court interpreters akin to their conference interpreting counterparts.

5.16 Summary of chapter 5

This chapter has provided an analysis of PVL hearings in 3 English Magistrates Courts. It has demonstrated the crucial importance of seating positions and how the interpreter's presence is enhanced by her move from the dock to the well of the court. However, these three courts have not shown themselves to have a greater awareness of the interpreter nor has her prominence in the well of the court had much effect upon their ability to accommodate appropriately to her professional needs. The intentional fragmentation of discourse by court actors seems to be a feature of both contexts. Since there were the same number of interpreter interventions in both contexts (9), I conclude that the presence of PVL does not make any significant difference to the interpreters' willingness or ability to intervene. There were 17 cases of back-channelling in the face-to-face cases, and 16 in the PVL cases. Again, it seems that the presence of PVL does not inhibit defendants from this activity. However, all cases of back-channelling were ignored by court actors, including the interpreter. Perhaps the most important finding to emerge from chapter 5 is that PVL interpreters only used CFV as an interpreting strategy whereas their face-to-face counterparts had the full range of five strategies available to them (see fig. 10 in chapter 4 at 4.1.9). These findings raise important training issues (5.15.8) which will be specifically addressed in chapter 8.

Chapter 6 will now focus on the court actors themselves, and will explore in some depth their views and experience of working in the two different contexts.

Chapter 6: Interviews with court actors

6.1 Introduction

Six types of court actor provided interview data for this chapter. They can be subdivided into two groups, lay and legal court actors. The lay court actors include ten court interpreters and four magistrates. Professional legal practitioners include one district judge, three court clerks, four crown prosecutors, and five defence advocates. The roles of the legal practitioners are described in Chapter 4, although a more detailed description of the role of the defence advocate has been provided later in this Chapter in section 6.7.1.

Semi-structured qualitative interviews were conducted with these court actors. There were also two comparatively unstructured interviews (DA(v) and INT(viii)).

The interview guide for court actors can be found in Appendix C. The range of questions is similar even though they are addressed to different court actors; however, certain questions reflect the different institutional roles of the respondents and are specific to those roles. Although the focus for this study is court actor behaviour in the Magistrates Courts, it should be noted that the court interpreter respondents work in a much wider range of face-to-face and virtual judicial settings than this. Their observations therefore reflect this wide range of contexts and are not restricted to Magistrates Courts. Although there are differences in terms of layout, seating position, what is at stake for the non-English speaker, judicial procedure and the seriousness of offences, there are also many similarities in the communicative relationship between the remote defendant (or appellant in the case of tribunals) and the interpreter, which make these observations valuable. The contexts in which this sample of court interpreters operate (and in which video link is installed) are: Magistrates Courts, Immigration Appeal Tribunals, Crown Courts and the Virtual Court in London.

It is important to bear in mind here that in the Magistrates Courts PVL is normally used for a narrow range of *non-evidential* legal proceedings, and that few of these hearings last for more

than twenty minutes in total, many of them for much less than that. Defendants appearing via PVL *can* be tried and sentenced, but must give their consent to this process.⁵¹

6.2 Transcription conventions

Unlike in chapters 4 and 5, the focus of the transcripts analysed in chapter 6 is on the content of what interviewees say rather than on a linguistic analysis of the interaction (a fuller discussion of this issue can be found in chapter 3.) A small number of transcription symbols have been used (see fig.53 below):

| | |
|------------------------------|--------------|
| Unclear passage in recording | [indistinct] |
| ... | Omission |
| Unclear meaning or referent | [] |
| Emphasis | Bold font |
| Word or sentence cut off | - |
| Questioning tone | ? |

Fig.52: Transcription symbols used in interview transcripts

In line with a constructionist approach (see chapter 3, 3.2.6) I have prefaced most, but not all of the respondents' answers with a section of the interaction which occasioned the response. In the interests of space I have had to condense some of the interviewees' responses to a single response, but I have tried to keep this practice to a minimum. Responses have been numbered by response rather than by line numbers. I have added information in square brackets where respondents have referred to something in a previous part of a transcript or where meaning might be unclear or incomplete to the reader.

Interviewees have been assigned letters according to their institutional affiliations, as follows: INT = interpreter, CC = court clerk, CP = crown prosecutor, DA = defence advocate, D = defendant, M = magistrate(s), DJ = district judge. Where appropriate, individual respondents are referred to by roman numeral, for example: CC(ii), CP(iii), DA(iv), M(v). These codes are also used at the beginning of the analysis of each type of respondent.

⁵¹ When defendants appear via PVL in the Magistrates Court, they can consent to be sentenced for summary offences (minor offences which are dealt with by the Magistrates Court) or either way offences (offences which can be heard in the Magistrates Court or the Crown Court). If it is a question of a summary offence, the defendant will have been found guilty after a face-to-face trial, or the Court and the defendant will have accepted Magistrates Court jurisdiction. Either the defendant will have been found guilty by trial or the defendant will have given an indication of a guilty plea.

6.3 General approach to the analysis of court actor responses

In chapter 3 I justified the use of data triangulation as the methodological approach most likely to fulfil the conditions of reducing the possibility of ambiguity or bias in the interpretation of the data. As I stated in chapter 3, the purpose of these qualitative interviews is to “investigate aspects of the culture observed which are still unclear or ambiguous even though they have been subject to close observation” (Gobo 2008:191).

The perspective of each type of respondent, whether legal or lay, is an essential component in understanding the court interpreter’s impact and the complexity of bilingual courtroom interaction. A number of the interviewees were probably interested in the study by virtue of the interest and sanction of the SPJ (Senior Presiding Judge: see chapter 3), by my own long-standing experience in court interpreter training (of which many of the respondents were aware), or because I had met them or knew them professionally before the interview and had established a rapport with them.

6.3.1 How the interviews were obtained

See Appendix B for a table showing details of prior relationships with interviewees, where the interviews were recorded and whether the interview was conducted in the first or second language of the interviewee.

6.3.2 Reflexive commentaries

See Appendix A for four reflexive commentaries on interviews with INT(i), INT (iv), DJ and CC (ii). The rationale for these commentaries is explained in chapter 3 at 3.2.7.

6.4 Analysis of court interpreter responses

6.4.1 Limitations: lack of recent experience

Some interpreters had not had much experience with PVL and sometimes those experiences were not recent. This sometimes made it difficult for a few of them to recall the details I was

asking for, such as where they sat, whether they had their own microphones and how the defendant appeared on the screen. Another problem was finding respondents with specific experience of PVL rather than remote appearances of appellants from detention centres in immigration courts. Although they are comparable, the two types of court have different layouts and the issues at stake are different. Nevertheless, it was important to hear about these experiences, so I have included them to see what could be learnt. Below is a table of the ten interpreters' court interpreting experience:

| Interviewee | Code | Experience |
|----------------|-----------|---|
| Interpreter 1 | INT(i) | 18 months court interpreting, 2 video link experiences |
| Interpreter 2 | INT(ii) | 20 years interpreting, 2 video link experiences |
| Interpreter 3 | INT(iii) | 18 years court interpreting, several video link experiences |
| Interpreter 4 | INT(iv) | 5 years court interpreting, experiences in Crown Court, Immigration Tribunals and pre-court booths |
| Interpreter 5 | INT(v) | 20 years or so court interpreting, 1 experience of video link in an Immigration Tribunal |
| Interpreter 6 | INT(vi) | 3 and a half years of court interpreting, 2 experiences of video link |
| Interpreter 7 | INT(vii) | 10 years of court interpreting, several experiences of video link, including at the Virtual Court |
| Interpreter 8 | INT(viii) | 15 years of court interpreting, 1 experience of interpreting at the Immigration Tribunal by video link |
| Interpreter 9 | INT(ix) | 1 year of court interpreting, 2 experiences of pre-court booth with solicitors and 1 with probation officers, 1 Crown Court video link experience |
| Interpreter 10 | INT(x) | 27 years of court interpreting, several experiences of video link, both in court and in prison |

Fig. 53: Interpreters' experience of video link hearings

6.4.2 Limitations: time constraints

Because of time constraints (some interpreters were able to give a longer interview than others) not all interpreters were asked exactly the same questions, and some responses could not be followed up. Despite these limitations, the data sample is large enough to have generated some very useful and illuminating responses about the professionalism, training and experiences of working court interpreters in face-to-face, as well as PVL and other video linked courts.

6.4.3 Common themes

I scrutinised all the interpreter interview transcripts in order to identify common themes, which I then grouped together. The six that emerged were closely allied to the questions I had formulated. The intention behind each of the topics was as follows:

- i) **Body language:** to assess the extent to which interpreters mentioned this as a factor in their interpreting and whether they might report differences or difficulties when working through PVL.
- ii) **Positions:** to assess the significance they might attach to shifts in seating positions and distance from defendants and how these shifts would impact upon modes of interpreting.
- iii) **Audibility and visibility** issues: to assess the significance they might attach to these factors and the impact they might have upon choice of interpreting mode.
- iv) **Interpreting techniques:** to establish which interpreting modes they use for different courtroom configurations.
- v) **Role issues:** to establish whether interpreters perceived their own role differently in a PVL court, and, similarly, whether they thought other court actors perceived them differently in the two contexts.
- vi) **Interpreter preferences** and personal choices: to establish interpreters' preferences, if any, for working remotely or face-to-face and the reasons for them, and to use the interpreters' own experience of working through PVL as a basis for establishing whether, if given a choice, they themselves as defendants would prefer to appear live in a court or by PVL.

Of course these themes cannot be considered discretely, as they are all intimately connected. It is not possible to separate out, for example, issues of non-verbal language from those of position, role, audibility or visibility. References will be made throughout to the links that these themes have with each other so that a picture of what interpreters are saying about their experiences can be built up and conclusions drawn. The interpreter responses will be considered in a thematic, rather than a linear, or numerical, order.

6.4.4 Theme 1: non-verbal language and other feedback

Interpreters were asked to compare the experience of interpreting in two contexts: whilst sitting next to the defendant in the dock, and for a remote defendant on a screen. It is perhaps not very surprising to hear that physical proximity to defendants enables interpreters to have a tangible awareness of defendants' demeanour, including physical indicators of a range of emotions. They are also aware of the interaction, both verbal and non-verbal, that appears to be generated by this proximity, and they feel its absence when interpreting via PVL. For extract 1, please see the accompanying reflexive commentary 1 in Appendix A which shows in greater detail how this response was produced. The following 7 extracts all show interpreters talking about the physical behaviour of defendants. A more detailed reflexive commentary on extract 1 can be found in Appendix A.

Extract 1

- 65 YF ...If you could compare the physical behaviour of the defendant when they are on the screen and when they're live in the dock, are there any noticeable differences there- that- in your experience?
- 65 INT(i) Yes, yes, er, I have two or three to relate, maximum, I'm not that expert [indistinct]
- 66 YF I'm not, [indistinct], it isn't about expertise, it's about experience
- 66 INT(i) I would say that maybe you can tell the high tension or the nerves more ... when the defendant is in the court, from the defendant's side, his concern, his worry, you know, you can feel it

Extract 2

- 123 YF And as far as prison video link is concerned [do you find it interesting]?
- 123 INT(i) Er, it is actually, it is interesting too, but as I said, it's always just on the link, what is happening, you interpret for- you don't know, it's, it's much shorter, it's not for the time, it's just I don't get the whole picture as, as, because with getting the whole picture, I feel I'm learning as well

Extract 3

- 137 YF [Do they seek eye contact with the interpreter] even though you're sitting next to them ?
- 137INT(ii) In the live, face-to-face one, they [the defendants] try to actually look at the interpreter all the time while at the same time, if the interpreter's not talking in the consecutive interpreting, then they look at the speaker and then turn round to look at the interpreter to get the interpreter. Now in a videolink situation, that's going to be ... well, I don't know whether it's possible or not ...

Extract 4

- 152 INT(iii) I just found that because I was removed from the defendant, I felt he was er passive. Although when he is in the dock with me he is al- also passive

153 YF Yes

153 INT(iii) I can detect his reactions and if he has not understood something, or if ...he has something to say, he would indicate that to me immediately [when sitting next to the defendant]

Extract 5

153 INT(iii) there was no interaction between myself and the defendant and I couldn't tell ... how ... well he was following the procedure [in a video link hearing]

Extract 6

37 YF Could you compare the physical behaviour of a defendant when you're sitting next to them in the dock and when you're seeing them on the prison video link, are there any differences ?

38 INT(iv) physically you feel the defendant, because next to you feel his body language, whether he's happy or not in terms of what has been said, but in the video link interpreting the defendant is more strict to himself to the camera, and he can see that he has no way to contact me directly, he feels that difference and that gap geographically or physically, so ... the defendant's movements are different from the dock and from the video link

Extract 7

38 YF ...you said that when you're sitting next to the defendant you can feel them so does that mean that you can't feel the defendant who's appearing on the camera ?

39 INT(iv) No I feel the defendant er that is in need of er my interpreting equally, whether he is in the dock or he is in prison, but the difference here is as I said you have to pass everything to the defendant whatever been said in the courtroom and er you have to do it one to one, sentence by sentence, but in the dock as I said it's quite different, some movement, some gestures you can feel it more than [if you are interpreting for]the person sitting on the screen

INT(iv) describes in greater detail the defendants' physical behaviour when they are in the dock in extract 8:

Extract 8

41 YF So in that case then do you mean that sitting next to the defendant and feeling that defendant's body language as they sit next to you, do you mean that that is a distracting factor, that it distracts you, that you have to learn to ignore it ?

41 INT(iv) You can say yes to that and no: yes because I have to listen to what being said some of the defendants they are different they some of them they have some er bad er what do you say er some of them they move their legs shaking their legs when they are sitting because they are worried they have bad habits as well, some of them you feel like they are swallowing something or just shaking their teeth

Interestingly INT(iv) views these defendant body movements negatively as distractions which interfere with his concentration. (See reflexive commentary 2 in Appendix A which shows how this response was interactionally occasioned.) Because of this he shows a *preference* for video link interpreting, regarding it as a relatively distraction-free environment in contrast to

the secure dock, where security officers often chat to each other, rattle their keys or rustle their newspapers.

In extract 9 INT(v) does not seem to take much account of defendants' body language:

Extract 9

47 YF And so do you think there's any difference in the perception of body language by the interpreter at a distance as compared with live, and if so does it matter ?

47INT(v) I don't think the body language always matters very much ... it just crossed my mind that some of the inveterates, culprits as it were, their body language is ... that ... they are trying to be persuasive or they don't care, so if they don't care they can be a little bit impertinent or answer shortly, in short answers, and trying to be clever ...

In extract 10 I ask her to adopt a shift in role from interpreter to defendant (see Holstein and Gubrium 1995:33-4) . Although this shift is researcher-initiated rather than one which occurs spontaneously, Silverman believes that when interviewees assume different roles they show themselves to be active narrators and this disproves "the assumption that people have only a single identity waiting to be discovered by the interviewer." (Silverman 2011:186). When I ask her if she would prefer a live or a remote appearance in court for herself, she takes a view of video link which is at variance with her previous answer:

Extract 10

53 YF And why would that be do you think ? [why would you prefer to be present in court]

53 INT(v) I believe in personal contact, I think it matters to see with your own eyes directly what happens who you're dealing with what sort of people ask you questions what sort of people you are facing; not that in a situation like that you would pay much attention to that sort of thing but you'd have to be extremely cool ... to notice all sorts of things like that ... but I think I would prefer to go to court live

At extract 11, she regards rapport-building with a defendant on a screen as more difficult than with a defendant in the dock, partly because there seems to be comparatively little opportunity for contact with the defendant:

Extract 11

44 YF Do you think it's easier or more difficult to build a rapport with somebody who is live or when they're at a distance ?

44INT(v) It's easier to do it live, you can't do it on the television screen it's more difficult because for one thing they are in prison and that is not a ... sort of place where they can be terribly relaxed ... and also you can't really look at them and talk to them and you can't have a private conversation because there is no time for it there's no place for it, no need for it ...

In extract 12 INT(vi) explains how proximity between defendant and interpreter facilitates the latter's perception of the subtle movements of the defendant:

Extract 12

- 66 YF So erm can you compare the physical behaviour of the defendant or an appellant when you do the interpreting through video link and when you are sitting next to them er either in the Appeal Tribunal or in the dock ? erm what- are there any noticeable differences between the way they behave in those two situations ?
- 66 INT(vi) Er I think I-I think so because when they er when they are in the like, in-in the-the you know in the video link er sometimes er they like er move their face and sometimes they do like try to think but you cannot say what what they say or what they mean by that but if they- next- if they sit next to you even when they they try to move their lips you can guess what is- they- you know, extra type of er frustration or kind of er-
- 67 YF Yes ?
- 67 INT(vi) Or muffling the word for something, or if they say I don't understand it I don't care, if sometimes they do things like in their way while with video link you cannot get that
- 68 YF Yes
- 68 INT(vi) Er er er and then er sometimes the video link you cannot see all the parts of er er like their body
- 69 YF Yes
- 69-70 INT(vi) You can you can only see their faces [in a video link hearing]while if they be next to you if they ... move their ... hands, if they move their legs .. you just get it ... because ...they sit next to you then you see all their body, you know in ... every kind of way

It is possible that some interpreters are not always aware of the extent to which they use non-verbal signals to inform their interpreting, or indeed that interpreters think they do not need to access body language to interpret. At extract 13 I ask INT(ix) whether there is any difference between the two ways of working (face-to-face and video link):

Extract 13

- 44 YF ...if you can compare your experience of speaking to a defendant who is not in the room, with a defendant who is [emphasis] in the room, who is, who is sitting next to you, would you be able to do that?
- 44 INT(ix) Er, for me personally ?
- 45 YF Yes
- 45 INT(ix) There was no much difference
- 46 YF Okay. So when you say there's not much difference, in what respect particularly?
- 46 INT(ix) I was just doing my job, I need the line, the line is clear, so I'm just listening and interpreting
- 47 YF But you can also see the defendant, can't you?

- 47 INT(ix) Yes, I can, yes. I don't know whether the defendant, I think defendant could see me, always we had tried to, to sit together with the interviewing person, so the defendant could see both of us
- 48 YF Yes, yes. Okay and so you don't really think there's much difference then?
- 48 INT(ix) For me, there wasn't

In extract 14 INT (ix) says she prefers face-to-face to remote interpreting, following a similar pattern to INT(v) (see extracts 9, 10 and 11):

Extract 14

- 56 INT(ix) Because I think always, er, if you have [a] live person next to you, it's always easier to clear any ... troubles, any unclear things said ... anything could happen at the time of the interview, so if you are at the same place and the person is next to you, it's much, much easier to, to clear all this

INT(x) is the only interpreter in my sample to interpret for defendants whilst sitting next to them in a video link suite in a prison. Seemingly this is policy in the part of England where she works. Her comparison of PVL and dock interpreting is thus made from this unique perspective. In extract 15 she echoes INT(iv)'s observation (extract 8) about the perceptible signs of tension in defendants:

Extract 15

- 126 INT(x) So then we go in and sit down, and ... I am aware of ... white knuckles ... and foot jiggling going on ... under the table and those sort of things ... So, yes, you do get a sense that they're very tense

In summary, interpreting in proximity to a defendant can have both advantages and disadvantages. It is an advantage for some of the dock interpreters who receive subtle messages about defendants' emotions, even though they are sitting next to, rather than opposite them (and do not look them directly in the eye). These messages often serve to inform some of the interpreters about the defendants' level of comprehension and state of mind. However, it is not clear from the responses how or whether interpreters make use of this information when making their renditions.

Dock interpreting, where the interpreter is in close proximity to the defendant, has a clear disadvantage for one of the respondents. The nervous movements that defendants make during their hearings and the lack of awareness shown by dock security staff interrupt his concentration and are, for him, a distraction.

6.4.5 Theme 2: seating positions

Interpreters were asked whether they had sat in the pre-court consultation booth with the advocate and about their position in the PVL courtroom; this last question was intended to see whether they thought the court treated them differently when seated in the well of the court as opposed to the dock and the consequences that might flow from that.

For four interpreters in the sample the experience of interpreting in pre-court booths has remained with them to the extent that they are able to give quite graphic descriptions. Those for whom the technology is new feel completely unprepared for the experience of being in the pre-court booth. In extract 16 INT(ii) describes an interview between a defendant in prison and a probation officer in one of the pre-court booths (the link is also used by other agencies in the criminal justice system). As confirmed by other defence advocates I interviewed, as well as my own experience of observing hearings in Wormwood Scrubs PVL suite, the booth will only accommodate one person comfortably; interpreters usually take the only chair, and lawyers (and others who use the facility) stand up with the door open (see chapter 5.1.5).

Extract 16

- 14 YF Right, could you see any other part of the prisoner? Er, down to where did the, did the, how much of the prisoner could you see?
- 14 INT(ii) Not all, I could only see his head
- 15 YF Just his head
- 15 INT(ii) Only his head, just his head
- 16 YF Not his shoulders?
- 16 INT(ii) Er, no, at that time no, I, that was very, er, the the, it gave me an impression that I didn't know how to position myself, I don't know whether he could see me, I had to do a very quick introduction to him that I'm, I'm here to interpret. At that time, I wasn't quite sure whether he saw me. I just couldn't tell. I definitely was totally unprepared for the technology as well. I didn't know ... actually there was a video link interview as such. We tried to see if we can fit in two chairs, it was difficult because you can't shut the door, so it's how tight it was ... because there was a little ... table top there ...

In extract 17 INT(iii) mentions the cramped conditions and airlessness as having a potential negative effect:

Extract 17

- 37 INT(iii) It was, er, it was literally like a cubby hole

- 38 YF Yes
- 38 INT(iii) Airless
- 39 YF Yes
- 39 INT(iii) And we just had this small screen in front of us
- 40 YF Yes
- 40 INT(iii) And two chairs which we had to stand to get into the room and get the barrister and myself there
- 41 YF Right
- 41 INT(iii) ... [the booth was] not very comfortable and I think the problem with ... the room where we were, is the fact that they are always airless, and you are tired because there's no oxygen in there is it ?

In extract 18 INT(iv) takes drastic action (he leaves the room) but does not explain what happens as a consequence (unfortunately I did not take the opportunity to ask him):

Extract 18

- 12 YF So how were you seated in that booth ?
- 12 INT(iv) I sat in a very small room which is about approximately two square metres or even less, I sat in front of the screen with the camera, the solicitor was er standing and actually I left the room because there was physically no space yeh and then we got the link via the custody staff he came to the screen and I introduced myself as I said, and the solicitor told him that it was a very short and formal hearing today and it's just committal to the Crown Court, he just needs to state his name birth, etcetera, that's the case and that's what happened later, after about five minutes later

In extract 19 INT(v) appears to accept the conditions of the booth good-humouredly:

Extract 19

- 37 YF Tell me a little bit about that one [that case] now
- 37 INT(v) That was er we were all sitting on the floor (laughter) because there were no seats
- 38 YF You were sitting on the floor ?
- 38 INT(v) Yes yes where were you oh no I was sitting on a chair and the er Probation Officer was sitting on the floor yes
- 39 YF And why was that ?
- 39 INT(v) Because there was only one chair in that cubicle and I don't think it was big enough to bring another chair and also possibly erm that probation officer didn't want to ask for another chair

INT(i) is one of two interpreters who dislike sitting in the dock with a defendant; her comment echoes that of the face-to-face Romanian interpreter I encountered in chapter 4.13.1 (case RFF2). In extract 20 she sees the physical distance between her and the defendant as an advantage for two reasons (unlike interpreters X and Y); firstly it is an advantage in terms of

her own safety and secondly it is an advantage because of the increased audibility that PVL and her more prominent seating position now affords her:

Extract 20

- 33 YF Where do you think you should sit? Do you think it [next to the defence advocate] was a good place to sit or do you think it's, would there be a better place to sit?
- 33 INT(i) I think in general, what I don't like about this job is being in the dock with a defendant ... so when there is actually a defendant who is in the [dock] ... some of them can be unpredictable ... and this, this actually can harm an interpreter, being in the dock ... next to the, to the defendant you know. So, actually when it is a video link, I have to say I feel, wow, it's great, I am not going to be shoulder to shoulder [with the defendant](laughter) and other thing as well, the way you can hear it is the same level because when you're sitting in the first row or the second row, it's almost the same ... level of sound will be to all [other court actors], but as interpreters we are expected to hear perfectly... and [in a face-to-face hearing] the barrister is giving their back to us ... and they mumble you know, talk very low ...

At extract 21 INT(iv), like INT (i), sees clear differences between the two interpreting contexts, and evaluates the advantages and disadvantages of both. In terms of seating position he sees coming to court as a “social experience” for the defendant, and I take up his previously uttered phrase in my question:

Extract 21

- 49 YF Very interesting, let me see if I've got that right, you say that you think that when you've got the defendant, for the defendant it's a more social experience ? is that because in the same way you feel his presence he feels your presence- he or she feels your presence ? is that what you mean or do you mean something different ?
- 49 INT(iv) I mean exactly that, because the person who is in the dock whether on bail or been remanded they feel that part of journey they feel that part of coming to court, and then expecting to see the solicitor and having the interpreter, that part, it comes more socialising with the interpreter as I said than being produced to the next building in the prison to the video link booth so there is no journey, there is no contacts, I mean physical contacts to see the person face-to-face, you see that person on the camera and sometimes you feel the control of the technique here the control of the camera, these are- more- the role of the camera here is very important and very feelable here

In extract 22 he maintains that PVL actually facilitates neutrality (see the Interpreter's Code of Practice at Appendix D):

Extract 22

- 52 YF And so perhaps when you have to strive very hard to achieve neutrality in your interpreting would you say that it's easier or more difficult to achieve impartiality with one method rather than another ?
- 52 INT(iv) I think in both ways you have to be impartial and neutral
- 53 YF But is it easier for you to achieve that ?

- 53 INT(iv) ... it's easier to achieve it in the video link ... because you are sitting there and even if the defendants ask the questions more and more, so you just say [to the court] "the defendant repeats the questions", and you interpret the questions again and so ... usually the defence advocate will say I will see you later next week or I'll visit you don't worry I will visit you in the prison very soon ...

In extract 23 INT(iv) also sees the enhanced presence afforded to him because of his prominent seating position as an advantage, because court actors are forced to pause more frequently to allow for consecutive interpreting. This in turn helps to raise the profile of the PVL interpreter:

Extract 23

- 47 YF How do you think the court perceives you when you're interpreting remotely with a defendant who's on the camera so- I think you've probably already answered it- if you could just say something about that, how do they perceive you ?
- 47 INT(iv) ... usually for the video link feel yourself that the court is aware of your role more than ... dock interpreting, inside the dock, because whatever they say, they do, they pause and they allow you with that gap to interpret whatever's being said [in PVL] that's one thing; the other thing is you feel yourself as ... an active member, we are an active member always, but they [the advocates] feel it physically because you are sitting next to them and you are taking part of whatever being said, I mean in terms of interpreting ...

Most of the interpreters are usually directed to sit where the usher or the court clerk tells them to. In my sample all were asked to sit next to the defence advocate on the front bench, sharing his/her microphone. In extract 24 INT(iv) is quite explicit about the link between his prominent seating position and its effect upon his status and visibility as an interpreter:

Extract 24

- 31-3 INT(iv) ... [in PVL hearings] you feel yourself your weight in the court ... I mean you have a first chance in order to speak, I mean to interpret everything that's been said from both sides to the defendant and the opposite way ... you feel yourself as an active member in the courtroom equal to the defence or the prosecutor advocates, you feel that without you, without the interpreter, the proceedings will not go ahead, and you have to pass everything being said to the defendant via the video link and oppositely when the defendant says something you have to interpret that fully and impartially to the court ... staff who are sitting there ...

INT(x) has a great deal more to say about audibility and visibility issues than about seating position, but echoes INT (iv) in extract 8 with regard to the disadvantages associated with dock interpreting:

Extract 25

- 18 YF So you never interpret from outside the secure dock?
- 18 INT(x) The secure dock there [in that courtroom] is big enough for two people but I can't

hear the magistrates if I'm in it, and I can't hear the defendant if I'm outside it, and they've got ... vertical slats of glass ... with a little gap between ... and so I ... constantly have my back to the magistrates while I've got my ear pressed to the slit, to listen to this often terrified person who can't manage more than a whisper anyway ... and just do your best really ... you know, not good enough on the whole, I think ...

To sum up this section, interpreters have negative experiences of the pre-court consultation booth in terms of seating arrangements and imply that this hinders their performance. In the courtroom, proximity to the defendant is an advantage in terms of audibility but a disadvantage in terms of personal security for the interpreter. For defendants, one interpreter sees coming to court in person can be a social experience for the defendant in which they feel involved. That same interpreter sees the PVL court as a place where it is easier to achieve the appearance of neutrality (at least from the vantage point of the court) because of the change of seating position of the interpreter from the obscurity of the dock to the well of the court.

6.4.6 Theme 3: visibility and audibility issues

Heightened interpreter visibility and audibility are the direct result of changes in interpreter seating position. Interpreters were asked to compare their experiences in terms of audibility and visibility in the two different types of court. I wanted to judge the extent to which they saw themselves as having an enhanced presence in the PVL court by virtue of their more prominent seating position, and whether this proximity to the well of the court would give them an advantage in terms of being able to see, and thus hear, court actors more easily.

In extract 26 INT(i) is clear that for PVL cases she prefers to sit on the front row in the well of the court, but does not say why:

Extract 26

- 91 YF ...what would be your ideal layout in terms of interpreting in the court room for a er, for a defendant who was appearing by video link because you've er, you've said
- 91 INT(i) Yes, to sit almost, if it is not in the same row as of the barrister and the defendant, the, the defence barrister and the prosecution, prosecutor is to be at least like in the, in these benches, the one after them or something

In extract 27 she implies that seeing the lips of the speaker makes it easier to understand what they are saying:

Extract 27

- 85 YF Do you want to tell me more about that [being able to see the speakers]?

- 85 INT(i) Er, like I mean, as I was saying, when we interpret when I interpret, I am with the defendant, I am seeing the backs of the people who I am interpreting for, the barristers, the defence, and the prosecution
- 86 YF Yes
- 86 INT(i) So, I'm completely relying on the clarity-
- 87 YF Yeah
- 87 INT(i) Of their voice and the vocabulary is sharp and clear, you know
- 88 YF Yes
- 88 INT(i) And, but if I- if they are standing with an angle, you know, er it's partial, the clarity is partial. Part of it to me, I mean I don't read lips, but I think, I think even when I have the TV sound off, I can guess what they are saying

Interpreters do not seem to be aware of what the defendant can see from the prison video link courtroom. In an earlier exchange, I informed INT(ii) that it was common for court clerks to track advocates and magistrates rather than interpreters and the result is that the PVL defendant sees the screen image of a speaker but hears the voice of the interpreter. In extract 28 I asked her what she thought of this:

Extract 28

- 131 YF Does it matter ?
- 131INT(ii) I think it does and also I think, it's because ... while I was doing ... the interpreting, either the magistrate or the clerk or the lawyers talking to the defendant, and I interpret, and the defendant was seeing, actually watching the face of whoever make that speech, and by the time the defendant listened to what I'm saying ... they might have stopped talking, he may be looking ... the face without speaking but hearing the voice in another language. That is odd, that is odd. Why, I don't know. Perhaps that [is] probably why it just make[s] me feel that first occasion that this videolink interpreting ... I was in, I just didn't feel I was doing anything properly ...

In extract 29 INT(iii) describes a problematic Crown Court case in which comprehension, audibility and visibility are significant elements and which become evident from the moment of her first encounter with the defendant in the pre-court consultation booth. First of all the camera is focused on the top of the defendant's head, making it difficult for her to see him properly. The lawyer keeps asking him if he can see and hear, but although he says he can, his responses, which consist of simply repeating back what the lawyer has just said, seem to indicate the contrary:

Extract 29

- 46 INT(iii) Well he-he had to plead and er and and the barrister explained three times, four times er and what was going to happen, what his advice was, asked if he agreed, explained about the evidence et cetera et cetera and er we were not very happy and I didn't think the defendant was happy either

- 47 YF You mean, er- why was he not happy?
- 47 INT (iii) He the defendant didn't seem confident, or didn't er, he he he kept, basically I do not think he could understand the the complexity of the task ahead
- 48 YF And what were the elements in your interaction that made you think-oh that's not a very good question is it ? (laughter)
- 48 INT(iii) Why did I think that he couldn't follow ?
- 49 YF Why did you think that?
- 49 INT(iii) Yes
- 50 YF Yes
- 50 INT(iii) I don't think that's to do with my interpreting, and I don't know ... how much the ... video conference side of it affected it, but I ... think that it did not help ...

The defendant then appears in court on the video link, and she complains that the picture is “fuzzy”. In extract 30 she describes what happens next:

Extract 30

- 68-70 INT(iii) ...And the defendant was asked twice or three times ... about how he would plead ... and it was clearly visible that ... he couldn't, he wasn't able [to plead] so the judge stopped the hearing, adjourned it and requested that the ... defendant appear in person ... because the judge didn't feel confident, and he actually said that, and that was why he adjourned [the case], he did not feel confident that the defendant was clear about what he was doing, what he was pleading and why ...

Later on in the same interview INT(iii) says that she is unable to interpret the ensuing interaction between the judge and the barristers partly because they do not pause to allow her to interpret consecutively, and partly because of the problem of voice overlap on the PVL system, thus precluding simultaneous mode and leaving the defendant out of the discussion (see chapter 2.2 section XX on modes of interpreting).

I do not wish to imply that video link is entirely responsible for the lack of understanding on the part of the defendant in INT(iii)'s interview, as this is clearly not the case. I have seen similar problems occurring with face-to-face interpreted hearings as well as with non-interpreter-mediated hearings with native speakers, although the latter are not considered in this project. There could have been a whole range of reasons why this defendant did not understand what was required of him: he may have had difficulty with the interpreter's accent or delivery, mental health issues, learning or hearing disabilities or low educational attainment, all of which may have resulted in disorientation and incomprehension. However, the clear implication of the judge's adjournment may be linked to the assumption that he thinks that the very production of the defendant *in person* will go some way, at least, towards

facilitating his understanding of what is going on around him. This would seem to indicate that any disadvantage suffered by such defendants would be compounded by the dual elements of video link and interpreter-mediated interaction.

At extract 31 INT(vii) mentions the problem of echo on the video link system and the difficulties caused by speakers' not waiting for interpreters to finish:

Extract 31

- 12 YF Are there any other changes and adaptations to your professional practice that you would have to do with prison video link that you wouldn't have to do face-to-face ?
- 13 INT(vii) Yes I'm not very sure about that, I don't know how- maybe the cultural differences could be taken on board because I believe what happens is you don't have the time to clarify or to bring to anyone's attention those differences and then there's the overlapping you know, the technical problems with echo and when you start talking you know ?
- 14 YF Are you talking about the video link ?
- 14 INT(vii) Well I'm talking about video links generally speaking yes
- 15 YF Well there was this morning wasn't there, did you hear the echo this morning ?
- 15 INT(vii) Well it wasn't too bad, sometimes before you finish what you have to say someone else will start talking and because you haven't finished what you said, the other person will have to stop and start again by which time you don't know what the other person has said so that creates a lot of confusion ...

INT(vii), the only interpreter in my sample to have worked in the Virtual Court, gives us a flavour of what it is like (she is sitting with the defendant at the police station) in extract 32:

Extract 32

- 35 YF Do you have any difficulties with audibility ? [in the Virtual Court]
- 35 INT(vii) That's the problem with the virtual court, you could hear everyone talking [in the courtroom] ... because of the mikes the voices are quite loud, if everyone is using the mikes then if the magistrates don't switch them off you can hear two or three people talking at the same time with the court clerk

(More information about the Virtual Court can be found at 6.8.8.) The phenomenon which INT(vii) is describing is exactly that which I recorded in my field notes when observing cases of defendants in the video link suite at Wormwood Scrubs prison; sounds such as whispering and paper rustling, which do not normally interfere with general audibility in court, are magnified by the video link system to the point where it is often difficult to hear what is being said (see chapter 7, 7.5.11 for my fieldnote on this). This further illustrates that overlapping

voices and sounds are not conducive to good audibility either for the interpreter or for the remote defendant. This will be discussed further in chapter 5.

INT(viii), who is also a conference interpreter, echoes other interpreters' complaints about the technical limitations of the system and makes a comparison with sound systems for conference interpreting. At extract 33 she speaks about her experience in the immigration tribunal:

Extract 33

- 44 YF But why couldn't you do the simultaneous interpreting ? why didn't you- why was it that you felt you just couldn't do it ? what was the physical situation that you found yourself in that prevented you from doing it ?
- 44 INT(viii) First of all the- well-
- 45 YF Can you put your finger on the physical problem you encountered ?
- 45 INT(viii) From a technical point of view the microphone was not appropriate, it was an open mike, it was not a microphone which was attached to my headset, OK ? it was an open mike, secondly, it wasn't the speed at which the appellants' representatives were speaking, it was simply that at no point could I- well it might have been her speed or her type of delivery, there was no point at which I could jump in, she was- she had no pauses, no nothing, and her presentation lasted about five to seven minutes

As a trained public service interpreter, she seems to be preoccupied throughout the interview with the perspective of the appellant. Her response to my question in extract 34 illustrates a certain resourcefulness in the face of overwhelming odds:

Extract 34

- 48 YF So what effect would it have, having an open mike as you describe it which I think is the correct technical term, the open mike, what would the appellant have been getting if you had decided to go ahead and do consecutive sorry I mean simultaneous interpreting ?
- 48-52 INT(viii) Actually they [the appellant] might have been getting just noise almost because ... short of physically covering my mouth over that open mike and creating a little vacuum booth ... in order to do the simultaneous I don't know that I could have done it, and what the appellant would have been getting might have been a confusion of sounds, I would say ... with an open microphone you can hear what's going on around, can't you ... [it] catch[es] ... extraneous ... noise which might interfere with your simultaneous and so what happens is that her brain ... might stop listening to my simultaneous and start listening to the extraneous noise that's going on, so I think I'm in a lose-lose situation whatever happens, unless ... I cup my hands around the microphone to confine my voice to the microphone and also to block out any as much as possible any extraneous noise ...

INT(x) describes her experience of sitting next to the defendant in prison, and has a great deal to say on issues of audibility and visibility. She makes a connection between these

elements, seating position and non-verbal feedback. In extract 35 I asked her what she could see of the main courtroom from her position in the prison PVL suite:

Extract 35

- 63 YF So, er, what do you, you say that you can't see? Could you describe what you can see from your-
- 63 INT(x) I can usually see the judge
- 64 YF From your perspective
- 64 INT(x) I can see the judge on the bench, usually in three-quarter face or profile
- 65 YF So this is a Crown Court you're talking about then?
- 65 INT(x) Yeah, hmm
- 66 YF Yes, and that's all?
- 66 INT(x) That's it really, yeah
- 67 YF So you're not given any other shots of any of the other-
- 67 INT(x) Certainly not-
- 68 YF Participants ?
- 68 INT(x) I mean certainly not of, of anything that would help me with what I'm trying to do
- 69 YF And what would you want? What would you prefer?
- 69 INT(x) The full face of whoever's speaking

Later in the interview it emerges that she is unaware that court clerks have at their disposal six possible camera shots, which can show the court clerk's desk, the Bench, each of the advocates, the well of the court and the coat of arms above the Bench.

In extract 36 she describes an occasion where she interpreted from a court in England which was video-linked to a court in another European country in which she found herself unable to see the witnesses properly:

Extract 36

- 40 YF So, the fact that these, er witnesses were sitting some distance away from the camera ?
- 40 INT(x) Yes
- 41 YF It caused you some difficulty in what regard?
- 41 INT(x) Well in the fact that I couldn't see the face properly, I couldn't see you know, it was like seeing somebody at a distance and not being able to see what they're saying

She places great emphasis on her need to see the *faces*, and in particular the *mouths*, of speakers in order to be able to interpret satisfactorily. In extract 37, where she is co-present with the defendant in the prison, there is again an issue with visibility:

Extract 37

- 76 INT(x) So I could have in fact have said [to the court], may I please see the speaker's face?
 77 YF Yes
 77 INT(x) Otherwise I can't think what they think the purpose of me being able to see anything is?
 78 YF So what you're saying is, you know you might as well be doing an audio [conference]?
 78 INT(x) Yes

INT(x) thinks there is no particular advantage for the interpreter to be co-present with a defendant in the prison, and, as she has no view of any of the main speakers except the judge, she might as well be using a telephone connection.

At extract 38 when describing another video link experience (this time with foreign language speaking witnesses who are in a different country, rather than with prisoners) the issues of visibility, audibility and non-verbal feedback become inextricably entwined:

Extract 38

- 35 INT(x) Er, my perspective was that the er, the visual aspect didn't help me at all
 36 YF Could you say a little bit more about that?
 36 INT(x) Because I couldn't see faces well enough
 37 YF How close were they to the camera? What could you see of the witnesses?
 37 INT(x) I could see a whole body and there was a whole group of them, I could see the whole group and the whole body sitting, you know, sitting in the little circle on chairs, and looking at the camera. So that not enough of the image was the face, and what you, what I really [emphasis] want to see if, if, if possible, is the lower half of the face. All the muscles moving, do you see what I mean? You know, next best would be the whole face, but face in close up. Er, so the, and the other problem I think, likely, if that had been available on that particular system, that the lip-sync wasn't very good
 38 YF Yeah
 38 INT(x) Because presumably that's to do with the, with the speed of the, of the feed
 39 YF Yeah
 39-46 INT(x) Er, so that, you know, to some extent you can, you can get a bit of an idea from body language and so forth, of what people are feeling and so forth but the clarity of speech did make it difficult for me in the fact that I couldn't see the face properly, I couldn't see ... it was like seeing somebody at a distance and not being able to see what they're saying ... we do actually

hang on mouths...[I need to be] able to predict, a little bit, even a nano-second ahead, what the next **sound** is going to be ...

INT (x) believes her interpreting performance to be hindered by adverse working conditions which include not being able to see the speaker's face and poor sound-image synchronisation.

To sum up this section, the respondents indicate that a prominent seating position in the well of the court is a distinct advantage for interpreters where they can better hear speakers, and INT(iv) in particular mentions himself as having an enhanced presence in the courtroom. As far as poor audibility is concerned, this seems to be an occupational hazard of being an interpreter. One interpreter describes her difficulty with extraneous sound, echo and feedback, time delay and poor image quality as well as the lack of correspondence between image and speaker. These are all elements that might be expected, at the very least, to hinder interpreters in the course of their professional duties.

6.4.7 Theme 4: interpreting techniques

In chapter 2, I outlined in some detail the two interpreting techniques that are traditionally deployed in the courts (whispered simultaneous and consecutive full voice) and the advantages and limitations of each. In chapter 4, I showed how these two categories were inadequate to describe what interpreters were actually doing, which was to combine the two modes with a range of different volumes on a continuum from *sotto voce* to full volume to produce *five* categories, or strategies.

I wanted to find out from interpreters whether they were aware of using different interpreting techniques for the two different interpreting contexts. In extract 39 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. Among possible reasons for this are that I may have phrased the question confusingly, or she may have misunderstood the question because of her lack of confidence and experience as an interpreter. (See reflexive commentary 1 in Appendix A).

Extract 39

58 INT(i) So this [simultaneous interpreting] is what I do, if I am sitting near the defendant

- 59 YF And so when you're sitting at the front [for a PVL hearing], then, is that different?
- 59 INT(i) Er, yes because all of them are actually silent, not talking
- 60 YF Who, who are they?
- 60 INT(i) The defence, the barrister, the, the prosecution
- 61 YF Yes
- 61 INT(i) They only ask the question and they are waiting for the answer
- 62 YF Right, okay. So you tend to use consecutive when you're doing prison video link then?
- 62 INT(i) I wouldn't say as a rule but it is like er yes, because it's they are expecting the, 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 40 INT(iii) is quite clear about the link between interpreting modes and contexts for interpreting. Up until this point in the interview, modes of interpreting had not been mentioned. In this extract, she herself brings up the issue:

Extract 40

- 73 YF Yes. So you were conducted to, er, to a seat next to the defence barrister ?
- 73 INT(iii) No, I sat on the same bench
- 74 YF You sat on the same bench ?
- 74 INT(iii) Yes, on the same side, yes
- 75 YF Did you share the same microphone?
- 75 INT(iii) Yeah
- 76 YF There was only one microphone?
- 76 INT(iii) Yeah
- 77 YF Okay
- 77 INT(iii) But I could not interpret simultaneously, it had to be consecutive
- 78 YF Okay
- 78 INT(iii) And I felt er, detached, and it was very strange for me because twice I had to be prompted to interpret
- 79 YF Hmm?
- 79 INT(iii) Which I-I thought it, as if I'd never interpreted in my life
- 80 YF Hmm
- 80 INT(iii) It was, I don't know, I had to be prompted twice to interpret

In extract 41 INT(iii) describes in detail a case in a Crown Court where the judge intervenes with the barristers because he cannot be certain the defendant knows what is involved in entering a plea. He (the judge) does not pause for the interpreter and this has consequences for the defendant:

Extract 41

- 118 YF And so you have already said that you, you were forced to do consecutive rather than simultaneous
- 118 INT(iii) Hm hm
- 119 YF You said that earlier in the er, when we were talking
- 119 INT(iii) Hm hm
- 120 YF And so, er, just to make that explicit, why were you forced to do consecutive rather than simultaneous?
- 120 INT(iii) Because I couldn't speak on top of the er, I couldn't interpret on top of the er barristers, or at the same time, at the same time because er otherwise, er **my** voice would have been recorded on, on top of theirs and no-one would have been able to hear properly what was being said, because being in open court, you can't have two people er speaking at the same time and the, the- the advantage of being removed from er barristers and judge, and if I could have a, a booth
- 121 YF Yes-
- 121 INT(iii) for myself where I could interpret, in that I could carry on simultaneously and er, there was a point, for example during the hearing, where there was, the judge was talking to, speaking to, to the barristers about the fact that he wasn't happy about the defendant fully understanding and, and er, you know actually being able to plead, and er, er they didn't stop so I couldn't butt in, and, and, and start interpreting. So the defendant was sitting there, hearing all this conversation happening, but he was not part of it because I couldn't interpret.

In extract 42 she goes on to claim that, for her, simultaneous mode is more accurate than consecutive, in that she attempts to convey tone of voice and emphasis as well as content (contrary to Hale (2007) and Mikkelsen (2010) but in line with Gile (2001) (see Chapter 2)). Moreover she maintains that during consecutive she conveys the content only:

Extract 42

- 131 YF So in simultaneous you're rendering everything that's being said ?
- 131 INT(iii) That's right
- 132 YF But in consecutive, you're focusing on-
- 132 INT(iii) On the message
- 133 YF On the speaker
- 133 INT(iii) You focus on the message more than what's being said

- 134 YF Hmm hmm. I'm not quite sure that I see the difference there. I was just wondering whether you could enlighten me a little bit ?
- 134 INT(iii) Right. Er, er, for example, er if er you're interpreting simultaneously and er, the judge or the barrister is making a, er, er, is putting more emphasis on such words, you have then time to do that as well, do you see?
- 135 YF Right, right
- 135 INT(iii) Yeah? And, er, where, er, when you are interpreting consecutively, you, er, you have to pass the message, absolutely, that's most important
- 136 YF Yes
- 136 INT(iii) You have to render
- 137 YF Yes
- 137 INT(iii) But, it's not going to be as close to what you would have done simultaneously
- 138 YF Oh, right. So, what you're saying is that with simultaneous you have more time to reformulate it than you do in consecutive ?
- 138 INT(iii) I find that in this, in these circumstances, I find personally, this is a personal thing, I find that personally that I can do a much better job if I'm interpreting simultaneously

In extract 43 INT(iv) says he uses the consecutive mode for PVL, and my question was designed to find out whether he makes a conscious decision to use this mode in the PVL context:

Extract 43

- 34 YF So would you say that- that is the main difference between the two types of hearing or are there any other differences for you, cos you said quite clearly that er you would do simultaneous while the defendant was in the dock live but you would do consecutive if you were in a prison video link court, so first of all why would you do consecutive and not simultaneous ?
- 34 INT(iv) You feel the geographical distance I think, as well, because if the defendant is on the screen you have some kind of feeling or realisation that the defendant is not in the courtroom physically, so you have to have er-er the consideration of the person who is waiting for being produced in that little booth or room in the prison in order to be in the courtroom, instead of that, so you have to stop every speaker after sentence after few sentences, in order to interpret that, to make him aware of what's being said
- 35 YF And so if you tried to do simultaneous interpreting in the prison video link situation what would happen ?
- 35 INT(iv) That will be a chaos I think, because of er noise, and er I will try to er to overtake the speaker sitting in the room er courtroom who is er speaking, for example the prosecutor will be at some distance from me, and physically I cannot hear everything being said, so it's an emotional and psychological thing. I raise my voice in order to catch everything it's like a person who is in the middle of the ocean or the sea and try with all the forces in order to swim further and further, but in that case er the role or the importance of consecutive interpreting will come over, and erm and will control the interpreting process

In extract 44 INT(v) cites *precision* as the reason why she uses consecutive mode. Unlike INT(iii), she claims that the simultaneous mode is *less* accurate than consecutive. When asked why she uses consecutive mode in the video link court case she is describing, she says:

Extract 44

- 14 YF So what mode of interpreting did you use during this hearing ?
- 14 INT(v) Erm not simultaneous much I don't think there was any simultaneous
- 15 YF Why is that ?
- 15 INT(v) Erm there was no need for it
- 16 YF So if you had a live defendant and you were interpreting for a live (language) defendant which mode of interpreting would you use then
- 16 INT(v) The same as I did at that time
- 17 YF And what was that
- 17 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
- 18 YF And so what mode did you use then
- 18 INT(v) Consecutive, consecutive
- 19 YF Was there any particular reason why you used consecutive and not simultaneous ?
- 19 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
- 20 YF OK and-
- 20 INT(v) I think it was the preferred mode in that kind of court

INT(vi) claims to use both simultaneous and consecutive for live cases and consecutive only for PVL cases. In his interview he speaks mainly about using video link in the immigration tribunal. In extract 45 he gives time delay as the reason for using consecutive rather than the avoidance of overlapping speech:

Extract 45

- 48 YF Right. And so if you were interpreting in erm for prison video link in the court room, which you have also done- I -I believe you've also done that, haven't you ?
- 49 INT(vi) I- I've also done that but I had to use only the consecutive one because of the er the the machines that the er like not microphones when you transmit the sound it needs like some time to get to the appellant
- 50 YF Yes

- 50 INT(vi) And then you have to er wait like and check er like you have to check until the voice of the appellant comes to you again
- 51 YF So there's a-
- 51 INT(vi) So
- 52 YF There's a time delay then
- 52 INT(vi) There is a time delay and er that that was why I had to do only consecutive interpreting even when er the like the Presenting Officer or the Legal Representative making their speeches

When asked whether she uses consecutive or simultaneous modes for PVL cases, INT(vii) brings up the hitherto unmentioned issue of intervention by the defendant in extract 46, but does not say whether this is specific to PVL or whether it applies to court interpreting generally:

Extract 46

- 26 YF Can you remember whether you did it [PVL interpreting] consecutively or simultaneously ?
- 26 INT(vii) It was consecutively, the problem I have is when the defendant says, what was that ? say it again-
- 27 YF In which situation ?
- 27 INT(vii) Well in video, well both, yes face-to-face is difficult-different, sorry, whereas in video link you just hear a voice saying what-what was that ? so you don't know how far to go back and you say that you interpret that back into English and that creates confusion because the other speaker doesn't know exactly if that's to do with, you know, his line of thought or mine and the judge or the magistrate are confused by the whole issue so yes it's not easy it's not going to be easy so far it's proved that er the technical part of it is

INT(vii) is one of the few interpreters to have worked in the Virtual Court in Camberwell, London, where courts are video linked to a number of police stations (again, see description of the Virtual Court in section 6.8.8). In extract 47 she likens the experience of the Virtual Court to dock interpreting because unlike other video link contexts she sits *next* to the defendant at the police station:

Extract 47

- 33 YF The virtual court is a fairly recent thing
- 33 INT(vii) It is recent yes, I was just thinking of video link the virtual court, yes ,what happens is that you are in the same room as the defendant
- 34 YF Oh so you're at the police station then, and does that make a difference to you then ?
- 34 INT(vii) Yes it's like being in the dock, you know as far as this half of the- you know- is concerned because I'm with the defendant and I do whispering interpreting I can see the body language, I can read that, so then you have the other half ,you know the court

In extract 48 INT(viii) demonstrates graphically how the interpreter can be an intruder in the legal process (see Fowler 1997) . She soon realises that her skills are inadequate to deal with the new situation and the insouciant atmosphere in which she unexpectedly finds herself:

Extract 48

- 5-8 INT(viii) the appellant's barrister launched into her presentation of the case, the reasons why she wanted her client to be released on bail from the detention centre ... she was at (*name of detention centre*) and ... at this point I actually sat forward to start doing a bit of ... whispered simultaneous but it was impossible because even if I'd done whispered it [w]ould have been semi-magnified I think, because I was having to speak into a microphone, I was not in a booth ... what do I do ? do I suddenly start launching into whispered simultaneous ? ... because the barrister was ... going ... like the clappers ... I just started taking notes and I thought OK hopefully after she's finished presenting I can do this in a consecutive way ... no sooner had she finished than the judge started talking and again ... no chance, no opportunity and the judge was certainly not in a mood ... to even hear the barrister's [speech] ... I think he had already ... decided ... what his decision was going to be ...

INT(x) follows the traditional professional practice adopted by most interpreters in the Anglo-American common law judicial system for dock interpreting (ie simultaneous interpreting) but in extract 49 she does not say what technique she uses when sitting next to the defendant in the PVL suite at the prison:

Extract 49

- 12 INT(x) I would, well in either case, I would be using simultaneous most of the time [in the dock]
 13 YF Yeah, do you want to elaborate on that at all?
 13 INT(x) Er, well obviously if they're doing evidence in chief, you're at the witness box, you can't do simultaneous, so no, I, I keep up as best I can in terms of simultaneous. Er, obviously if there is a long discussion of case law or if I can't hear, which is more likely in a closed- in a secure dock than an open dock, in an open dock I'll just sit there and murmur quietly all the way through

To sum up, interpreters generally use consecutive mode for PVL interpreting, but do not always articulate why they do. There seems to be some difference of opinion about whether simultaneous is more or less accurate than consecutive in terms of both content and/or style. The co-operation of other court actors is a significant factor in facilitating both modes of interpreting, and this is sometimes lacking. The failure to accommodate the interpreter can have consequences for the communicative relationship between the interpreter and the defendant.

6.4.8 Theme 5: role issues

The question I asked interpreters was intended to establish whether they perceived their own role differently when working through PVL, and, similarly, whether they thought other court actors perceived *them* differently in the two contexts.

In extract 50 INT(i) does not see much difference in the roles accorded her by the court in the two different contexts but does highlight a concern amongst court interpreters that they are not accorded common courtesies nor treated as professional members of the court team (the interpreter as “transmission belt” metaphor comes to mind here: see Morris, 1999:6):

Extract 50

- 70 YF Okay, and so, er, er are there any other differences that you want point out between the two types of hearings? The live hearings and the remote hearings ?
- 70 INT(i) Er-
- 71 YF That you can think of ?
- 71 INT(i) There are, people are different and sometimes I see er, it is something completely attached to people's personality and their upbringing, and how polite they are. But I find some don't treat er, I cannot say even they are a big number, I came up with two or three, and so then, like I'm waiting for the barrister for the conference before we start the case, and he shows up, he just doesn't even acknowledge me, you know ?

In extract 51 we see INT(i) subscribing to the same mechanical view of interpreters described by Morris (*ibid.*) and which the lawyers have of *her*:

Extract 51

- 98 INT(i) ... I think it's almost like being, which is true, what we do, is just being the tongue of the defendant, in a different language ...

In extract 52 INT(iii) describes a PVL hearing during which she is forced to intervene because the judge is talking to the advocates without pausing for her; there is an implication that her intervention is more noticeable than it would be in a face-to-face hearing:

Extract 52

- 158 YF How do you think the court perceives you when you're interpreting face-to-face? And compare that with how you think the court might perceive you when you're interpreting for a remote defendant ?
- 158 INT(iii) We are called interrupters, aren't we? I think when in court, during the remote interpreting, that was definitely the case because I was interrupting the hearing and that was very clear and

very noticeable because everyone had to wait for me. Er, we are, we tend to be rather ignored and I think interpreters are not well-recognised for what they do, and er, people tend to think we are a bit of a nuisance really

By calling herself an “interrupter” INT(iii) raises a very important point. A court interpreter is required by her Code of Conduct⁵² to intervene for clarification or repetition (also see Appendix D). By doing so she draws attention to herself and risks losing face (see Berk-Seligson 2002). She must first raise her voice to stop the court actor from continuing to speak (often difficult from an enclosed dock), explain the nature of the intervention, obtain the clarification from the relevant court actor, and continue interpreting, all with a degree of professionalism and assertiveness. The degree of formality in a Crown Court where wigs and gowns are worn is greater than in a Magistrates Court, and this can test the interpreter’s assertiveness to breaking point. Berk-Seligson found that the impact of interpreter interruptions depended on who was being interrupted, the witness or the lawyer during cross-examination. In her recordings of mock trials, her non-Hispanic jurors found witnesses who were interrupted *more* trustworthy, credible and intelligent, whereas the Hispanic jurors found the witness *less* so on all these points. However, all jurors rated lawyers as *less* competent when interpreters interrupted them for clarification or repetition; Berk-Seligson (*ibid.*) considers that interruptions of lawyers demonstrate a lack of sensitivity to the interpreter’s professional needs, and that jurors sympathise with this veiled criticism.

There are no jurors or witnesses in Magistrates Courts PVL hearings, and so the applicability of Berk Seligson’s (*ibid.*) research to my study is somewhat limited, although it is clear that it has an effect upon perceptions of court actors. In Chapter 5, I investigated intervention behaviour and found that interpreters made *more* interventions in PVL cases, and that these interventions, unsurprisingly, were mostly limited to defendant-focused, consecutively interpreted Moves. In extract 52 above INT(iii) describes the negative consequences of intervening during a *non-defendant-focused* Move in a Crown Court PVL hearing because the court actors did not stop for her consecutive renditions (consecutive because of the presence of the camera). Court interpreter interventions thus depend upon whether the hearing is a face-to-face one or a PVL one, and whether the intervention takes place within a defendant-focused or non-defendant focused Move, since a greater degree of assertiveness is required for the latter than the former.

⁵² The UK interpreters’ Code of Conduct can be found at <http://www.nrpsi.co.uk/pdf/CodeofConduct07.pdf>

In extract 53 INT(iii) sees face-to-face interpreting as preferable for the defendant because of the greater amount of interaction that is possible amongst the parties concerned. She appears to go beyond her role as an interpreter as defined by the code of practice, noting down comments made by the defendant during the hearing, and ensuring that these concerns are brought to the attention of the defence counsel after the hearing:

Extract 53

- 159 YF Okay. And so how do you think the defendant perceives you when you're interpreting face-to-face and when you were interpreting remotely? When he's located in prison. Could you make a comparison between those two perceptions?
- 159 INT(iii) [in a face-to-face hearing] if he hasn't understood something, he would tell me, or if he is unhappy with a comment that, let's say, the prosecution barrister made, then I'll make a note, and ...we can go back to that and speak to defence counsel in consultation afterwards, and the point is raised about whatever, you know. It often happens during a trial. And so there's much more interaction ...

In extract 54 INT(iv) clearly perceives the enhanced presence that PVL gives him as directly impacting upon the style of interaction in the courtroom, and he sounds as though he views this positively:

Extract 54

- 47 INT(iv) ... Usually for the video link you feel ... that the court is aware of your role ... more than dock interpreting inside the dock, because whatever they say, they do the pause, and they allow you with that gap to interpret whatever's being said, that's one thing, the other thing is you feel yourself as ... an active member [of the court]

In extract 55 INT(v) implies that the role of the interpreter is different in the immigration tribunal as contrasted with the Magistrates Court:

Extract 55

- 28 INT(v) [in the immigration tribunal] it's a lot stricter than it is in the Magistrates Court for example I am not allowed to speak to the defendant until I am given permission by the adjudicator, you do not speak to them, you have no contact with them unless you are given permission ...

Perhaps interpreters in tribunals are more likely than in those in the Magistrates Courts to be suspected of collusion with appellants by the immigration tribunal authorities.

INT(vi), whose experience is mainly with video link in immigration tribunals, claims in extract 56 that court actors using video link are more likely to address the interpreter than the appellant:

Extract 56

- 88 YF How does the court er how does the court treat you? Does the court treat you any differently when you're interpreting face-to-face as when you're interpreting remotely ?
- 88 INT(vi) Er I think er there is a fine difference er er not not much like difference still but there is a fine difference because when you er interpret through er video link and the er you speak through a microphone er the judge and even the Presenting Officer er they tend to speak to you rather directly rather than to er asking questions er and refer to you rather than er to the appellant
- 89 YF Yes yes
- 89 INT(vi) Er that is not a very er ideal way of doing the interpreting because er but when the appellant is live in the like court room in the tribunal they tend to ask the questions er direct direct the questions to the appellant, which is the better way
- 90 YF That's interesting
- 90 INT(vi) Er because you you normally don't need like like to be asked all the questions to be addressed to you, like why did you do that ? why did you do that ?
- 91 YF Yes
- 91 INT(vi) You can say oh I didn't do that the appellant did

This is a very interesting point and he is the only one of my sample of ten interpreters to make such an observation. It is possible that there are features of the layout of immigration tribunals (different from Magistrates or Crown Courts) which may make this more likely; tribunals are usually held in much smaller courtrooms with a small number of court actors sitting opposite one another but close together. There is no dock, and interpreters are much more visible. In my audio-recordings of both PVL and face-to-face cases court clerks frequently address the interpreter rather than the defendant in defendant-focused Moves, but my experience over many years shows that this is just as likely in either context.

In extract 57 INT(viii)'s account of her treatment by the adjudicator in the immigration tribunal is illustrative of his complete lack of understanding of the parameters of the interpreter's role. To him, the interpreter is simply there to interpret any interaction between the appellant and the court (in other words, only for appellant-focused Moves) and nothing else:

Extract 57

- 50 YF What do you think they [the court] thought you were there for ?
- 50 INT(viii) According to the adjudicator, just to do what he said, [interpret] any question she [the appellant] had, any questions either of the representatives had, any answers given by the appellant, full stop, that's what according to him what I was required to do

In extract 58 her attempts to adhere to the interpreter's code of practice and interpret simultaneously into an open microphone that was never designed for that purpose, incur the displeasure of the adjudicator. We can perhaps assume that if working conditions had been more favourable for the tribunal interpreter INT(viii) she also might have viewed the experience more positively. Her interview is dominated by her unpreparedness for video link and the inflexibility she encounters from the adjudicator when she tries to interpret simultaneously for an immigration court appellant, thus forcing her to violate her code of practice:

Extract 58

- 47 YF Were there any other physical factors present which prevented you from doing the simultaneous ?
- 47 INT(viii) No the judge's attitude I think, his whole attitude was not one of- it was nothing to do with the decision that he rendered that was his decision to render, but generally you know, when an adjudicator or a judge or a magistrate, you can sense their flexibility or inflexibility, and in this one as soon as I walked in I sensed inflexibility, it's the same inflexibility I sensed when I did the very very first court case I had which was a Crown Court case, and every time the defendant next to whom I was seated said something, I put my hand up and I repeated it, after the fourth time the judge erm said- threatened to throw me out of court

Prior to the Human Rights Act⁵³ there was no requirement for immigration tribunal interpreters to interpret simultaneously for appellants during non-appellant-focused Moves. It is possible (but unlikely) that this adjudicator had not had much experience with interpreters, and was therefore applying the pre-2000 rules. As INT(viii) says, inflexibility is the most likely explanation. INT(viii) subsequently put in a formal complaint to the immigration authorities about the fact that she had been forced to violate her interpreter's code of conduct, but to date this has not resulted in any remedial action on their part.

In extract 59 INT(x) is very lucid about her role. Although in this extract she is talking about how the court might perceive the interpreter when sitting next to the defendant in the PVL suite with no-one else present, she touches on a problem for *all* interpreters who sit next to defendants:

Extract 59

- 70 YF Right, okay. So that's two experiences that you've talked about. Did you say you had a third? I think you said you'd done a couple
- 70 INT(x) I'd done, ah yes, well I they're much the same you know, er
- 71 YF the same problems

⁵³ See footnote 14.

- 71 INT(x) The same idea, yes, that you're in this little room, where you've got no idea, there's, there's no kind of feedback, now that might be an advantage, I really am not sure about that, as to whether there's, there's feedback within the court room, you know there's sort of, there's atmosphere, there's general ambience, isn't there? Er, and there is this, what worries me slightly is the fact that I am sitting next to a defendant where I have no feel for anybody else. Er, it's sort of, it's like a, there is, there is room for some sort of negative collusion, in the sense of, of being drawn in on somebody's side, er, because, because you're sitting next to them and there's no officer in the room

Although I did not witness any cases where interpreters were co-present with the defendant at Wormwood Scrubs prison, I did notice that defendants there are always accompanied by prison officers and never left alone with me. It may have been the case, then, that in the particular prison in which INT(x) finds herself, there is no room for *three* people in a confined space.

In extract 60 when asked if she thinks the court perceives her differently when present in the courtroom as contrasted with appearing remotely, she seems to think that the court cannot gain a true impression of the professionalism of the interpreter if she is not co-present:

Extract 60

- 134 YF Er, so, do you think there's any difference to the way the court perceives you [emphasis] when you're there in person, in front of them or, and when you're not in the room? When you, they know you're not there ?
- 134 INT(x) No idea. I suppose the general demeanour and presentation is missing if you're not in the court room
- 135 YF You mean, general demeanour, your general demeanour?
- 135 INT(x) Yes, the, the, the professional behaviour of the interpreter comes through, I think, with the, the fact that they're taking notes, that they're, you know, that they know, that they can manage the oath, that they've got, er, reference materials with them if they need them and so forth, and that their, their, the intense concentration that is necessary, particularly in a jury trial where you've got the 12 good men and true over there, and whoever it is doing his evidence in chief, chief, in the box and you're standing beside them. That, that does require very focused concentration and, er, and I think probably that isn't, you see if they haven't got any better a view of us in prison, than we have of them in the court, they're going to miss all that

In summary, it appears that, unsurprisingly, interpreters vary in the extent to which they reflect about the parameters and limitations of their role and about how others (particularly defendants) perceive them in the course of their work; too often they are not aware of the wider consequences of a particular decision they may make. Interpreters need to be both knowledgeable about, and sensitive to, the roles of other court actors if they are to deliver quality interpreting. The inflexibility of some court actors (particularly judges and adjudicators) towards interpreters is clear, but on the other hand, some do attempt to accommodate to the interpreter's professional needs. Whilst some interpreters view PVL

negatively, others do not have a view, whilst INT (iv) sees it as conferring some advantages in terms of neutrality and a greater understanding of his role by the court.

6.4.9 Theme 6: interpreter preferences

Interpreters were asked to imagine they were given a choice between two interpreting assignments, one face-to-face and the other by video link, and to give their reasons if they had any instinctive preference so that I might be able to elicit more observations about working with PVL. Some of the interpreters were also asked to imagine themselves as defendants, and asked whether, if they had a choice, they would rather appear remotely from the prison or appear in person. The fact that interpreters would have some “insider knowledge” of the system might influence their answers.

In extract 60 INT(i) is unhesitating about which environment she prefers to work in:

Extract 60

109 YF Would you enjoy doing one more than the other ? [PVL or live]

109 INT(i) Er

110 YF Would you get more reward

110 INT(i) Enjoyment?

111 YF Would get more reward than the other?

111-116 INT(i) Enjoyment is actually in the live one ... it's not because I like meeting defendants (laughs) ... it's because ... I value very much the conference we have in the custody, with the defendant, which is most of the cases we do, especially in the Crown Court ... because, er, I get a lot of about what is the case about ... I ... get most of the information from the defendant, about his name, his birth, his date of birth, his address, a lot of them can't even say their address properly, so I take it and I write it so when he's saying it, you know, at least I have it written ... put it in a very professional way to them ...

This shows the value of any pre-hearing contact between defendants and interpreters in that it is possibly the only way (short of studying court documents before the case begins, a luxury that is rarely afforded to them) to gain important factual and linguistic information (say, about the accent, dialect or style of delivery of the defendant), or about the nature of the case before it starts.

At extract 61 in response to the question of choice between a live or a PVL interpreter for herself, INT(iii) says she would rather be produced in court in person:

Extract 61

- 160 YF Okay, and finally, if, heaven forefend, you were ever a defendant yourself, if you could choose a, a live interpreter or a remote, sorry a live appearance or a remote appearance in court, which do you think you would choose? Why, why would you choose that?
- 160 INT(iii) ... I think I would prefer to be ... in a court personally, so a live appearance.
 Why? Because ... I would be able to perceive ... what's going on, and, at first hand. First hand ... I don't know if I'm saying this because we are ... only starting[out]with video link or ... if it's because I haven't had sufficient training, or ... because the courts are not yet properly ... adjusted to the system and ... barristers and judges and everybody else not trained. So ... we're very much in the initial stages, but I think there will have to be alterations within court rooms to allow a place for the interpreter to actually work, to ensure that the interpreter can hear ... you would never have direct access ... to the defendant to make sure he understands. I mean the judge can say if you can't hear, raise your hand, but he [the defendant] **didn't** raise his hand, he kept saying I can't hear, I can't hear. And then ... I had to butt in whilst counsel were speaking, to say **defendant can't hear**... so I had to speak louder, you know, literally butt in ... so it ... wasn't a successful experience

INT(iii) reveals herself here as not simply an interpreter but as monitor of the PVL defendant's comprehension and hearing. She does this by acting as an advocate for him when he fails to signal his lack of ability to hear in the way prescribed by the court (raising his hand).

In extract 62 INT(iv) is not explicit in this regard, but it is clear from his interview as a whole that he finds advantages as well as disadvantages in both environments. If given a choice between appearing live or remotely himself, he draws a clear distinction between non-evidential review hearings and more contentious trial hearings for pragmatic reasons:

Extract 62

- 54 YF Finally if you were a defendant yourself I hope you never will be but if you were and you could choose between a live court appearance and a remote court appearance from the prison which would you rather choose which would you rather do ?
- 54-7 INT(iv) I think for the purpose of ... the plea and case management [hearing] I would prefer video link ... if I've committed a crime and I've been remanded in custody I think that's the best way [rather] than to go through all these search and checking ... maybe I would feel it like humiliation to go through all these procedures and (come into custody?) and then ... knowing that I will return to the same cell at prison, but if it's a trial hearing of course I would prefer to attend the court physically in order to feel I hear everything ... because if it's a trial ... I will have a fair chance to hear whatever's being said by both sides and by the witnesses or the victims of my crime and then I will have ... a fair chance to present my evidence when I'll be asked to give the evidence

In extract 63 INT(v) is not explicit about whether she prefers one interpreting context over another and says that she believes in personal contact:

Extract 63

56 YF Is there anything else that you want to add ?

56 INT(v) Again it has to be personally for me I did not feel any difference between live and video link for what I had to do I didn't feel more nervous or because I hadn't done it before I took it its stride so really I am a bit like that on the whole I do worry internally but people don't see it

In extract 64, asked whether she herself would prefer a live or a remote interpreter, INT(v) responds:

Extract 64

48 YF And finally if you were ever arrested yourself and you were brought before the court which way would you choose to appear in court would you prefer to appear in court live or would you prefer if you had the choice to remain and appear in the court from custody if you had the choice yourself and you were a defendant ?

48 INT(v) I don't think it would matter- I don't think it would matter

49 YF If you had to make a choice ?

49 INT(v) If I had to make a choice I would have to think very hard about it because as it were it wouldn't matter to me whether I am live or not the fact that I would be in court would be quite awful so I don't think any choice would make it better or would make me happier or relieved or relaxed or you know

In extract 65 I asked her if she would prefer face to face or PVL for a more contentious matter like a trial:

Extract 65

51 YF Supposing it were a more serious matter where the use of video had been extended for let's say a trial or something like that where there was a lot at stake how would you feel about it then ?

51 INT(v) You mean then would I still have a choice ?

52 YF Yes if you had a choice what would you do ?

52 INT(v) I think probably I'll go to court

53 YF And why would that be do you think ?

53INT(v) I think probably I'll go to court ... I believe in personal contact, I think it matters to see with your own eyes directly what happens, who you're dealing with, what sort of people ask you questions, what sort of people you are facing, not that in a situation like that you would pay much attention to that sort of thing ... I think I would prefer to go to court live ...

In extract 66 INT(vi) expresses a preference for face-to-face rather than PVL interpreting:

Extract 66

- 94 YF Hm very interesting and so if somebody erm offers you a choice of two assignments and one of them is er video link interpreting and the other one is live interpreting do you have any preferences ?
- 94 INT(vi) I do
- 95 YF As to which you'd take
- 95-6INT(vi) Yes, I do ... really, I ... would go for the ... live one ... I think ... you feel and you think that you do your job more ... properly when you are doing ... live interpreting, for a live client for someone, they connect to you because you just have that impression that you get everything from the appellant and convey it to the court people and ... that gives to you the impression that you do your job properly like you are supposed to do, while when you in the video link as I explained it before you just don't have that confidence that you do your job properly ...

In extract 67, when asked to imagine himself as a defendant, INT(vi) implies that PVL is a barrier for the defendant:

Extract 67

- 92 YF Okay right right that's interesting. Okay and so erm, er if you were a defendant yourself and you could choose live or to appear in court live or to appear via video link which do you think you want you would rather do
- 92 INT(vi) I I would definitely choose the live one
- 93 YF And why would you do that
- 93 INT(vi) I think it is more you feel like you're part of the like process and you feel like your point is heard more accurately and clearly and you can er say and like express through whatever you want while through video link you do not have that feeling er automatically, because it's through a machine and you don't have that good impression

His account at extract 68 of his video link experience at an Immigration Tribunal is illustrative of his perceived deficiencies of the technology and chimes with the inflexibility shown to INT(viii) in extract 58:

Extract 68

- 97 YF if you compare your feelings about the job that you've done when you come away from the Immigration Tribunal where you've been doing video link and you come away from the Immigration Tribunal where you've been doing live interpreting ?
- 97 INT(vi) Hm hm
- 98 YF Could you describe the way that you feel about erm what you've done ?
- 98 INT(vi) I- I could only cry because I remember once when I er came back from that court the one in (name of town)
- 99 YF Yeah

- 99 INT(vi) I-I felt deep in my- you know- heart I felt pity for the appellant through the video link, because I knew that he did have lots of other things that he couldn't convey, because he even like said like some some other stuff I couldn't hear it, and even though I said he's saying something, they didn't like that and he just was told off, er then I told the interpretation of my role, that my role was not like er good and as accurate as I want to be

Of course it is difficult to say whether the poor quality of the communication as highlighted by INT(vi) and INT(viii) in immigration tribunals can be attributed entirely to the video link system or whether it is due to other factors, but it seems likely that it is easier to ignore appellants' attempts to intervene in legal proceedings when they are not co-present with other court actors.

INT(vii) (with experience of working remotely in the Virtual Court) gives a short but unequivocal answer to my question in extract 69:

Extract 69

- 28 YF And so if somebody offered you two jobs and they were both at the same time and one of them was in prison video link court and the other one was face to face interpreting which would you prefer to do yourself ?
- 28 INT(vii) Definitely face-to-face
- 29 YF And why would that be ?
- 29 INT(vii) It is easier, it is fairer, I can do my job properly and although with the video link it's probably shorter because you probably have slots although I have noticed that slots have been removed in the virtual courts, yes

In extract 70 INT(ix) explains how she prefers live to remote appearances:

Extract 70

- 68 INT(ix) I would say, defendants people who have, let's say, difficult or poor background, not always but mostly, most of the time. So they haven't got access to the new technologies and, er, when they have to stand in front of the video, with no live communication, they could be quite upset
- 69 YF I see, I see, yes
- 69 INT(ix) And it's, when you see, when you can communicate personally with somebody, even, even if he's, if this is the police officer, or court, somebody from the court, I think they would feel more, more relaxed. That's my, just my impression

In extract 71 INT(x) is sure that she could do a better job if the standard of video technology were to be greatly improved, and refers to a demonstration of state-of-the-art video conferencing system she had seen demonstrated at a recent conference:

Extract 71

- 143 INT(x) You could almost see the spit, er and I certainly could have interpreted with that, and that and it lifted my spirits because it's possible. Given that sort of standard, then I, I think that-that would be perfectly feasible

In extract 72, asked to choose between remote and live interpreting if she were a defendant, she sees some advantage in the remoteness from the court:

Extract 72

- 136-7 INT(ix) I suppose in some ways, it depends on what I was accused of having done ... and whether it was going to be, [a] sort of brutal cross-examination, I might prefer the physical distance if it was going to be a brutal cross-examination ... possibly ... just looking at the newspaper reports of [the cross-examination of] Millie Dowler's⁵⁴ parents, for example ... but I think on the whole if I needed an interpreter particularly, I would rather everybody was in one room ...

To summarise interpreters' responses in this section, all except INT(iv) would prefer to appear in court in person if they were defendants themselves, although INT(iv) makes a distinction between routine administrative hearings (where he might prefer PVL), and trials (when he would prefer to appear live). There is one respondent, INT (v), who speaks with two voices about the issues of context preferences (face-to-face or PVL). Meeting a defendant in person helps an interpreter because of the opportunity to prepare for the hearing. Most respondents feel that, on the whole, they do a better job when interpreting face-to-face.

6.4.10 Summary of interpreter interviews

In summary, interpreters seem to prefer face-to-face to PVL interpreting. When it comes to personal choice (should they ever be in a position to choose for themselves), their insider knowledge of the system prompted some interpreters to qualify their answers depending on the length of the hearing and the seriousness of the offence for which they were being brought to court. Direct access to defendants by interpreters is also a factor in their answers, firstly to gain valuable information from defendants and their legal advisers which might help them to anticipate language and terminology which will be used in the case, and secondly to bring the attention of the court to the fact that defendants might not be able to hear or understand what is happening. Evidence of inflexibility and lack of understanding of the interpreter's role by adjudicators emerges from two interpreters, both experienced in immigration tribunal work.

⁵⁴ Millie Dowler was a 13-year old girl who was murdered in 2002 by Levi Bellfield. During his trial both her parents were cross-examined (in the opinion of the Police and the Dowler family, too aggressively) and this revealed details of her father's possession of pornographic and other sexually explicit material. As a result, the Crown Prosecution Service have promised to consider whether victims are properly treated in court.

6.5 Analysis of magistrate and district judge responses

6.5.1 Experience of PVL interpreter-mediated cases

| Interviewee | Code | Experience |
|----------------|--------|--|
| Magistrate 1 | M(i) | 1 IPVL case, experience with non-IPVL cases |
| Magistrate 2 | M(ii) | No experience of IPVL cases, experience with non-IPVL cases |
| Magistrate 3 | M(iii) | No experience of IPVL cases, experience with non-IPVL cases |
| Magistrate 4 | M(iv) | No experience of IPVL cases, experience with non-IPVL cases |
| District judge | DJ | A few experiences of IPVL cases, experience with IPVL and non-IPVL cases |

Note on abbreviation: IPVL = interpreted PVL

Fig. 54: Magistrates' experience of PVL hearings

6.5.2 Themes

The themes are:

- i) the nature and extent of any **official guidance** on working through interpreters in court
- ii) the significance of **seating positions** in relation to interpreters
- iii) **body language, visibility and audibility** issues
- iv) the Bench's **relationship with the defendant** and other court actors
- v) **personal preferences** for working with video or not and observations about the future of video link

The themes will be grouped and considered together under the following three headings: firstly, the extent of official guidance, secondly, seating positions, audibility and visibility issues and body language, and finally, observations about the future. A single summary of their views will follow this analysis.

6.5.3 Theme 1: the nature and extent of official guidance on working through interpreters

The interviewees in this group varied in the degree of formal training they had received for working through an interpreter in court, whether through video link or not, although

one magistrate said he had had a briefing lasting ten minutes. It later emerged that this was about video link in general and not about working through interpreters. (See Appendix A for reflexive commentary 3 where several extracts from the DJ are analysed). The DJ openly criticises one of his own colleagues for addressing the interpreter rather than the defendant (I had witnessed this exchange myself the same morning):

Extract 73

- 48 YF Okay, and, er, do you think that, er, do you know whether district judges or magistrates have any training in how to work through an interpreter generally?
- 48 DJ Well, er, I'd like to think that I do it better than the legal adviser who I had this morning doing it, who was, er, talking through the interpreter. I don't-
- 49 YF -addressing the interpreter rather than the defendant ?
- 49 DJ I don't, I don't, I don't do that, I do it direct, we have been given training in it, but er, when I say we, district judges magistrates' court have been given training in it, it's one of the, er, the essentials when you first, er, when you're first made a district judge magistrates' court, er, you're taught an awful lot about court craft and it comes into court craft. So we are told how to do it, er

In extract 74 he elaborates further:

Extract 74

- 52-53 DJ ... the legal advisers do not do the job as I think it should be done, for the simple reason that they tend to address ... they deal with the interpreter, they ask the questions through the interpreter. You don't do that at all. You talk to the defendant or you talk to the witness ...

In extract 75 M(i) raises the question of training court actors:

Extract 75

- 11-12 M(i) ... the absence of training ... for court personnel and for advocates as to how to deal with an interpreter ... is an issue, I don't know how big an issue, but it's an issue ... if the MOJ were prepared to spend money on training lawyers and especially CPS and clerks ... I would have thought that was money well spent, certainly it's an important contribution to this principle that the absence of the right language shouldn't disadvantage people, generally speaking I must say that our clerks are very good but ... nevertheless it's something to bear in mind

All interviewees were vague about the existence of official guidelines about working through an interpreter in either face-to-face or PVL contexts.

6.5.4 Theme 2: seating positions for interpreters in court, body language and visibility and audibility issues

In extract 76 M(i) considers the interpreters' seating position. He makes a link between seating position and the neutrality of the interpreter, but also demonstrates his awareness of sightlines and image-speaker correspondence from the perspective of the defendant:

Extract 76

- 6 YF The ones[cases] I've seen so far, the interpreter's always been next to the defence advocate the defence not the prosecution
- 6 M(i) Well it seems to me first of all that the interpreter is actually to some degree a court official rather than belonging to the defendant, they belong to the court so I think ... symbolically it's significant that the interpreter sits with the ... clerk who is technically a neutral person and so too should the interpreter be, secondly I think the dynamics of a video court are such that the primary attention rests with the clerk who manages the event and therefore if the interpreter is sitting with the defence advocate who actually gets very little screen time the interpreter is nearly always ... absent I suspect ... from the defendant's view, so I think there are both technical and practical reasons why it's good that the interpreter should sit with the clerk and had it not been so I think I would have requested that it were so

It can be seen from the extracts analysed in chapters 4 and 5 that defence advocates sometimes do not have much to say during PVL hearings, and that if interpreters sit next to them, defence advocates will not get very much "screen" or "camera" time. The problem is that once crown prosecutors begin their submissions (which can be comparatively lengthy) the camera is focused on them at that point, so wherever interpreters are sitting, there will always be lengthy periods of time when the interpreter does not appear on the screen, resulting in a mismatch between image and speaker for the defendant. The problem of image-speaker mismatch could be alleviated by focusing the camera on the interpreter throughout, but this could be disorientating and confusing for the defendant who needs to have an overall view of the court and to see the faces of speakers (that is, if the experience is to be anything like a face-to-face hearing: see section 8.2.3 in chapter 8 for a description of the effect of different camera configurations).

In extract 77 M(i) stresses that the authority of the court rests with the bench of magistrates; it is they who can order the interpreter to sit in a certain place, they who ensure that the defendant hears and understands, and they who, in theory, can monitor the pace and delivery of speakers to ask them to accommodate to the professional needs of the interpreter. Here he speaks about PVL in general:

Extract 77

- 9 M(i) ... it seems to me unacceptable that the fellow sitting over there in the video link

room ... can just sort of gather that there's some chat going on but doesn't really know what it is, even if he's not interested I think I should ask him, do you know what's happening, and he's free to say if he doesn't, but that he shouldn't be excluded from what's being said about him even if it's a technicality that's being sorted out ...

In extract 78 M(ii) and M(iii) (who were interviewed together) are keen to promote the “virtual tour” by camera of the court for defendants:

Extract 78

- 10 M(ii) I think it should be standard practice regardless of whether it's your first or third time because people need to see who the face is they're looking at, who's looking at them, and I think it's equality cos when you are in a court you're introduced, you know who everybody is, you see them. I think if you're using a video link you should have the same level of equality ...
- 11 M(iii) ...I think it's just a matter of common courtesy that we introduce each other as best we can in the circumstances

My observations show that it is not normally the case that defendants are formally “introduced” to the court in face-to-face cases. Unless defence advocates have previously explained the court layout and the status of the different actors within that layout, defendants are usually left to work this out as best they can by themselves. Some courts I observed did not, in fact, conduct a virtual tour at all (see chapter 5, 5.14.1).

In extract 79, M(ii) speaks positively about PVL, possibly pre-empting any concern on my part that PVL might be unfair to defendants:

Extract 79

- 13 YF so can you remember the very first time that you erm did a prison video link hearing, and if you can remember the experience, and what you thought of that experience ?
- 13 M(ii) I was impressed with the way that everything was videoed around, the chair also explained our role, but then the chairs [always] explain our role so it was done exactly the same as if the person was in court

It may be the case that practices vary across the country in different court areas, but I have myself not observed any chairs of the bench explaining their role to defendants, whether in face-to-face or in PVL courts. It is possible that M(ii) meant to say “court clerk” rather than “chair”; it is the court clerk who is supposed to conduct the virtual tour of the PVL courtroom for each defendant on the screen.

As for sightlines and body language, M(ii) has to rely on others' assurances, rather than her own experience, of what the defendant can see and hear from the prison. However, it is not

the case that the defendants can see everyone in the court at the same time all the way through their hearings, as she claims below. My prison observations demonstrate that defendants are only shown a fleeting glimpse of the well of the court if there is a formal virtual tour at the beginning of their case, and that subsequently court clerks focus on images of individual speakers, using one of the six possible camera shots available to them. M(ii)'s comment in extract 80 is interesting, as she plainly needs reassurance that defendants will be able to perceive body language and the facial expressions of speakers in court as well as to be able to look at whoever they want, elements which she thinks are important in the interests of fairness:

Extract 80

- 14 M (ii) The only thing that I was bothered about was the diff- the camera and where the camera would be
- 14 YF Right, so would you like to say something about that ?
- 15 M(ii) I wasn't exactly sure what the defendant was looking at, but I was assured afterwards that the defendant could see us all at the same time because I was worried about the width, so whether they'd only see the bench ... but I was assured that they would see everybody at the same time because when ... you're in courts as a person, you can move your head and look at whoever you want and I think ... that body language and facial expressions are really important ... I would feel that if they couldn't see everybody's body language or a reaction of somebody to a statement ... sometimes there are reactions ... I asked this question afterwards, this is how I can remember and I was told that they could see in a wide area ...

She implies that if this concern had not been allayed, she might have felt it to be unfair. Thinking next about her own view of the PVL defendant from the Bench, she notes the loss of body language on the screen and says that she finds it a disadvantage, but does not make the connection that the inferior quality of communication she is experiencing may also apply to defendants and their communicative relationship with other court actors, particularly the interpreter.

In extract 81 M(iii) bring up the question of defendants not being able to see their families in court:

Extract 81

- 27M(iii) I was very impressed with the system, and I'd always be very supportive of the system, because I- I've always felt that anything that keeps costs down and keeps the- and er- helps the defendant if you like, by er not having wasted trips to court, well trips to court that are just going to be straight remands, back to jail, or whatever it might be, that's got to be a good thing, we'd keep stress levels down, I do wonder sometimes though ... there were relatives who come into the court and ... they were not sitting in a position whereby the camera could pick them up and so at the end of the whole thing the defendant asked if he could see his girlfriend his wife or his mother whatever it might be, sometimes they said yes sometimes they said no

and then there was just a quick little flash of the camera and that was it, and I wondered whether that ought to be looked at and sorted out from the court's point of view ...

In extract 82 this is echoed by M(iv):

Extract 82

- 11 M(iv) ... if you have someone who's brought in from custody for a hearing in court the family will turn up ... often they're put sitting underneath the screen where they can't see sonny Jim up above their heads, and we have to try ... and move them around a bit so that they can give a wave

Not being able to see family members, friends or supporters who might come to court is clearly a crucial difference between the two contexts for the defendant, and this may well prove to be more disorientating for non-English-speaking defendants and foreign nationals than for native speakers.

Both M(ii) and M(ii) are aware that the PVL defendant cannot make direct eye contact with court actors, and when asked about the mismatch between image and speaker received by the defendant, M(iii) makes an interesting comment in extract 83:

Extract 83

- 49 YF ...if the interpreter's sitting by the defence advocate and the court clerk is speaking then the defendant is going to get the picture of the court clerk but the voice of the interpreter interpreting to them, d'you think that could be distracting or significant or how d'you think that would erm come across ?
- 49 M(iii) It could be because when we when we're in a face-to-face situation talking to someone, we like to look at them, and we like to see, hear the sound coming out of that voice that we're looking at, out of that mouth we're looking at, don't we ?

In extract 84 M(ii) claims that defendants' behaviour varies according to the extent of their competence in the English language:

Extract 84

- 52 M(ii) If the defendant isn't in the dock, if the defendant is in the dock, then they they're below the screen and they turn their head to- but I haven't noticed any of the times, and I watch quite carefully, because many of the defendants can speak English, may not have a huge- but you're well aware that they're understanding what's being said to them and they're not necessarily waiting for the interpreter so what I've noticed is lots of the defendants in court who've got an interpreter next to them are hearing, but not looking at them, they're looking at the person who's speaking the English, now if they have no English at all which is the last one I dealt with, they look at the interpreter but if they have a level of English, they don't tend to look at the interpreter, they look at the person who's speaking

In extract 85 M(iv) is plainly aware of the poor quality of PVL communication:

Extract 85

10 YF And does body language matter to you ?

10 M(iv) I think it does, I mean there's all sorts of differences, like you're sitting down all the time even though he's addressing you, and the way people stand when they come into court, that's one of the benefits of having three people on the bench, because if I've got a witness and I'm the chair of the bench then I'm concentrating on giving that witness my attention and showing them that I'm giving them my attention, one of my colleagues will be watching the defendant and see how he's reacting to what's being said, we had a lady once who spent all her time curling her lip, you know, and in fact we had to move the court in the end because she was intimidating witnesses which one of my colleagues picked up and I didn't because I was concentrating on the witness, so you don't get as much coming through from the defendant as you do in a live hearing, and again for a bail application or whatever these are fairly sort of routine matters, but for something like a trial that's where you really need to sort something out, I think you would want the defendant there

As far as the mismatch between image and speaker is concerned, in extract 86 M(iv) maintains that there is an instinctive need to watch a person who is speaking. She explains how, as a former teacher, she conducted an experiment with her students:

Extract 86

16 M(iv) it is much easier to concentrate on what somebody's saying if you can see them and actually what I used to do while I was explaining this to ... students was I walked to the back of the classroom and all their heads turned and followed me to listen to what I was saying, and they realised they'd done it, and it made my point that it is much easier to concentrate on what someone is saying if you can see them ...

M(iv) has not had any experience of interpreter-mediated PVL, but when asked in extract 87 where the PVL interpreter should sit, her instinct is to try to replicate the conditions prevailing in the courtroom, where interpreters sit next to defendants. Her next observation shows an understanding of the role of the court interpreter which is at variance from that expressed in the interpreters' Code of Practice:

Extract 87

20 YF Now that you've said that, imagine that you have an interpreter in that situation, first of all, if you have an interpreter in that situation, where do you think the interpreter should sit ?

20 M(iv) The interpreter in court sits beside the defendant, I've been thinking about this because I knew you'd be going to ask something like that, therefore for me the important thing for the interpreter would be with the defendant in the prison, now how possible that would be I don't know, it rather depends I mean (prison X) isn't that far away from (Y) City Centre, I don't know whether it's convenient, every interpreter I've ever had in a live court has been stood and sat beside the defendant, and when the defendant has moved to the witness box and please, we do go into the witness box, we don't take the stand in this country, if we can get that through to people I should be very grateful, the-the interpreter moves with them, I mean the interpreter is only there to interpret but the interpreter really takes on the role of sort of friend, I think, a supporter, cos they're doing the interpreting, all they must do is to interpret, they're not making any suggestions or whatever, but for someone who isn't sort of fluent in language to have the interpreter beside them, they've got a friend, and I think therefore it is important that the interpreter should be beside the defendant and if the interpreter is well schooled and fluent

there's no reason why their voice shouldn't come through clearly and what they're saying shouldn't come through clearly to us, we should be able to speak clearly enough for the interpreter to get what we're saying, but it's the link between the interpreter and the- now, how practical that would be I don't know, and whether (*name of city*) has made the right decision, and if there is a remand or a bail hearing that needs an interpreter, it should be something which is in the list of things that should be done in a live court rather than by video link, it would cost money and be a bit of a fag, but if it's going to make it better, if it's in the interests of justice, not just the usual shibboleth, if it's in the interests of justice that the interpreter and the defendant should be together and it means that they need to come to court then I think they need to come into court

In extract 88, M(iv) concludes that for an interpreter-mediated PVL case:

Extract 88

- 36 M(iv) the ideal situation would be to bring the defendant into court and then you could have everybody together live and that would be the ideal

When asked what he thinks are the main differences between interpreting in the two contexts the district judge describes two types of interpreter/defendant interactions, “just translation” and “more than translation” or “chat”. In extract 89 he talks about this and refers to the defendant as “the body”:

Extract 89

- 9 YF So what, for you, are the main differences between the two [face-to-face and PVL interpreting], would you say?
- 9 DJ Er, you get, er, more interaction that isn't exactly translation when the body is in court than you do over the video link. Over the video link, you tend to get the interpreter in court, you get the body in the prison and it really is just translation. In court, quite often, it's more than translation, and I don't know, because you know the length of sentences, even with Urdu or something like that, where they seem to go on forever, er
- 10 YF There was a case like that this morning, wasn't there, that I was present for
- 10 DJ Well, yes, exactly, and there's far more chat between them in court. It's more stultified, er, when it's on the link, er, and you tend to get a pure translation, not an interpretation
- 11 YF Do you think there's any reason for that?
- 11 DJ Er, yes, because there isn't personal contact between them. I actually think that the translation at a video link is better than the translation in court

What district judge means by “stultified” I am not sure but his overall message seems to be that the co-presence and juxtaposition of the interpreter and defendant encourages more interaction than when they are physically separated from one another. He seems to imply by his last sentence that any interaction over and above what he calls “pure translation” is undesirable.

When asked about possible seating positions for interpreters he claims in extract 90 that it is policy to ask co-present interpreters to stand outside secure docks for their own security. In PVL courts this district judge has them sitting next to defence advocates (so they can appear on the same picture) but is open to the idea of letting them sit next to the court clerk. He is opposed to the idea of allowing PVL interpreters to interpret by telephone (designated for private consultations between defendant and advocate during hearings). This was particularly interesting as I observed (and interviewed) a court clerk who had instructed the PVL interpreter to do just that in the same courtroom in that very Magistrates Court only a few days previously:

Extract 90

30 DJ Yes, I don't agree with it, because the interpreter should be seen ... by the prisoner at all times, and ... on the telephone they're not seen

However, my observations show that the interpreter will *not* be seen by the defendant at all times unless the court clerk keeps the camera focused on the interpreter all the way through the hearing to the exclusion of other court actors, something which did not occur during any of my observation periods in the PVL courts.

6.5.5 Theme 3: observations about the future of video link

Opinions varied amongst the magistrates and district judge as to whether video link should be extended to include other, more contentious hearings such as trials. In extract 91 M(i) seems to be against such a move:

Extract 91

17 M(i) Where there seems to be significant territory for dispute I become more nervous about video link because then I think you really do want all your nerve endings at work

In extracts 92 and 93 M(ii) and M(iii) are certainly open to the idea of using video link for trials, seeing it as a natural technological progression:

Extract 92

81 M(ii) we have to be open to all ideas, I wouldn't be able to say yes I think that's a wonderful idea, but I don't think we should block any ideas, I think ... we should consider the pros and cons ... I think we can't live in just the eighteenth ... the nineteenth or the twentieth century either ... we are far behind with the technology ...

Extract 93

- 78 M(iii) ... perhaps we ought to be flexible enough in our approach to consider that there are some things which we can't do or which should not be done ... but I bet the majority of stuff could be done by TV remands or video link ...

In extract 94 M(iv) sees coming into court as a more intimidating, formal and serious experience for defendants, especially younger ones:

Extract 94

- 37 M(iv) It may well that the younger people we see in court are used to virtual reality, it doesn't bother them, I'm just old fashioned, however [going] back to what I said about the formal situation and being wrong footed, if we want to get through to ... our younger defendants the seriousness of what they've done ... driving without insurance ... I sit there and I say, here in these courts we take driving without insurance very seriously, if you want to bring that over to defendants then I think that coming into court ... and facing the magistrates ... frankly I think [it] is a good thing ... it wrong-foots them

In extract 95 the district judge is unhesitatingly in favour of extending PVL for trial procedures:

Extract 95

- 43 DJ I can see no reason at all why that can't be done. There may well be objections from defence in relation to it; I have no doubt at all they'll have things to say about it, but ... in a way it's little different than the Virtual Courts that are being promulgated in, for example, Camberwell Green in London ...

Hi answer to my question in extract 96 illustrates clearly how different court actors operate with different agendas within the same institution (see reflexive commentary 3 in Appendix A for more contextual information about this response):

Extract 96

- 45 YF So there is, er, as I, as I understand it, sort a jurisprudential right, if you like, to look your accuser in the eye-
- 45 DJ Absolutely
- 46 YF So, what do you think, do you think that that can still happen with prison video link?
- 46 DJ Right, well, you're, you're going at a sore point as far as I'm concerned because, er, when I was in private practice until about ten years ago, I would have been arguing against what I'm going to say now. As a former defence lawyer, I have no doubt at all that the body should be in court and there should be eye-to-eye contact, you see the whites of the eyes, er, so they feel that they are being taken seriously, they are there, it's their human right to have a fair trial in a reasonable period of time, er, but it's very expensive transporting people around, and I can't see any reason why trials can't take place, putting my judicial hat on, er, whilst they're in prison or somewhere else. So I've changed my view over the last ten years

- 47 YF Okay
- 47 DJ If I was a defence lawyer, I'd say exactly the opposite

6.5.6 Summary of bench responses

I have been unable to find any specific guidance for on the matter of interpreter-mediated communication in court and none of the magistrates referred to such guidance during the interviews. On the one hand, two of the magistrates claim that the two contexts are the same, but go on to say that PVL has disadvantages for them associated with lack of body language, a clear admission that the quality of communication is inferior to that in a live appearance. They see no problems in extending the use of PVL for contentious hearings yet cannot see that the same argument works both ways; what is inferior communication for magistrates is inferior for interpreters and defendants too. Magistrates have difficulty in imagining themselves in the position of defendants and interpreters. This echoes some of the interpreter responses in the previous section. Other magistrates see the lack of eye contact with family members as problematic, since live defendants would be able to see them (in fact, I have heard court clerks in PVL cases apologise to defendants in open court for this). As for the DJ, he believes that interpreters should be seen all the way through a hearing, a condition that cannot be fulfilled in a PVL court at present because of the nature of the fixed camera shots. His attitude shows how crossing the invisible line in the well of the court from advocate's bench to presiding bench coincides with an ideological sea change; having crossed that line, he sees no reason why trials should not be heard via video link.

6.6 Analysis of court clerk responses

The experience of the three court clerks (CC(i), CC(ii) and CC(iii)) was identical. All had had experience of interpreted and non-interpreted PVL cases.

6.6.1 Emerging themes

- (i) **Body language, audibility and visibility issues, seating position**
- (ii) **Differences** between the two contexts, **personal preferences** and the **future** of video link

The elements of these themes are sufficiently related to one another to justify grouping them together in two larger groups.

6.6.2 Theme 1: body language, audibility/visibility issues and seating position

The issue of body language is probably of secondary importance to court clerks, since their main function is to provide legal advice to the Bench and manage the flow of cases with their consequent paperwork through the court, but they do have something to say on the subject. In extract 97 I ask how the court might perceive the averted gaze of the defendant CC(i) says:

Extract 97

- 40 YF Do you er I'm sure you must be aware that when the prisoner or the defendant is looking at the picture of the court, his gaze is averted, obviously the camera is there above, and the screen is there, and he has to choose which one to look at, and generally speaking he or she is going to look at the picture[rather than the camera], do you think that this averted gaze is very common in prison video link cases ? erm- is that erm- what perception do you think the court would have of that averted gaze ?
- 40 CC(i) Well the court could read something into it, and of course er I think a lot of er communication I think about eighty per cent is non-verbal, so er it all takes place at a subconscious level er it could influence them it could make someone look disingenuous and uninterested er it may even er potentially make them look guilty, I mean, I've not noticed that too much er I know it's not quite television er but generally I effectively when they come to sit down I check the picture in picture and er you can tell from their non-verbal communication that they can hear you, for example as you said earlier on they may lean forward when proceedings start so you know that that they can hear, er sometimes they will look around if they can't hear, or they will say I can't hear or ask one of the officers er but generally in terms of that, once I know that they're in there and they've got I've got a response from them I'm concentrating on the advocates or my other work I don't really worry- spend too much time looking at the screen unless I have to address them, so this gaze I can't really say that er I've really known it to be an issue, or really thought about it before, because I do- I just pay a passing glance at- initially when the case is called on and then that's it my the screen is at ninety degrees to me and I'm looking at the advocates and the paperwork

In extract 98 CC(i) is unequivocal about the differences between the two contexts in terms of non-verbal communication:

Extract 98

- 43 YF What do you think is the main difference between having a defendant in the court and a defendant in the prison ?
- 43-44 CC(i) in terms of having someone [a defendant] here [in the dock], then when they're on the link it's quite sterile and of course you don't get the non-verbal clues that you would get if they're in the dock ... say, for example, you can now do trials over the link ... you don't get those clues, you can't see somebody's demeanour ...

When asked how she sees her responsibilities in relation to interpreted PVL hearings CC(iii) shows how she takes account of the interpreter in extract 99:

Extract 99

- 18-19 CC(iii) Well ... we use ... simple language as far as we can, try to avoid jargon and break it down in chunks ... clearly it's most important that you've got clarity ... so that you know that the connection that's been made between the interpreter and the defendant is a clear one, you know, acoustically ... because they haven't got the person there [so] that they can ... see their facial expressions
- 20 YF ... you made it sound as though you try harder in a PVL court than you do in a court where the defendant is present
- 20 CC(iii) ... that's probably right although I perhaps wasn't aware of it but I suppose I'm trying to compensate for the fact that they can't **see** body language because, as you saw, when they see the prosecutor or their own solicitor speaking, they, they only see...the shoulders upwards...in a frame of the TV screen ... then obviously they have the voice of the interpreter down the telephone line. So it must be ... more artificial for them ... I always try and make it as clear as possible ... and you often have to remind advocates to slow down

In extract 100 CC(i) supports my own observations about the difficulty of distinguishing the features of black-skinned people on the screen, especially against a dark background (see chapter 5, 5.1.8.). He gives an example of a defendant who entered and had been sitting for some time in the PVL room without being noticed:

Extract 100

- 42 CC(i) ... it was only when I saw movement that I realised that there was actually someone in there ... it's not bad technology but ... I wouldn't say it's broadcast quality it's not high definition ... you wouldn't go to the cinema to pay to watch it ...

All three court clerks have a great deal to say about seating positions for interpreters, sightlines and audibility and visibility issues. The omni-directional microphones, according to CC(i), are not properly utilised by advocates, who often fail to move them into a suitable position. CC(i) and CC(ii) both direct interpreters to sit next to the advocate on the front bench, but CC(iii) directs them to use the defence advocate's "private" telephone line at the back of the court. They justify this by referring to the necessity of keeping the interpreter in the sightline of the defendant. In extract 101 CC(iii) justifies the use of the telephone link because she genuinely believes that the result will be better for the defendant:

Extract 101

- 26 CC(iii) in my view why should they [the defendant] only see the interpreter when they're sitting next to the solicitor? The whole purpose is to understand what's being said, hear what's being said, and so to me you achieve that with greater clarity if you put the interpreter on the

telephone line so that the person simply watches the person who's speaking but hears their words translated ...

- 27 YF So that's more akin to a kind of conference interpreting, really, isn't it?
- 27 CC(iii) I, I'm guessing so, yes, yes
- 28 YF Okay

Both CC(i) and CC(ii) agree that they sometimes forget to track the speaker, resulting in a mismatch between image and sound, but point out that this can happen whether or not there is an interpreter. My observations over many years prior to this study show that this mismatch is more likely to occur when there is an interpreter present because of her seating position on the front bench.

In extract 102 CC(i) points out the inadequacies of the PVL system for defence advocates:

Extract 102

- 45 CC(i) also I don't think the defendants get the service from the advocates in terms of being able to talk freely, because ... some of them ... maybe for good reason, have fears that their conversation is being listened to, they may be paranoid, there may be a number of reasons that they just don't like it, they can't communicate because the camera's in one position, the screen's in another ... and there isn't that ... intimacy in terms of communicating that the technology- ... it removes that, whereas ... in the cells and ... during the bail application there are times when [there is] something that the defendant may wish to convey to his advocate [but] can't do that over a courtroom because everyone would get to hear it, and ... we would have to put something back ... for him to take instructions in a booth, it doesn't happen very often, but I certainly recall cases where that has happened ...

CC(i) also claims that defence advocates are disadvantaged by having to depend on private consultation telephone facilities during the hearing because it interrupts their rhetoric and frustrates the Bench. CC(iii) explains how when the system was installed advocates were advised to include everything they wanted to say in one speech to avoid the camera having to be re-positioned, which was thought to cause confusion for the defendant.

6.6.3 Theme 2: differences between the two contexts, personal preferences and the future of video link

When asked about their own preferences and about the future of video link in the courtroom, CC(i) cites the risks that defendants have to take in order to come to court in person. According to CC(i) these risks include losing cells and cell-mates, being re-admitted to another prison which may be far from home and family, and having their work and training

programmes disrupted. The facilities for housing defendants awaiting production in court are far from ideal, involving long waits in confinement. In fact, CC(i) ends up being rather equivocal on the subject.

CC(ii) is similarly equivocal, and wonders whether the detached nature of a trial by video link would be fair, whilst stressing that the legal procedure and outcome would be the same (see reflexive commentary 4 in Appendix A). CC(iii) is the only interviewee to bring up the very real difficulty of tracking speakers during cross-questioning in a trial. In extract 103, armed with this “insider” knowledge, she is clear that she would not herself want trial by video link:

Extract 103

- 60 YF Yes, yes. And what about [PVL for] a trial for example?
- 60 CC(iii) Oh, right, that’s interesting. Er, the problem with a trial would be logistically how you would manage it, such that at all times the defendant was clear as to who was speaking. Er, because in a trial scenario you could, you would commonly get a situation where a witness, say, is giving evidence, is being questioned by one advocate, and another advocate might interrupt, object, and then you would have that very difficult, er, need you know to be very swift with swinging the camera round the court room. Er, so unless you could have a system whereby the defendant saw the entire picture, and you didn’t have to have the system of moving the camera or there was an automatic system whereby the camera moved automatically to whoever spoke, and that was generated by the microphone and not relying on someone manually moving the camera. Er, because obviously I think it’s important that the defendant sees the witnesses give their evidence
- 61 YF Yes. So, what about if you yourself, just imagine and heaven forfend, you or a relative were in a position of having to choose between a live appearance and a remote one, which do you think you would choose for yourself or your relative? If you were ever in that situation, knowing what you know
- 61 CC(iii) I, I, I think I’d probably say I wouldn’t want my trial to take place in that way. I’d want to be there, I’d want to be involved, if you like, by physically being present

6.6.4 Summary of court clerk responses

Court clerks seem to be well aware of the limitations as well as the advantages of PVL. They highlight audibility problems for defendants, potential disadvantages for defence advocates and the communicative relationship with their clients, problems of image-speaker mismatch due to the limitations of the tracking system as well as unresolved issues about where interpreters should sit. The interview transcripts as a whole show that there is no formal training for court staff to enable them to work effectively through an interpreter and no useful guidelines on the subject. Because of this there is some inconsistency about seating positions for interpreters, with two choosing to place interpreters on the front row next to advocates and

one placing the interpreter at the back of the court using the “private” telephone link intended for defence advocates. This inconsistency is backed up by my own ethnographic observations in court.

6.7 Crown prosecutors

6.7.1 Range of experience

The experience of crown prosecutor respondents CP(i), CP(ii), CP(iii), CP(iv) was identical. All had experience of prosecuting in interpreter-mediated PVL hearings.

Because the interviews with crown prosecutors were fairly short (they were mostly interviewed on noisy court premises whilst waiting for cases to be called) I have chosen to consider their responses together in one section.

6.7.2 Crown prosecutors’ responses

CP(i) has extensive experience of interpreter-mediated PVL cases, and has a unique perspective due to the fact that he has done both prosecuting and defending advocacy in court. Interestingly he spent more time during the interview talking about his experience as a defence advocate than as a prosecutor. Once again he highlights the inconvenience of doing a private pre-court consultation through an interpreter in the tiny booths available. He compares this with the challenges of working with defendants in the court cells, often taking instructions through glass slits or working through intercoms and handsets, clearly seeing it as part of a defence advocate’s lot. As far as differences between dock and PVL cases go, in extract 104 CP(i) claims:

Extract 104

- | | |
|---------|--|
| 6 YF | you said something to the effect of um that it made your relationship with the defendant different ? |
| 6 CP(i) | I don’t think it makes counsels or the advocates’ relationship different, because um you do take the time to meet with them, when you meet with them, and they’re in custody anyway, quite often you’re speaking to them through glass in a very artificial situation down in the cells, that’s um that’s more that’s just as likely than to be placed in a small room um by the jailers to speak person to person, you’re just as likely to have to pass things, and hard to hear and over an intercom system and where the things are happening in the jail uh so that’s not too different. I I just think um and it’s probably because what I’ve read also um that when you’re in court and you’re looking up at a screen, I believe it may be that the that the the prior fact the |

decision maker rather the district judge or a uh lay bench may in some way depersonalize the individual, because you're looking at a TV screen and uh you're going through the same activity as as you would, uh in person, it's the same thing, the difference between uh a movie and a live presentation on stage, you get an electric feeling of a live presentation on stage that you don't get in a movie, there is something some human dynamic that's going on, I don't know what it is, I don't know how it affects- but it could it could affect someone

CP(ii), like CP(iv), changes his style of delivery to accommodate the interpreter. His answer in extract 105 shows a desire to work productively through interpreters by consulting them about how they would like him to speak; some prefer him not to pause too frequently and others say the opposite:

Extract 105

- 11 YF And, er, you're making your, your usual submissions, er, what difference does it make to you in that situation?
- 11 (ii) None. It makes no difference to me at all, er, other than the fact that I'm sitting down instead of standing up or leaning forward to make sure they can see me on the camera if the camera's not focused on the bench properly, which happens. Other than that, the, it makes no difference to my presentation, er, if there's an interpreter present, whether or not the defendant [emphasis] is present in court, or the defendant is at a remote location.
- 12 YF So, it's the interpreter that, that is really the, er, the catalyst, that's the one-
- 12 CP(ii) That's, that's the key difference between...well, as I'm talking to you now, I'm aware that I talk quite quickly, and everybody tries to slow down when they're in court because it helps get the argument across. If we had an interpreter present with us, I would be speaking even more slowly, and I would be pacing the delivery according to the needs of the interpreter. That doesn't change whether it's in court or at a remote location.

In extract 106 CP(ii) has an interesting remedy for the mismatch of image and speaker in PVL cases. He suggests having a second Picture in Picture image of the interpreter to help the defendant see and hear both interpreters and speakers simultaneously. He realises that the neutrality of the interpreter might be compromised by her seating position:

Extract 106

- 31 YF But do you think [seating position] could be a problem in terms of, er, the neutrality of the interpreter and the perception of the defendant who may from a foreign jurisdiction and who doesn't know who these people in the court room are ?
- 31 CP(ii) I, I, I understand, yeah I understand, I understand what you're asking. I don't think, I think any, any place, sitting next to any one person in the court room, whether they're familiar or not with the way a court is comprised is unhelpful because they appear to be, they would appear to be interpreting for that one person rather than anybody else. When the videolink court's operated, the members of the court, before the hearing are introduced to the defendant over the link, as you will have seen today. These are the bench who are hearing your case today, I'm the clerk, these are the Bench hearing your case they'll say, this is the prosecutor, this is your solicitor and there's the interpreter. Er, so they are, we are all introduced as separate entities and separate identities. I think it's unhelpful for the interpreter to be sat [sic] any, by any one person, in the courtroom, because as I've said, it would appear that they are interpreting for that person and rather than for the defendant which is who they're there for.

In extract 107 when asked about the future of video link, he has doubts about its applicability to trials:

Extract 107

- 48 CP(ii) So, very often that happens in court proceedings and rarer proceedings if somebody is abroad and can't get to the court, or if they've got a physical disability and can't get to the court, then they can give their evidence to the proceedings via the videolink as well
- 49 YF Yes. What about looking at it from the defendant's point of view?
- 49 CP(ii) The, the point that I was coming to is that, I, I don't know if the entire trial necessarily should be conducted, er, properly, could be conducted properly over the videolink. Er, for the technical issues, at very least, er, that would, that would prevent perhaps that. I know there are some plans to extend, I know you can sentence over the videolink as well for instance. What I was, what I was saying, and it applies equally to witnesses and defendants, is that evidence is very often introduced and cross-examined and re-examined over certain circumstances, that are not infrequent over the videolink in any event, and I think if, if it were extended to allow people to give evidence, er, then I don't see the harm particularly in evidence being examined, and cross-examined over the videolink. I'm not sure that a, an entire trial would work simply for the logistical reasons, amongst other things. And as far as the defendant is concerned, er, he has a right, I believe to, face his accusers as it's, as it's phrased. Whether or not that's a tele-presence right to face his accusers or not is not something I've not had to consider before. Er, I think the point of people giving evidence over videolink in special measures, very often, is to protect that person, defendants also have a right to, and can also give evidence via videolink if they're considered more vulnerable in the same circumstances. So, sauce for the goose, I suppose, is sauce for the gander. If, if, if evidence can be called over the videolink I don't see any problems with that, the same rights should be extended to the defendant, are extended to the Crown. If, if the rights to introduce videolink were extended to the Crown, they should be extended to the defendant. But I think logically it would be unfeasible.

His insider knowledge of the risks that prisoners take when coming to court are pre-dominant in his answer when he is asked to consider his own personal preferences as between PVL and a live appearance.

I observed that CP(iii) was in the courtroom on the occasion when the court clerk requested the interpreter to use the private telephone link intended for the defence advocate in the corner of the room. In extract 108 CP(iii) does not approve of this practice:

Extract 108

- 8 YF Right. So you say that it works better for you when the interpreter sits next to the defence advocate?
- 8 CP(iii) Yes
- 9 YF But on that day when you and I met, that wasn't the case
- 9 CP(iii) No, it wasn't
- 10 YF And so, do you have any comments to make about that?

- 10 CP(iii) Well, as I said, as I said, I just think that it's better for the defendants to see the interpreter and have eye contact with them. Just speaking to a voice over the phone, I personally don't feel as comfortable with.
- 11 YF Is there any particular reason, could you put your finger on why that makes you feel uncomfortable?
- 11 CP(iii) Er, I, I think it's just a bit more personal. I think it is to do with eye contact, I don't think it affects the quality of the interpreting on anything like that, just more personal for the defendants so they, they actually know who is interpreting for them, they can look at that person, er, and I think it's just a better effect overall
- 10-11 CP(iii) I just think that it's better for the defendants to see the interpreter and have eye contact with them. Just speaking to a voice over the phone, I personally don't feel as comfortable with ... I think it's just a bit more personal. I think it is to do with eye contact, I don't think it affects the quality of the interpreting on anything like that, just more personal for the defendants so they, they actually know who is interpreting for them, they can look at that person ... and I think it's just a better effect overall ...

In extract 109 she takes pains to adapt her style of delivery to accommodate the interpreter, but has never encountered one who performs using simultaneous mode:

Extract 109

- 28 CP(iii) Whether it's through TV link or whether it's live ... it's the same, it tends to be stop-start, stop-start, and sometimes if you've got a very long sentence ... you can't sort of complete the full sentence before the interpreter has to be given a chance to interpret what's been said...
- 48 YF And supposing the interpreter were skilled in simultaneous, whispered interpreting, would that make any difference to you?
- 48 CP(iii) Oh definitely yes, because it wouldn't be any different to ... somebody who didn't need an interpreter. I've never been told an interpreter is capable of that ... and on several occasions I've been stopped, and not just myself, defence advocates, judges, magistrates as well have been asked to stop because the interpreter can't keep up

She would not like PVL to be extended to trials, claiming that the defendant should be brought to court in person so that good quality communication can take place between defence advocate and client, and to make it clear what mitigations will be used. CP(iii) would rather be brought to court for trial herself, but is also aware of the risks that prisoners take by appearing live (see CP(ii)). In extract 110 CP(iv) echoes CP(i):

Extract 110

- 10 CP (iv) It's only recently, since I've come back off maternity leave, it appears they're doing it [hearing interpreted cases by PVL] by video link, the interpreter
- 11 YF I've certainly seen a lot here
- 11 CP(iv) Yeah, yes, so I, I hadn't seen it before returning to work, er, it did seem to take away the feel of the other parties because the main focus tends to be on the interpreter and what the interpreter's saying, so they don't really get to see much of the court, usually the camera

will span to whoever's talking but because there's an interpreter there, it will focus completely on the interpreter to make sure even if they don't hear what's been said, they can see lip movements and might be able to pick up on some things that they've missed. Er, so then they, they don't have the experience the video link is meant to be, which is

- 12 YF When you say they, you mean the defendant ?
- 12 CP(iv) Defendants, yes, don't have the same experience that they're meant to have if they're in the court room which is what it's meant to be like. They see the person speaking, it's as if they're in the court room themselves. I do think that, that element is, is now lacking by using the interpreter by video link rather than being brought up from custody
- 12 CP(iv) Defendants, yes, don't have the same experience that they're meant to have if they're in the court room which is what it's meant to be like ... I do think that, that element is ... now lacking by using the interpreter by video link rather than being brought up from custody

In extract 111 CP(iv) shows how she makes a conscious effort to simplify her language when working through an interpreter:

Extract 111

- 19 YF You would simplify your language?
- 19 CP(iv) Yes
- 20 YF And you'd do that quite consciously?
- 20 CP(iv) Er, yeah, well it's quite easy because usually you'd word up, if, if you know what I mean, you, you, just for the very nature of the job that, er, you'd elaborate more on what you had in front of you, you may have a complainant who states that, you know, he was acting suspiciously but we would probably say is "furtively", but to make it easier to translate we'd probably use "suspiciously" [laughter]
- 21 YF I see
- 21 CP(iv) Rather than furtively
- 22 YF So you-
- 22 CP(iv) It might be more difficult to translate
- 23 YF You have a, a sort of, you're you're keeping an eye out for the interpreter all the time
- 23 CP(iv) Yeah. Yeah, we try and make sure we keep it as plain English as we can...I just tend to do a sentence at a time and ... allow them [the interpreters] to translate

At extract 112 CP(iv) confirms my own observations and the general impression of difficulty with audibility for the PVL defendant, claiming that they often say they cannot hear. She thinks that it is more important for the defendant to see and hear the interpreter throughout the hearing rather than any other speakers in court, and this is reflected in her views about PVL in trials and her own personal preference:

Extract 112

- 52 CP(iv) ...when I think there's the likelihood that they are going to be released, or there's going to be some form of conclusion, I think it's better that they are in the, in the court building, and..
- 53 YF Could you just say why?
- 53 CP(iv) Why? I think it's
- 54 YF It's difficult to put your finger on it
- 54 CP(iv) It is, it is, er, it's such, it's such an occasion isn't it, your trial? I think it's only fair that you should be present, er, I don't know, it just wouldn't feel, it just wouldn't feel right. I mean I know the information would still be passed on to them but I feel that if they're in the court room, they're more likely to object or step in, stay something rather than if they would if they were on the end of a video link
- 55 YF Why do you think that might be?
- 55 CP(iv) Er, probably because they don't want to interfere with what's going on, they can't see every party and what's being said, and so, reactions and things like that, so I think it's important to be able to see everything, hear everything and be a part of it, feel a part of it. I think that's another thing, you wouldn't feel so much of a part of the proceedings

6.7.3 Summary of crown prosecutor responses

Like court clerks, crown prosecutors are aware of the advantages and disadvantages of PVL. On the whole they see it as inferior to face-to-face communication, and would not want it for themselves as defendants. They seem to make efforts to accommodate interpreters, consulting them about how they would prefer them to deliver their submissions, sometimes modifying their language to simplify legal terminology. None of the interviewees seem to have come across simultaneous interpreting for defendants who appear in the dock. For them, interpreters have only one mode of interpreting at their disposal, and that is consecutive.

6.8 Analysis of defence advocate responses**6.8.1 The role of defence advocates**

Defence advocates in the English and Welsh Magistrates Courts are more likely to be qualified solicitors rather than barristers. In England and Wales, though a few state-run public defender offices are in operation, there is nothing comparable to the public defender system in the United States. Nearly all criminal defence lawyers are in private practice, with their work paid for through Legal Aid where appropriate.

The perspective of defence advocates on the issue of PVL and interpreters is likely to be very different from all other court actors, as they are the only ones to have a long-term and more intimate professional relationship with their clients. One might expect that issues such as body language and visibility/audibility would be much more significant for this group because of the close and sometimes prolonged professional relationship that exists between defendants and their defence advocates; this does seem to be borne out by the responses. Court clerks, magistrates, district judges and crown prosecutors have only transient contact with defendants, possibly only lasting for the duration of a single court hearing. Defence advocates, on the other hand, might first meet their clients at the police interview stage, will almost certainly have prolonged contact with them to take proofs of evidence, and will go on to represent them in court, possibly over a number of hearings, before cases are disposed of.⁵⁵

The defence advocate's function is to take instructions, give impartial legal advice as to the consequences of pleading guilty or not guilty, and to present defendants' cases in their best possible light before the Bench in order to gain the most favourable outcome (this is necessarily a very condensed explanation of what is a much more complex role). This long-term relationship may include interpreters where there are defendants who do not speak English. In the exercise of their duties, defence advocates have three specific challenges to contend with which will become apparent in the interviews. It is important to understand these challenges and how they might affect the crucial communicative relationship between the interpreter, the defendant and the defence advocate.

6.8.2 Specific challenges for defence advocates in relation to defendants

Firstly, defence advocates usually operate under time pressure, whether working through video link or not, for example, when first meeting clients in court cells and attempting to take instructions from them in time for their first court appearance. This pressure increases when the video link element is introduced, as a maximum of just fifteen minutes is allotted for each pre-court consultation between client and defence advocates, whether the case is interpreted or not.

⁵⁵ To dispose of a case means to take a case out of the court process.

Secondly, and again under time pressure, defence advocates have to make an assessment of their clients' mental and physical state, as well as gain some idea of their intellectual and decision-making capabilities in order to determine their fitness to give instructions and enter a plea.

Thirdly, in order for a private criminal legal aid firm to operate economically, defence advocates have to undertake large caseloads. The handling of their cases is monitored by the Legal Services Commission⁵⁶ who is empowered by the state to grant or revoke licences for criminal legal aid firms.

A summary of defence advocates' experience can be found in the following table:

| | | |
|------|---------|--|
| DA 1 | DA(i) | Experience of PVL and IPVL |
| DA 2 | DA(ii) | Experience of face-to-face INTs and PVL |
| DA 3 | DA(iii) | Experience of IPVL and face-to-face INTs |
| DA 4 | DA(iv) | Experience of IPVL |
| DA 5 | DA(v) | Experience of The Virtual Court and PVL |

Fig. 55 Defence advocates' experience of interpreter-mediated PVL

6.8.3 Themes

- (i) **Communicative relationship** between interpreter, defendant and defence advocate including body language
- (ii) **Practical issues:** interpreter seating positions, audibility and visibility
- (iii) **Personal preferences**

The communicative relationship between an interpreter, a defence advocate and a defendant is of paramount significance in the assessment of a defendant's mental state, the taking of instructions and representing the interests of defendants in court, and thus it predominates over all other sub-themes in the responses. Rather than consider each of these themes separately, then, I will attempt to show how each defence advocate forges that relationship and how s/he comes to terms with the limitations of not being able to conduct interpreter-mediated private consultations face-to-face.

⁵⁶ The Legal Services Commission is the body responsible for running the legal aid scheme in England and Wales. It works in partnership with solicitors and not-for-profit organisations to provide information, advice and legal representation to people in need.

6.8.4 Defence advocate 1

I was fortunate to observe DA(i) in two different situations; firstly in consultation with his client in the pre-court PVL booth to which he invited me, (first having gained consent through the interpreter for me to be present) and secondly in the courtroom, making submissions on behalf of his client.⁵⁷ The interpreter in this PVL case was asked by the CC(iii) to use the telephone link (see section 6.6.2).

In extract 113 DA(i) feels himself to be at a disadvantage when using an interpreter, and particularly so when in the pre-court booth:

Extract 113

- 25 DA(i) Er, I mean, you're really at a disadvantage aren't you? You're saying things, the interpreter's going to repeat that and you've got to take it on trust that what you've said exactly is repeated to the defendant, and vice versa
- 26 YF Who is at a disadvantage? Who is at a disadvantage?
- 26 DA(i) The defence solicitor because he doesn't speak the language. So there's, there's always a slight problem
- 27 YF Yeah
- 27 DA(i) In that particular case, I, no criticism but at the end I did ask her whether she had actually interpreted everything that he had said precisely back to me, because I got the impression that he was saying a lot of words, but the way it was being interpreted back to me was sort of paraphrased and wasn't word for word, and I must admit, I would prefer it to be a literal translation, so he says whatever, swear words, the lot and then he repeats them back to me, because that would give me a better idea of what he's like, rather than being sort of a, being paraphrased, paraphrased or watered down, does that answer your question?
- 28 YF Yes

As I watched this interchange myself, I can confirm that the interpreter in question did, in fact, speak directly to the prisoner without referring to the advocate for some of the time. It is possible that the temptation to do this is greater by virtue of the fact that there is only one telephone handset, and that handset is usually held by the interpreter, although it will be seen in section 6.7.6 that DA(iii) chooses to reverse the process with the result that the defendant can *see* but not *hear* him, and can *hear* the interpreter but not *see* her.

⁵⁷ The defendant is always referred to as a "client" by defence advocates to denote the professional relationship that exists between them for the duration of a case.

In extract 114 DA(i) shows how he consciously changes his behaviour with a face-to-face interpreted case. He slows his speech down and stands at an angle to enable the interpreter to see his face. He also takes the initiative to ask other speakers to slow down if speaking too fast. He prefers interpreters to take the initiative to state how they would like advocates to speak:

Extract 114

- 41 DA(i) I think interpreters should be more pro-active and say, look I need a bit more time ... but it depends on their skill levels ... you don't know how skilful they are or how quick they are, or how difficult it is with that particular language

He does not appear to approve of the practice of interpreters being directed to use the advocate's "private"⁵⁸ telephone link at the back of the court (see CC(iii) at section 6.6.2) and sees it as a disadvantage for defendants in that they cannot see the interpreter.

In extract 115 when asked why interpreters are most often asked to sit next to the defence advocate, it is rather difficult to tell from his answer whether it is he or the court that perceives the interpreter to be part of the defence team:

Extract 115

- 50 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 ?
- 50 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.
- 51 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?
- 51 DA(i) Er, I don't think it matters. Does it matter?
- 52 YF This is your, entirely your perception, that's an interesting-
- 52 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 advisor'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.

When asked about extending video link usage for trials, in extract 116 DA(i) is unequivocal:

⁵⁸ If defence advocates wish to communicate privately with their clients during a hearing, they use a dedicated line at the back of the courtroom for that purpose. However, defence advocates can often be overheard, as the facility is not enclosed.

Extract 116

- 66-7 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.

And in extract 117 on the question of his attitude to trials by videolink:

Extract 117

- 66 YF Okay. So, what would your attitude be if the government or the powers that be, decided to extend the use of video link to other types of hearings, for example trials? As they do in some other countries ?
- 66 DA(i) Er, trials? I wouldn't be happy with that.
- 67 YF Why wouldn't you be happy with that? Could you explain?
- 67 DA(i) 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 in court, is important. I mean he'd want to know who was talking to who [sic], what was happening, who was walking around the court, what the magistrates were doing, whether they were paying attention, etc. I think that would be, er, 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, well what aren't, what's not being shown, 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.

In common with DA(v) in extract 118 he makes a distinction between complex and straightforward private consultations, seeing the latter as quite appropriate for video link:

Extract 118

- 12 DA(i) ... if you're taking instructions over video link you can do it but what you don't get necessarily is body language about how people understand the advice you're giving.
- 13 YF And how important is that to you, body language, even if there isn't an interpreter there?
- 13 DA(i) Depends on the hearing. I mean if it's a case where you've got to take comprehensive instructions, you've got to try and give some difficult advice, then it's going to be better to see them in person rather than video link. But if it's a case whereby the matter is going to be adjourned or it's a repeat of previous advice, and you're happy that the person understands it, then there's no problem. I mean, personally, I think video-link hearings with prisoners is a good thing.

6.8.5 Defence advocate 2

In extract 119 DA(ii) makes a distinction between first and second meetings on video link, saying that a first encounter with a client through video link is always more difficult because of the greater legal complexities of a first hearing (and here she is referring to native-English speaking defendants):

Extract 119

- 13 DA(iii) I always find it more difficult not knowing the client. And that's an English-speaking client.
- 14 YF So that means, when you say you don't know them, that means you haven't met them before ?
- 14 DA(ii) That's right
- 15 YF Apart from this is your first meeting on video link
- 15 DA(ii) Yes
- 16 YF Right, okay
- 16 DA(ii) And er, you know there's sometimes a lot, a lot to explain and you don't really know how much they do know about the procedure, the ins and outs of the court. You've got some idea on how and you don't know how intelligent they are
- 16 DA(ii) you know there's sometimes ... a lot to explain and you don't really know how much they do know about the procedure, the ins and outs of the court ... you don't know how intelligent they are

These challenges are compounded by the fifteen-minute time limits imposed by the court for private consultations. The limits appear to be the same whether the case is interpreted or not.

Interestingly DA(ii) identifies a modification in her own behaviour when using interpreters, pausing frequently, turning towards the interpreter and monitoring the understanding of her client. Contrary to DA(i) who felt himself to be at a disadvantage when using an interpreter, she expresses a distinct *preference* for using interpreters in court in extract 120, saying that she uses them strategically to enhance her own thought processes:

Extract 120

- 22 YF Er, do you, does it make any difference to you whether the interpreter's there or not? In the sense that, this is an interpreted case, this is an uninterpreted case. So if it, if it does, how does, you're nodding
- 22 DA(ii) Yes
- 23 YF How does it make a difference to you?

- 23 DA(ii) It makes a huge difference to me because I have, I, it's important that I pause, I speak clearly so that the interpreter speaks throughout and interprets throughout. Er and I pause a lot, so that the interpreter can catch up and I, in fact, quite often turn to make sure that they're interpreting and that the er, er, the defendant understands. Er, so I find it easier because I can slowly gather my thoughts and get a kind of momentum going. So I actually quite like an interpreter there; because it slows me down and gets my rhythm going when I'm doing an application.
- 23-4 DA(ii) ... I find it [using interpreters] easier because I can slowly gather my thoughts and get a kind of momentum going. So I actually quite like an interpreter there; because it slows me down and gets my rhythm going when I'm doing an application ... I find it very helpful, it slows you down, you can think about the next point that you want to make while waiting for the interpreter ... to catch up. So I find it a great advantage, and I usually do better because I've slowed down a bit

In extract 121 she claims that sometimes clients on video link in court do not understand why their advocate does not speak during the hearing. Some PVL hearings are merely a formality and there is literally nothing that the defence advocate can do or say that will change the outcome for defendants, who can interpret this as negligence on the part of their advocate:

Extract 121

- 29 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
- 30 YF How would you do that?
- 30 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

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, something that I have not witnessed during any of my ethnographic observations.

In extract 122 DA(ii) clearly sees PVL as impacting negatively upon the professional relationship she has with her client:

Extract 122

- 48 DA (ii) If you're speaking on a video you can't necessarily project so well your, your, your opinion. You can make it-whether they're really taking it on board, over and above something else you've emphasised
- 49 YF What's missing there, then?
- 49 DA(ii) Ah, it's very good, it's a very good question, what is missing. Because you're just relying on visual and not on perhaps body language or anything else. Er, and I sometimes like to read witness statements with the clients and go through things, jointly, of course you can't, you're just there. He may be looking at the crossword for all you know, he may be looking down. You know, you just don't know, it is, it's, it's definitely not the best medium to talk to anybody. I know everybody has meetings and everything like that but, of course, when you're in a professional situation with another professional, then you are assuming that they're going to pay attention and have the same major priorities. The person you're talking to may not have any priorities that you're, and may have a huge different agenda, and may not, just may not be paying attention. So it is difficult, and it's difficult to assess that from just a, a, a frontal view of them looking down the, er, looking down the camera

Although she has never practised in the Virtual Court, in extract 123 she takes a dim view of the prospect:

Extract 123

- 56 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 ...
- 57 YF So ... do I gather that you wouldn't like to ... have it [PVL] extended ?
- 57 DA(ii) ... I'd like to give it a go but ... it's not access to justice, it's just a means of making it cheaper, and there's just no way it's fair ...

and in extract 124 she gives her overall view of PVL:

Extract 124

- 76 DA(ii) 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 ...

Finally, as we might imagine, she would choose face-to-face over PVL communication for herself, if she were a defendant.

6.8.6 Defence advocate 3

The time pressures upon advocates seem to have a greater impact upon interpreted PVL cases because of the fact that no extra listing time is available to take account of the interpreted nature of the case. In extract 125 DA(iii) claims that this impacts negatively upon his professional relationship with his client:

Extract 125

- 50 YF And so would you, would you describe it [the PVL pre-court consultation booth] as a satisfactory experience? This, er, pre-court consultation in the booth or how would you describe it? Is it something that you've, er, that concerns you in any way or are you...?
- 50 DA(iii) I know why they're doing it, obviously costs, but given that there are serious issues that sometimes need to be spoken to about with your client, given that they're vulnerable as it is, they need to speak to you freely it just makes it all sterile ... you're being pressed to wrap everything up within the short time that you've got. You've got other solicitors, like today for example, waiting to come in [to the pre-court booth] as well, you're conscious of that clients obviously have loads of questions because perhaps it's been a good few weeks [since] they've seen anyone, but you just can't do that within the time-frame that you've got. Whereas, if it's an open consultation, for example in the prison cells, it's a lot more relaxed, you've got that time, the client's at ease and they can talk to you freely

DA(iii) gives an unexpected answer when I asked him whether he modifies his behaviour in court in any way to take account of an interpreter. Rather than referring to his own behaviour, his response shows a pre-occupation with practical considerations; interpreters are required to countersign forms signed by his clients to certify that they have carried out an accurate interpretation.

DA(iii) deplores the use of PVL by Probation Officers to compile pre-sentence reports⁵⁹, clearly implying in extract 126 that the information gained in such an encounter will be incomplete:

Extract 126

- 80 DA(iii) I mean obviously the other thing I find bizarre is that probation use video link quite a lot now to do their pre-sentence reports
- 81 YF Yeah, yes, yeah
- 81 DA(iii) Especially with an interpreter there, I just don't think you can get everything that you need purely from the video link with an interpreter, especially for something, you know, as important as pre-sentence report?

In extract 127 DA(iii) rejects the idea of extending video link to trials:

Extract 127

- 83 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 ?

⁵⁹ Pre-sentence reports (PSRs) are reports ordered by courts when defendants plead guilty or have been found guilty of an offence. They are undertaken by Probation Officers who are specially trained in the process. These reports assist the court in determining the most suitable method of dealing with an offender, and contain an assessment of the nature and seriousness of the offence and its impact upon a victim. (See www.cps.gov.uk/legal/p_to_r/provision_of_pre_sentence_report_information/)

- 83 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.

And asked what he would choose for himself as a defendant, his view is clear in extract 128:

Extract 128

- 84 YF If you, yourself were ever in a position of having to choose maybe for yourself or a member of your family between a live appearance or a remote one; what would you choose?
- 84 DA(iii) Definitely [a] live appearance

6.8.7 Defence advocate 4

DA(iv) echoes other defence advocates when he describes the limitations of PVL in extract 129:

Extract 129

- 20 DA(iv) I don't think you get as good instructions myself
- 21 YF And could you elaborate on that?
- 21 DA(iv) Well, this is really to do with, with people who understand English, er
- 22 YF Yes, it doesn't matter
- 22 DA(iv) But, I find if I'm face to face with someone, as opposed to seeing someone on a television screen, I can more judge by their facial reactions, er, what their response is to various questions or points that I've put to them or raised with them.
- 23 YF Yes
- 23 DA(iv) With a screen it's so much, well it's virtually impossible to, to er to pick out those, those little signals that they give out

He claims he cannot adequately assess the mental state of his clients, citing a recent face-to-face case where two psychiatrists who were called in to give an opinion on his client's fitness to plead gave conflicting decisions. Although his account is about a face-to-face encounter, the point he is making in extract 130 is that these matters are difficult enough to establish even when the parties are in direct contact with one another:

Extract 130

- 27 DA(iv) And this was when they were face-to-face with the fellow. If it were on video link, I think that things would have been even more difficult.

The fact that such interaction is further mediated by two additional factors (interpreters and video link) is bound to compromise the accuracy of such decisions, as he sees it.

DA(iv), as well as all the other advocates, describes the difficulties of communicating effectively with clients through interpreters in pre-court booths, but brings up an interesting new issue: the question of clients who can, in fact, speak some limited English. In extract 131 he claims that this group is particularly disadvantaged because he cannot hear clients who choose to make some of their responses in English, responses that he would like to hear for himself at first hand:

Extract 131

- 31 YF And, I see, and how do you manage that interview physically in terms of the single hand-set, the fact that it's rather a small booth, how do you manage the actual process of that consultation with an interpreter?
- 31 DA(iv) Well, with the single hand-set, I've got to hand it obviously to the interpreter and so I'm depending on the interpreter completely. Er, there's no chance of me picking anything up, it, a lot of have a very basic grasp of English, the ones that need an interpreter that is. Er, and occasionally they'll be able to come out with a response in English. That's fine because that can help when you're face-to-face
- 32 YF Yeah
- 32 DA(iv) If you're on video link it cannot happen, because obviously you can see the mouth moving but you can't hear what they're saying; it's all got to be via the interpreter

In extract 132 he underlines the importance of taking notes for himself so that he can keep track of the interaction:

Extract 132

- 39 YF You, what do you do then, you give your instructions or you give your consultation through the interpreter, how do you do it?
- 39-40 DA(iv) I will be putting various points, which the interpreter will then translate down the telephone [handset], get a response back and then translate it to me before I can then go on to the next point I've got to write down. Obviously I'd have scribbled notes of what's, what's been said

In extract 133 he sees PVL as interfering with the professional relationship between himself and his client in that, firstly, the client should be able to see his own legal representative

clearly, and secondly, he should be able to recognise that representative when they meet in the same or in any other context:

Extract 133

- 42 DA(iv) Well it's important, in my view anyway, for the client to be able to see me, and to understand this is the person representing him and recognise me then if he sees me again on a future date, either on another video link or-
- 43 YF Yes
- 43 DA(iv) Er, by way of appearance in court
- 44 YF Yes
- 44 DA(iv) PVL has the effect of minimising the solicitor-client link which I personally think is important

He follows this comment by confirming, in extract 134, that since the introduction of PVL he has less face-to-face contact with his clients when taking instructions:

Extract 134

- 50 DA(iv) I'm much happier if I'm taking instructions when the person is sat in front of me in an interview room down in the cells with the interpreter there as well, so I can see the facial expressions when he or she's speaking, and gauge for myself the honesty of the responses

In extract 135 he thinks that the interpreter should be seen by the defendant when she is speaking, but is aware that this often does not happen. As far as the defendant is concerned, he thinks receiving a series of images which may or may not necessarily match the speaker could be confusing, and recommends focusing the camera on the interpreter all the time:

Extract 135

- 59 YF So, if you're, if you put yourself in the defendant's shoes, er, receiving these images where sometimes he can see the interpreter, if, if, er, the shot, the camera is on you, and sometimes not, do you think, do you want to make any comment on what his impression might be of what's going on in the court room?
- 59 DA(iv) Well, I think that it's going to prove somewhat confusing. To my mind, the best way of doing in the system that we do have is for the court clerk, initially, to speak to the, the defendant, er, showing himself or herself, the magistrates, er, the prosecutor, defence, er, and the interpreter. At that point in time the interpreter is interpreting without being, being seen, but after that {coughs + apologizes}, after that, concentrate the camera on the interpreter, regardless of who's speaking

In common with other advocates, he modifies his delivery by pausing frequently to allow for the interpreter, but finds that this fragmentation interferes with his submission style,

preferring to speak in one continuous and uninterrupted monologue. He explains why in extract 136:

Extract 136

- 62 YF And how, is there any way, is there anything in your behaviour, your delivery, in your style that you would change if you're working through an interpreter, as opposed to, er, on video link?
- 62 DA(iv) The main thing would be you've got to pause very regularly, to make sure you're, you're not outstripping the interpreter
- 63 YF Yes
- 63 DA(iv) That does interfere with, er, the way you do present things because everybody has a different style
- 64 YF Yes
- 64 DA(iv) Er, but it certainly does interfere with that
- 65 YF So, if you're trying to make a case, on behalf of your client, you, what you seem to be saying is that, er, that, er pausing will interfere with your delivery?
- 65 DA(iv) It does because I find that, er, if you've got a point to make it's best to make it in a continuous flow, and then stop
- 66 YF Yes
- 66 DA(iv) And then make your other point, but sometimes solicitors are verbose creatures anyway, er, your, your sentences are not the shortest of sentences, and you make, want to make your point over say, three or four, five different sentences
- 67 YF Yes
- 67 DA(iv) You don't want to have, for instance, pauses in between each sentence you want it to flow

He is aware that interpreters would normally perform in simultaneous mode during face-to-face hearings, and sees the necessity of using consecutive mode during submissions as one of the limitations of PVL. When asked about extending PVL to trials in extract 137, he is adamant:

Extract 137

- 76 YF ...if anybody should come along and propose that the range of hearings should be extended to include more contested material, like trials for example, what would you say to that as defence advocate ?
- 76 DA(iv) I'd be strongly against it
- 77 DA(iv) Certainly. With trials, when you've got lengthy, er, amounts of evidence being, being given, you often have civilians as opposed to police officers giving evidence
- 78 YF Yes

- 78 DA(iv) Er, it's difficult from their point of view, in an unfamiliar environment, doing something that's totally foreign to them. The last thing they need is to be told that, hang on a second, after every second, er, sentence, let's have a pregnant pause whilst it's being interpreted. Er, it's not going to help them any way shape or form, er, and equally when the defendant gives evidence, there's going to have to be pregnant pauses, er, whilst everything is interpreted. I would estimate that that would increase the length of the trial significantly, er, with the increased costs to the pub, public purse because, at the end of the day, er, the cost of running a court per hour is several hundreds of thousands of pounds. Er, and it would seem to me to be a completely false economy, saying oh well, we've done away with the need to produce the, the defendant in court, and therefore we've saved X amount of pounds, well that's true but you've spent more than that in the extra court time it's taken to deal with the case, and again, I don't think it would be as, er, as, er, as beneficial from the defendant's point of view if he's just sat in the little room, listening to what's going on but not seeing everybody. At least if he's in the court room, he can see everybody, body, and glance from one to the other, as they're speaking, which will aid his [emphasis] understanding if, if, if, if not, properly help him as to, to what is going on

He gives an interesting example of why it would not work; civilian witnesses who are not used to giving evidence would have to stop to allow interpreters to finish their rendition, and this he considers to be both unfair to witnesses and hamper their ability to give evidence freely. From a practical point of view he suggests that this would also lead to lengthier trials with an associated increase in costs, thus defeating purpose of the supposedly cost-saving measure of PVL. In addition, he sees difficulties for the defendant in being unable to communicate directly with his advocate during a trial. Doing so would involve an adjournment where the advocate would need to leave the room to communicate with his client in a court booth, then return, thus causing considerable disruption to the court. It is unsurprising, then, that if it were a question of appearing live or by video link himself, he would always choose a live appearance.

6.8.8 Defence advocate 5

The main focus of the final interview with DA(v) is the Virtual Court rather than PVL, but nevertheless it gives an advocate's perspective upon future applications of video link technology which is both informative and potentially quite disturbing. Under the Virtual Court scheme set up in 2008, defendants make their first appearance in court from a room at a police station equipped with a camera. The scheme was set up to save on prisoner transportation costs, ensure that defendants turn up for their hearings, and ensure speedy disposal of cases; in fact the pilot evaluation by Terry *et al* (2010) has shown that the claim to

have saved on costs has not been borne out.⁶⁰ However, the system has been in operation long enough for some of its advantages and disadvantages to be examined, and highlights the need for much more research into the use of interpreters in the Virtual Court, and indeed in all other virtual judicial contexts.

DA(v) was invited onto the local implementation team as a defence representative when the Virtual Court was being established, and seems to be in an ideal position to assess its impact upon his own professional practice and relationship with his clients. His first comment (in common with all the advocates I interviewed) relates to the inferior quality of communication on video link, and his inability to see signs of self-harm and psychiatric and addictive problems in his clients. Interestingly, the implementation team appears to have tacitly accepted that the quality of communication by video is poorer, since they subsequently made a decision to exclude vulnerable groups from the Virtual Court. He doubts whether busy Police Officers are qualified or appropriate persons to make such a decision, especially since those who can be classed as vulnerable often make strenuous efforts to hide their vulnerability for a range of different reasons. I suggested to him in extract 138 that not being able to speak English might appear on the scale of vulnerability (although this is a controversial issue):

Extract 138

8 DA (v) ...we know that lots of people who are in vulnerable groups are acutely aware of being in a vulnerable group and try and disguise the fact that they're in a vulnerable group cos they're not very proud of the fact that they've got learning disabilities or they've got communication problems or they can't read or write or-

7 YF Or they don't speak English ?

7 DA(v) Or they don't speak English, or they're on psychiatric er medication, and some of that information they might think quite rightly might jeopardise their chances of achieving bail or being released as soon as possible, because it's not necessarily information that will er improve their position erm in the whole process, so they may be reluctant to put it forward erm and some people don't necessarily want to advertise the fact that they are abnormal or have got differences, so I as a practitioner have always had concerns, I would put it across to them saying I'm not like a GP, I cannot take your pulse, I cannot- you know, carry out procedure- an independent objective procedure on you, I'm relying on the quality of information I receive from the client in order to do a lot of my job, so if the quality of that information is er affected by the way that I receive that information by video link, I think it will lead in certain cases to possible injustice, or- well injustice is a big word, my bail application will not be as good, therefore they may not get bail, my mitigation in sentencing if they have pleaded guilty may not be as good, so instead of giving them a community order they should have had with issues in their lives, they'll get custody because they will not have told me what the real picture was, er and that itself will be more expensive and counter-productive, and have lots of other negative effects as well, so I suppose those are the main concerns we have

⁶⁰ The Virtual Court has been shown to cost more than it saves. See www.justice.gov.uk/research-and-analysis/moj/virtual-courts-pilot-outcome.htm

- 8 YF So what you seem to be saying is that the de- the possible degrade- degradation of information is actually going to impact on the decisions that you make on your ability to make recommendations and representations on behalf of your client ?
- 8 DA(v) The quality- the quality of my advice is determined to a large extent on the quality of information I get from my client

In extract 139 he shows how this information is not purely verbal, but non-verbal too:

Extract 139

- 11 YF Why do you think that is- what is it- erm you say it's very difficult to build a rapport with someone who's on a TV screen, what is it, what are the differences, can you put your finger on what it is ?
- 11 DA(v) The overriding er means of communication is purely verbal, so it's purely auditory, so you're listening and not watching, and because- unless technology is excellent, I think you spend more time concentrating on listening to what they're saying than you do interpreting their non-verbal cues, and how their body is expressing itself, and how they're expressing themselves
- 12 YF And there's a greater reliance on the sense of listening than there is of observation ?
- 12 DA(v) Unlike normal three dimensional conversations you have to use up more concentration in the activity of listening, and that can eclipse other information coming through, putting aside the fact that it's coming through on a one dimensional screen any way, just- I believe you concentrate more on what you're being told rather than how it's being said or other clues from your client, er I think that's a big part of it

Unlike other advocates I interviewed, he highlights the need for defendants on the other end of the video link to be able to read *his* (the defence advocate's) body language, as well as the other way round, as he often demonstrates to young clients in physical terms how to behave and how not behave in court, something he feels he cannot do effectively on a screen.

The Virtual Court system gives advocates a choice of appearing in the courtroom or at the police station with the client, and although we might expect him to take up the latter option (given his strong views about the disadvantages of video link as expressed in extract 138 and 139), he chooses the former. By remaining in the courtroom he believes that he has the advantage of negotiating directly with other court actors, in particular the crown prosecutor, and is perceived by the court as a more effective communicator. In extract 140 he explains how remaining at the Police Station for him means a loss of professional identity, and, he believes, puts the client at a disadvantage:

Extract 140

- 18 DA(v) Actually being an advocate in court is very important, being able to speak to the prosecutor and negotiate with the prosecutor in three dimensions is erm very important, I can't- I can't even negotiate with the prosecutor by the video link, I don't even have access to the prosecutor, speaking for the judge you come across very poorly sitting in a police interview room beside

your client, erm- you don't even look like an advocate, you look like someone sitting at a desk at a police station, you've got very little impact as an advocate and it's very difficult to read what the judge is thinking, er what signals the judge is giving, what the judge is indicating to the prosecution whenever they're making their objections or representations, therefore as an advocate I think if you have to sacrifice something I'll sacrifice the communication with my client to actually be there in court, also economically on legal aid cos most of the clients are legally aided, it's very difficult for us to justify going to the police station because the government- Lord Carter said that we have to become more efficient by doing more cases in the shortest possible time so er it's difficult from a number of points of view

He regards the court as neutral territory as opposed to the Police Station, which cannot be perceived as such. This echoes the concerns of Borman (2001) (see Chapter 1, 1.3.1). Borman maintains that when defendants are physically present in the courtroom they are no longer under the control of prison officials (or of the Police) but under that of the judge in the courtroom as a "neutral convenor", and he believes that all defendants need to be made aware of this.

In extract 141 he charts his own personal progress from raising initial concerns with the authorities, to implementation, to acceptance of the Virtual Court with all its faults:

Extract 141

- 21 YF So would you say then that you say you expressed all these fears and concerns to the implementation boards before you before the trial before the er pilot started ? would you say then that all of your fears have been realised ? you expressed these concerns before you knew how it was going to work out ?
- 21 DA(v) Yes
- 22 YF But would you say that have you learnt anything more that you didn't envisage when the pilot started ?
- 22 DA(v) I've learnt that we tend to lower our standards once the thing starts happening ... I come out with a lot of enlightened observations and great moral statements about my position about what I would and wouldn't do, and I've found that I've got caught up in the process and rather than stopping it and saying this isn't good enough, I've just gone along with it. The other week ... all I could see was the top quarter of my client's head ... I had a lot of appointments back in the office ... I'm working under pressure as normal, [and] rather than say, look this is not good enough, this case has to be put back, I made a call which says "I can just about communicate well enough with my client" [and] muddle[d] my way through it ... I feel somewhat grubby that I then allowed myself to be part of a process that is nowhere near ... what we should aspire for it to be, but it's OK because it's well, it's convenient and ... no real damage was done ... so that's one thing I've learnt ... you don't put your hand up once the process starts and ... say look, this is not good enough ...

Poor image quality and inappropriate camera angles, as well as the time pressure which is the occupational hazard of the advocate would all seem to militate against good quality communication; to introduce an interpreter into this situation would seem to be risky, to say

the least. As he points out in extract 142, one of the effects of the Virtual Court is to separate defendant from advocate:

Extract 142

- 31 DA(v) the entire case can be conducted without ever meeting your client face-to-face which I think is very worrying

In extract 143 he sees the Virtual Court experiment as a threat, although he concedes that for routine communications it can work well:

Extract 143

- 51 YF I think that's probably as far as we can take it for today, I mean the best questions are the ones that I didn't have to ask because you already you know- answered them, is there anything else you want to add before we wrap up ? you're obviously very unhappy about it
- 51 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 er 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 that people get 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 making justice a mockery, and making 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
- 52 YF Okay
- 52 DA(v) 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, er and that affects justice, I think we should be worried about that

6.8.9 Summary of defence advocate interviews

All of the advocates in my sample appear to regard video link as an inferior form of communication, agreeing that aspects of vital body language are lost. This body language is an important element in the advice that advocates give to defendants, since their professional duty requires them to make an evaluation of their clients' mental and physical state. Although some of this assessment will have been done at the first face-to-face encounter between advocate and client, some advocates still seem to find it problematic at subsequent encounters on video. In some cases this is potentially harmful to the client's case, especially where there

are vulnerable defendants who are self-harmers or who have psychological problems. The loss of body language means that one advocate relies too heavily on listening rather than looking, with the result that he concentrates on the content of what is being said rather than the important non-verbal signals that accompany the interaction. In addition, some advocates have doubts about the abilities of the interpreters who are engaged to work with them, in one case being unaware that they should normally be performing simultaneous interpreting during face-to-face submissions.

Conducting private consultations through interpreters in the pre-court booths is problematic for some of the advocates in my sample. The fact that there is only one handset and room for only one person means that they can see but not hear or speak directly to their clients, and in turn their clients cannot see or hear their advocates. Even if the handset is retained by the defence advocate, the defendant will be able to see, but not hear him, and hear, but not see, the interpreter. The fact that I observed one of these pre-court consultations leads me to think that if an interpreter has sole possession of the handset throughout the interaction there might be a greater temptation for her to address the client directly, reporting back to the advocate what he is saying rather than interpret, as happened in this case. One advocate thinks that if clients *do* speak some English and reply in that language, that response is lost.

As might be expected, advocates *do* modify their behaviour when working through an interpreter in the courtroom, pausing frequently and turning towards the interpreter, with one advocate making strategic use of the pauses in her submission to gather her thoughts, and signalling her presence in the courtroom to her client by making a superfluous comment to the Bench, thus gaining “camera time”, allowing the camera to focus on her in order to reassure the client that she is actively pursuing his interests. This would seem to indicate a need on the part of advocates making submissions to be “camera aware”, thinking ahead about how their clients will perceive them in a way that they would not have to do if they were in court.

Advocates come up with a range of different reasons why defendants should not appear by video link for trials. These include: possible suspicion on the part of the defendant about what does *not* appear on the screen, physical separation from their advocate, a defendant’s inability to properly see the faces of those he may be trying to convince of his case, an advocate’s difficulty in taking further instructions from a client and consequently forcing an adjournment whilst this is done, the fact that witnesses would have to fragment their testimony in order to

accommodate the interpreter working in consecutive mode (no overlapping speech is possible when interpreting through video link), and the consequent lengthening of trials with the associated costs.

Most advocates seem to agree, though, that in a straightforward case where complex communication is not an issue, video link can work well and considerably aid the advocate's task.

6.9 Summary and conclusions

Although this study was designed as a comparison between face-to-face and PVL court interpreting, it is difficult to avoid discussion of the very medium of VC communication itself, and of its impact on the administration of justice. Often the very weaknesses of a system are compounded by the superimposition of interpreter-mediated interaction, and so it is here. What does not work for non-interpreted defendants does not seem to work for interpreted ones either; the deficiencies of the existing technology become even more obvious when the interpreter is factored in.

Court clerks seem to be making intuitive decisions about seating positions for interpreters which are inconsistent with each other. These seating positions may enhance, but may indeed hamper, their work. Interpreters are not pro-active in claiming the best seating position for themselves in court, and are not inclined to intervene for repetition or clarification, even when they could not be expected to understand the formulaic language of the court. Interpreters are not aware, and perhaps could not be expected to be aware, of the effect of their interpreting on the PVL defendant. When one interpreter is treated badly by the court and makes an official complaint, nothing is done. There seems to be a particular issue about interpreters being prevented from rendering *everything* that is said in Immigration Tribunals, and this is backed up by the Bail Information for Detainees group research (BiD 2008).

Magistrates and district judges have the authority to ensure that the defendant is treated fairly in terms of ensuring their understanding, monitoring the acoustics of the court and taking steps to make sure that speakers accommodate the interpreter. But if they are not fully aware of the working conditions that a court interpreter needs to be able to interpret accurately, they

are unlikely to be able to intervene effectively and appropriately on their behalf. Although they concede that the quality of PVL communication is inferior to face-to-face (in that they are not able to clearly distinguish facial features and evaluate demeanour, both factors which contribute to the decision-making process) it is difficult for them to imagine themselves in the interpreter's shoes and to see that what is effectively loss of body language for magistrates is also loss of body language for the interpreter and the defendant.

A wide variety of views was expressed by court clerks and crown prosecutors about seating position, camera tracking and audibility issues. Whilst there is often considerable goodwill towards interpreters, this does not always amount to knowing how to accommodate them appropriately.

Other than interpreters and defendants, it is the defence advocates (and by extension, their clients) who seem to have the most to lose by video link, since they have the greatest amount of involvement and contact with defendants, and often go on to develop a longer-term professional relationship with them. The unsatisfactory arrangements of the pre-court booth consultation in Magistrates Courts where instructions are given and taken in a foreign language, and where defence advocates can see their clients but cannot speak to them or be seen by them (and vice versa) is unlikely to result in good quality interlingual communication. Unless interpreters bring these matters to the court's attention nothing is likely to change. We know from one interpreter I interviewed and from evidence in Braun and Taylor's (2011a) report that interpreters are being used in the Virtual Court in London. The camera set-up and the poor quality of sound and image seem to matter much more in a situation where defence advocates are expected to take instructions from clients they have never met before, and whom they never actually meet in person from first encounter to disposal of the case.

From the evidence of the interviewees in my sample, the PVL system in the English Magistrates Courts (which often uses out-of-date technology) has shown itself to be an inferior substitute for face-to-face communication. The absence of official guidelines means that too much depends on individual approaches and subjective decisions, hardly a firm foundation for quality communication in the interpreter-mediated courtroom.

In my experience as a trainer of court interpreters over a period of fifteen years, the professional practice of court interpreters, court clerks, magistrates, district judges and

advocates has greatly improved since the miscarriage of justice associated with the Iqbal Begum⁶¹ case in the 1980s, when interpreters were a something of a rarity in the courts, largely untrained and unqualified into the bargain. However, these improvements are starting from a very low base. Interpreters have somehow adapted to the new technology through trial and error and have worked out a *modus operandi* for themselves, but this ad hoc approach is a very unsatisfactory state of affairs to say the least.

In chapter 7, I will examine the experience of the end receiver of PVL, the defendant.

⁶¹ See footnote 1 about the Iqbal Begum case in chapter 2.

Chapter 7: Observations of prisoners using interpreter-mediated video link at HM Wormwood Scrubs Prison

7.1 Overview of the chapter

Chapter 7 is based upon a series of vignettes. According to Miles and Huberman (1994:81) a vignette (in ethnographic terms) is “a focused description of a series of events taken to be representative, typical or emblematic in the case you are doing”. One of the characteristics of a vignette is that it has “a narrative, story-like structure that preserves chronological flow and that is normally limited to a brief time span, to one or a few key actors, to a bonded space or to all three”. Erickson suggests that it is a “vivid 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 presented in this chapter conform to this definition. They have a narrative flow, and are limited to the period under observation, to the key actors involved (the prison officers, the court actors, the defendant and myself) and to that which could be heard and observed within the confined space of a prison video link courtroom at a prison. These vignettes link up with other parts of the study in several ways, and can be seen as the result of the insights gained from court observation and interviews, filling in the gaps left by the court recordings and the interviews. Some examples of links between the data sets are given in 7.1.1.

From a temporal point of view, it proved to be extremely advantageous to have completed this part of the fieldwork *after* the recording and observation of the court hearings and the interviews had taken place, although this was entirely accidental, and not intentional. This is because of the prior insights into court actor behaviour that I had gained from the court observations and the interviews. For example, I had already observed (at close quarters and completely by chance) a pre-court consultation between defence advocate and defendant in a Magistrates Court booth (see chapter 5.1.5) and had interviewed several interpreters and defence advocates about their experiences of video link interpreting in the booth. In this chapter I recount my own experience of using the court booth to access the interpreter in the court in order to gain consent from the defendant (chapter 7.3). If a friendly and supportive prison officer had not understood my dilemma about gaining consent from prisoners, and had not suggested that I make use of the court interpreter to obtain that consent, I would not have suggested it myself for fear of making an unwarranted intrusion into the short time (usually

15 minutes) that advocates have with their clients in the booth before appearing in court. The prison officer's suggestion to use the interpreters in this way thus made it appear "permissible" and gave me the courage to try out her suggestion.

If I had not spent a great deal of time observing, recording and analysing the 21 court hearings and Moves before arriving in the prison, the significance of the gestures, gazes and positions adopted by court actors (as viewed from the prison) would not have been fully appreciated.

7.1.1 Links between the interview data and the prison observation data

There was an interesting link between the field work at the prison interviews and the interview with DA(ii) at chapter 6.8.5 who showed herself to be well aware that defence advocates have to gain "camera time" by saying something, however insignificant. During defendant 5's hearing at 7.4.5, the defendant's DA can be observed to look away from the Magistrates' bench and to gaze frequently at the defendant as she makes her submission. I was able to interpret that gaze as a deliberate attempt on the part of the DA to make eye contact with the defendant in order to demonstrate her active engagement with his defence case. I base my interpretation of this gaze upon the interview I had with a DA (see chapter 6) who claimed that she would not only make a redundant utterance but also gaze at her client on the screen with this in mind (my italics are to emphasise the point):

30 YF How would you do that [emphasise what is happening for the sake of the defendant]

30 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 [the defendants] 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*

I was unable to make notes during the actual hearings, as I was too busy watching the screen. The hearings were so short in duration that I could not afford to take my eyes off the screen for long. My field notes largely concentrate on audibility and visibility, but particularly the former.

An incident occurred during the hearing of defendant 3 (7.4.3), which relates back directly to my time spent at a magistrates court in outer London a few months previously. The court

usher I had described in some detail at 5.4.10 is the same one as that located at the same courtroom as the hearing for defendant 3 in chapter 7. Although he had behaved courteously towards me when I had met him face to face, I had the strong impression that he had regarded me as a disruptive, irritating and unnecessary intruder. He had seemed to enjoy wielding the remote control to initiate the video link with the prison, (a role which is normally carried out by the court clerk) and had swept in and out of the courtroom, announcing cases in a particularly declamatory and self-important manner; the other court actors seemed to be content to let him get on with it. It was this same usher who figured prominently in the dispute with magistrates about my presence described at 7.3.3). The dispute happened as a direct result of the above-mentioned court usher giving the court inaccurate information about the contents of my letter (he misinformed the magistrates that I would be observing the previous week but not during the present week). Did he do this deliberately to make difficulties for me ? I can never know this for sure, but I suspect so. Misunderstandings such as this one, whether created deliberately or not, can easily jeopardise the researcher's relationship with participants in a study, and illustrate the defensiveness of some court actors when it comes to making recordings in court.

7.2 How the observations were carried out

In contrast to the analyses of audio-recordings of court hearings (chapters 4 and 5) and interview responses (chapter 6), chapter 7 consists entirely of my subjective impressions and interpretations of hearings in the PVL courtroom at Wormwood Scrubs as recorded in my field notes. For reasons described in detail in chapter 3 (methodology), I did not interview defendants in custody and nor did I obtain audio-recordings of the proceedings. Because of this, what follows can be viewed as narrative description: the result of my field notes and recall of seven observed PVL court hearings from the vantage point of the defendant.

This set of observations was particularly difficult to carry out for the following reasons:

- (i) The speed at which I had to negotiate and obtain defendants' permissions, usually through a remote interpreter in a Magistrates Court
- (ii) The short duration of each hearing
- (iii) Finding a suitable place to sit which was out of camera shot

- (iv) Being unable to observe the defendant directly because of my seating position
- (v) Having to rely mostly on direct observation and memory prior to making field notes (it was not possible to observe the PVL screen and take notes simultaneously)
- (vi) The wide variation in terms of audibility of hearings. This meant that where proceedings were clearly audible, my account of the facts of the prosecution case were necessarily full and detailed. Poor audibility resulted in, at best, sketchy notes with many gaps in my understanding of the case.

Obviously these can be regarded as considerable limitations as they inevitably result in inconsistency. Nevertheless, the experience was a valuable one in that it enabled me to replicate, as nearly as possible, the PVL experience of the defendant.

7.3 Description and layout of the prison video link suite

My field notes record that there are two courtrooms in Wormwood Scrubs PVL suite: the second one is the mirror image of the one described below at fig.56:

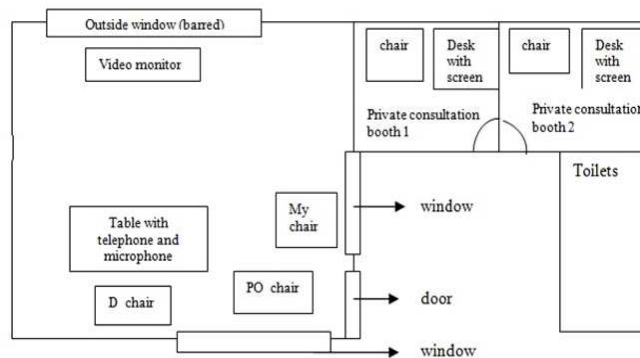


Fig. 56 Diagram of the PVL suite at Wormwood Scrubs prison

The picture at fig.58 below gives an idea of the PVL court and the defendants' position within it, although at Wormwood Scrubs there were no curtains to absorb the sound and improve acoustics. As can be seen in the picture, there was a crest on the wall. The crest serves to designate the room as a court. The telephone link with the court is visible on the table. It is designed for use between the defendant and his/her defence advocate in court *during* (not before or after) the hearing. Such communication is deemed to be confidential, but can often

be overheard in most courtrooms. (It was this telephone link that was used by the interpreter at the request of the court clerk: see Chapter 4, section X).

For reasons of copyright, this photograph of a remand prisoner in a prison video link suite could not be reproduced. The photograph can be found at the following website:

<http://news.bbc.co.uk/1/hi/scotland/3183662.stm>

Fig. 57. Typical view of a defendant on remand in custody sitting in the prison video link suite (source: BBC news website)

Note that although the photograph is of a Scottish prison, the facilities look more or less the same throughout the UK prison system.

Immediately behind the defendant was a large sign painted on the wall, designed to be readable from the main courtroom. It read as follows:

**HMP
WORMWOOD
SCRUBS
COURT 1**

Fig.58 Sign on the wall of the prison courtroom

Another notice in English was pinned to the wall opposite the desk where the defendant sat (although he would have had to go over and read it as it was not visible from the defendant's chair):

**This court hearing is taking place
over Live Video Conferencing Link.
All parties will be treated as present
in court.**

Fig. 59 Notice on wall of prison courtroom

There was a blue carpet covering the floor, one fluorescent light over a barred window, an extractor fan in the right hand corner of the room and a window in the wall next to the door so that Prison officers could look into the room without opening the door. A notice by this window read (*sic*):

**NOTICE
ENSURE WINDOWS ARE KEPT
SHUT TO ENSURE PIGEON
INGRESS**

Fig.60 Notice on wall of prison courtroom

Next to each of the two courtrooms 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. They had extractor fans on the outside wall, and small barred windows. There was just room for a table for the video monitor, a microphone and one chair. Next to the two booths there was a toilet for defendants, and along the corridor was a holding room with benches where all defendants were locked in together to await their cases.

7.4 The process of gaining the defendants' and the court's consent to the observations

Since it was not possible to predict the languages of the defendants and translate consent forms in time for the hearings, gaining their consent was done using two methods:

- (i) Reading out the consent form in English to the court interpreter who was based in the main courtroom, who then interpreted it to the defendant. For this I stood next to the defendant in the private booth. When the explanation was complete, the defendant signed the consent form.
- (ii) By directly approaching defendants in the holding room with a translated version of the consent form. The defendant would read the form in his own language then sign it.

Although I had never intended to use court interpreters for this process, standing next to defendants in the private booths and communicating with defence advocates and interpreters through video link gave me a unique and valuable opportunity to examine the defendants' own experience. In chapter 5 (section number) I described my observation of a private consultation in one of these booths and the unsatisfactory nature of the resulting interaction for interpreter, defence advocate and defendant alike. In the following section I will compare my earlier observation of an interaction in the court booth with a similar interaction in the prison booth. This time it was one in which I was directly involved.

7.4.1 Communicating with the court interpreter from the private booth

The first defendant I met was 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 asked for the assistance of the court interpreter, who at that moment was sitting in a similar private consultation booth in an Outer London Magistrates Court together with his defence advocate, ready for his client's pre-court briefing. My field notes describe the event as follows:

I stood next to the defendant in the 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 a research student and sketched out the nature and the purpose of my 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 (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 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.

The same process was carried out for each of the Dutch, Bahasa Malaysia, Yoruba and Kurdish defendants except that the court interpreters for these languages waited for me to read out the consent form, and did not speak directly to the defendants. The defendants did not appear nervous of me during our contact with each other, although my impression was that they found my request to observe them rather puzzling. I was careful to shake hands with and smile at each prisoner before speaking to them in order to give them the impression that I was not part of the prison establishment. I also took pains to emphasise that defendants could refuse to give their consent and that such refusals would not harm their cases in any way.

In chapter 5 (section 5.1.5) I describe at some length the arrangements for interpreted communication between defence advocate and defendant in the pre-court booths situated in the magistrates courts. At the prison, I found myself communicating with court interpreters in exactly the same way as defendants would have done. I can confirm that I could neither see nor hear any of the defence advocates throughout the consent process, even though they were present.

The Vietnamese interpreter I referred to earlier in this section took it upon herself to address the defendant directly rather than listen to me and interpret what I was saying. Since I had a particular message to deliver and a form of words which had been composed with great care, I was very concerned that the interpreter was summarising my speech and that the defendant

would not fully understand what was involved. Coincidentally, the interpreter referred to in section 5.1.5 also addressed the defendant directly without referring to the defence advocate. I will discuss this further at in chapter 7 at 7.5.2.

7.4.2 Gaining the prisoners' consent to the observation with translated consent forms

On another occasion I had received sufficient notice about the defendants' languages from the courts to obtain two translations of the consent form (Punjabi and Russian). These were available for the two defendants to sign before the start of their hearings. My field note documents the process of gaining consent from two of the defendants:

I accompanied the prison officer to the holding room near the courtroom. The Punjabi-speaking defendant had removed his trainers and was busy putting them back on when we approached him. I shook hands with him, and after a few words had passed between us, it was obvious he could speak a little English. I gave him the translated consent form which he read and then laughed, saying in English "I don't mind". I said "Are you sure it's OK?" He repeated "I don't mind" and signed the form. I said, "See you later".

The Russian-speaking defendant I encountered on my third prison visit seemed relaxed and rather puzzled when I shook hands with him and gave him the form to read. As he read it, he laughed, then smiled broadly, said "OK" and signed the form.

7.4.3 My seating position in the prison courtroom

I tried several seating positions but had difficulty in finding a place where I could sit next to defendants and yet not appear on the screen with them. In the end the best place was found to be directly in front of the accompanying prison officer, with the door closed. I was seated to the right hand side of the defendant but the diagram at fig.57 shows that I was nearer to the screen than he was.

On my final visit, I took up my usual position only to find that I was plainly visible on screen, the camera position having been changed during my absence. There was insufficient time to re-arrange my chair before the magistrates entered court and saw me. My field notes describe what happened next:

The court usher announced: "a letter has been sent to warn courts that a researcher will be observing last week but not this week". (I had been asked to write to the court manager and had subsequently obtained the court's agreement in principle to my presence in the video link suite.) The remark by the court usher was inaccurate, as I had specified quite clearly in my letter to the court manager that my visits would continue up to the end of that month. I became concerned that this misunderstanding would jeopardise the whole project, and that the unnecessary delay that was being caused to the Dutch defendant's hearing would cause annoyance to the court and unfair disruption to the defendant. At the same time I noticed apparent surprise and disapproval on the faces of the defence advocate and the interpreter as the situation unfolded.

The Magistrates deliberated together for some minutes and then left the court to continue deliberating in private. At least twenty minutes elapsed before the Magistrates re-appeared in court. The chair of the bench then said: “if the researcher wants to make recordings she will have to stand up and make that request to the whole court”. There had never been any question of making recordings and I had made that quite clear to the court manager in my letter. The prison officer present intervened to make this clear to the court, and the magistrates then quickly agreed to my participation. With my off-screen presence now formally ratified, the case started.

7.5 Observations of the PVL hearings

All of the following observations are field notes which were written immediately after the hearings were finished. There is a direct correlation between the amount of detail I give about the facts of each case and the quality of the sound coming from that particular court. The less detail I give, the worse is the audibility.

7.5.1 Defendant 1

The Vietnamese defendant I had spoken to earlier was the first into the court. His hearing lasted perhaps seven minutes. He remained calm and still during the hearing with little sign of emotion, but I feared I might distract him by turning round to look at him too often, so I only looked twice. His hands were on his lap, and he was seated as far away from the camera as the room allowed, with the wall behind him. He was wearing grey prison issue clothes, visible from head to waist, though appearing to be quite distant in the PIP frame. There was audible back channelling from the prisoner during the whole of the short hearing, in fact, after every interpreted rendition. (References to back-channelling throughout this chapter cannot be expanded for two reasons. Firstly, I did not have access to the defendants’ languages, and, secondly, my seating position made it impossible to turn round and observe defendants.) The interpreter appeared to ignore this back-channelling. There was no spoken interaction between the prison officer and the prisoner at any time before, during or after the hearing in relation to the actual substance of the proceedings.

The interpreter took the oath and was seated next to the defence advocate. The court clerk conducted a virtual tour of the court, and as he did so there was a distinct jerkiness of the image as it moved from speaker to speaker. I noticed that the only court actors to acknowledge the defendant at the time of their introduction to him were the defence advocate and the magistrates. They did this by looking at the defendant and nodding their heads in his

direction. The crown prosecutor did not look up at all or acknowledge the defendant in any way. Sometimes the camera focused on the interpreter and sometimes on other court actors, but not always when they were speaking. The exception to this was the magistrate's pronouncement. Changes of camera focus and any movement of speakers was accompanied by noticeable jerkiness of the images on the screen. The defence advocate acknowledged her client by looking at him, when she made her only contribution: "no representations".

There was a discrepancy between the good audibility of the interpreter and that of the main speaker, the crown prosecutor, who was virtually unintelligible throughout, even though there was very little overlapping speech. He fragmented his speech into short units and waited for the interpreter to finish. The interpreter used consecutive full volume mode throughout the hearing. Her voice was much clearer than other court actors, probably because she positioned herself much closer to the microphone than the others. Whispering, moving papers, writing notes or shuffling in seats created extraneous sound, interfering with the sound of speakers' voices to the extent that most of the English proceedings were unintelligible until the magistrate's pronouncement, which could be clearly heard. The camera focused on the magistrate at this stage, and not on the interpreter.

7.5.2 Defendant 2

Whilst I was waiting for the Panjabi speaker to be called for his hearing, I had to be sure that I would not miss the interpreted cases I had come for, so seated myself in the small lobby outside the courtroom making notes. There was one English-speaking defendant in each of the two private pre-court booths. I could hear what was being said, despite the soundproofing. The discussion in both sounded animated and emotional.

When the Panjabi-speaking defendant came in I smiled at him and he maintained a calm and quiet demeanour and displayed no visible emotion. When I looked round at him he did not look back at me. The court clerk looked at the defendant, but his virtual tour of the court was very perfunctory, simply changing 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.

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; her 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. Since this was the same courtroom in outer London as in my previous prison visit, the same observations about image-speaker match, poor audibility and image quality also apply. There was no interaction between the prison officer and the prisoner at any time during the hearing.

7.5.3 Defendant 3

Defendant 3 was a Dutch foreign national. He was a man who seemed to be in his late sixties, maybe even early seventies. He used a walking frame and appeared to have considerable mobility problems. After speaking to the Dutch interpreter and obtaining his consent (see section above) he entered the courtroom and sat at the desk for his hearing to begin.

The interpreter took the oath, which she then sight translated to the defendant unprompted. The court clerk conducted a virtual tour of the court, but it was cursory. The defendant had been living in a South American country and had been arrested at a London airport after leaving that country by way of another European country. He had swallowed 38 packages of cocaine amounting to 340 grams. It was of 1% purity. He was acting on his own, and the street value of the drugs was about £20,000. The defendant appeared not to hear properly as he often leaned forward with a puzzled look, and intervened several times. The sound quality

was poor. The only image on the screen was of the crown prosecutor, who was fairly easy to hear as he spoke clearly and slowly with careful articulation; he opposed bail “on the usual conditions”. The subsequent mismatch between speaker and image continued for most of the hearing. Finally the magistrates gave their decision (his case was committed to the Crown Court) and again I could see only the magistrates and not the interpreter. Apart from the crown prosecutor (who spoke clearly) it was very difficult to hear or understand what was happening. The defendant back-channelled nearly all the way through the hearing, and was obviously not worried about intervening when he felt the need. I would suggest that he *did* hear the interpreter, but only after he intervened. I assume that he said he was unable to hear.

7.5.4 Defendant 4

Defendant 4, a Russian, entered the court. There was the same cursory virtual tour of the court (“magistrates” “legal adviser” “solicitor” “interpreter” “crown prosecutor” was all that the court clerk said). As the camera switched backwards and forwards from actor to actor there was a jerky blur of images. All court actors greeted him verbally but made no visual acknowledgement during the virtual tour and this included the interpreter. The defendant responded verbally to each greeting. The Russian interpreter sight translated the oath unprompted. 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. The crown prosecutor was the same as in the previous case and, despite the interference, his submission was perfectly audible.

Defendant 4 had been arrested after allegedly spending a holiday in a Caribbean island. He was arrested at an airport with no return ticket to the island and no checked-in baggage. When a body scan revealed packages in internal concealment, he was found to have swallowed 41 packages containing some 500 grams of heroin with a street value of about £20,000. There was an intervention by the interpreter for repetition at this point in the submission. The crown prosecutor continued by saying that defendant 4 had given a no comment interview.

In this courtroom speakers often looked at the screen to gaze at the defendant. The defence advocate did not say anything. The sound quality was mostly poor (apart from the crown

prosecutor) and it was hard to understand what was happening. Again, the interpreter's voice was easier to hear than those of the other speakers.

7.5.5 Defendant 5

Defendant 5 was a Bhasa Malaysia-speaker. The interpreter took the oath and then sight translated it unprompted. When his name was called the defendant said "OK". There was a lot of defendant back-channelling throughout the hearing. There were no matching shots of speakers with images. The crown prosecutor was the same one as in the previous case, and so was perfectly audible throughout.

Defendant 5, a professional football player in his own country, had been arrested at the airport after returning from a Caribbean island. He had undergone an X-ray which revealed 91 packages of cocaine weighing 900 grams. On interview he said he thought he had been smuggling black diamonds, saying that he had been paid £2000 to do this.

Before and during his submission, the crown prosecutor frequently turned to face the camera and looked directly at the defendant. Apart from the crown prosecutor (who spoke clearly throughout) and the magistrates, other rapid exchanges between speakers were impossible to hear. People stopped speaking when the magistrate was making his pronouncement but the sound quality was extremely variable throughout the hearings, and poor enough to hamper my understanding of the case.

7.5.6 Defendant 6

Defendant 6 was a Yoruba speaker who appeared bewildered and frightened. I could see that the Yoruba interpreter had a notebook in front of him. There was a long series of exchanges about his date of birth. The prison officer in charge of video link had previously looked at his form in the office, and had already highlighted to me that his date of birth did not match the age given. (The defendant had said he was fifty whereas his date of birth showed that he was sixty one.) The magistrates realised this discrepancy and queried his age. I heard him mutter "fifty six fifty seven" in English, but no one heard him apart from me, as he probably spoke too quietly to be heard by the main court. It seemed possible he did not know what his age was. Once again, the same crown prosecutor spoke clearly and could be heard.

He had been arrested at an airport on a flight from an African country. He had swallowed packages totalling 750 grams in weight of cocaine. It was the first time the defendant had ever left his country; he had been asked if he would undergo a body scan but said he was “too scared” to do so. His elderly mother and his wife were both very ill and could not protect themselves. His house had been demolished.

During the hearing there was loud electronic interference from what sounded like a mobile phone. This meant that from this point onwards it was impossible to hear. Although I turned to the prison officer, appealing to him to alert the court to this, he did not do so. The defendant left the court after the hearing to go to his post court hearing booth and whilst I waited in the lobby I could clearly hear the defence advocate saying that she would come and see him on a certain date at the prison, and that she would tell the court all that had happened to him including the demolition of his house. She asked if he needed to see the doctor and told him to “take care”. The briefing ended at that point.

7.5.7 Defendant 7

Defendant 7 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 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”). He then began his submission.

The defendant had been found with 2 kg of opium worth £20,000 concealed in the struts of his trolley suitcase. He had been arrested after arriving from a Middle Eastern country after coming back to the UK from his uncle’s funeral ceremony. His wife and child had accompanied him, but when they picked up their bags from the carousel officials had found more drugs. He blamed his father-in-law for placing the drugs in the suitcase, claiming that he was a long-standing drug addict, would soon be coming the UK for a visit, and needed to have the drugs ready for his consumption when he arrived.

The camera was on the crown prosecutor and not the interpreter throughout his submission. There was a request for repetition from the interpreter. The defendant said he could not hear.

As I myself could not hear, I asked the prison officer to alert the court to the fact, which he did. The crown prosecutor spoke in semantically complete and comprehensible units. The defendant looked down at his hands nearly all the time. The crown prosecutor (as was his habit) looked at the defendant on the screen occasionally as he spoke. Although the crown prosecutor remained audible throughout his submission, the interpreter's voice faded into the background and became almost inaudible. It sounded as though the crown prosecutor was much closer to the microphone than the interpreter. The story continued with the crown prosecutor reading out the statement of the defendant. I heard the defendant say something but it was ignored by all concerned; in fact every intervention the defendant made was ignored. There were several interventions from the interpreter asking for repetition. The interpreter's voice continued to grow fainter and fainter. Later in the hearing the defence advocate and the interpreter were shown together on the same camera shot. The defence advocate occasionally looked at the defendant. There was no note-taking by the interpreter. From this point onwards there was constant and intrusive electronic interference which made it virtually impossible to hear clearly what was happening. I believe that the defence advocate made a lengthy application for bail. The defendant had entered a not guilty plea and would be committed for trial at the Crown Court. He had no history of failure to surrender but did have some previous convictions.

At this point there was an exchange between the prison officer on duty in the courtroom and another who opened the door to speak to him. They had a short conversation together, which effectively drowned all further sound from the main courtroom. After the prison officer had gone out, the defence advocate was still speaking, and both the defence advocate and the interpreter could be seen sitting next to each other. I noticed that, although the interpreter was leaning into the microphone her voice was still muffled.

Whilst the court clerk gave legal advice to the magistrates, the camera remained on the defence advocate and the interpreter. I heard (but did not see) the court clerk asking the court to rise, and the magistrates then retired. However, there was no indication of this on the screen (it was not interpreted) as the camera was still focusing on the defence advocate and interpreter. All that could be heard was the sound of people standing up and leaving the court. The interpreter and the defence advocate continued to appear on camera, sitting in the courtroom chatting to one another. By now it was impossible to hear anything as the sound had been switched off by that time.

I asked the defendant whether he could hear what was happening, and he replied in English “the sound is coming slowly”. He could not have been aware that there was a hiatus in the proceedings and that the court had been suspended. A notice came on the screen at this point: “the far site has disconnected”. At this juncture the defendant sighed, cracked his knuckles and looked upwards occasionally. He appeared to be nervous.

When the magistrates came back into court some time later the sound was switched on again. The defendant leaned forward, straining to hear what the magistrates were saying and turning his head to one side. The court usher could clearly be seen on the screen in the background all the way through the hearing. He kept passing to the right and to the left behind the defence advocate’s bench; I found this, together with all the other audibility problems, very distracting. The magistrates gave their decision and the case ended.

7.6 Summary of prison observations

In this summary, I will comment upon the divergent perspectives and goals of court actors and defendants and articulate some of the most salient communication problems which arise for PVL defendants who rely upon interpreters.

7.6.1 Different perspectives of the court process

What emerges from this set of observations is that interpreter-mediated PVL works much more effectively for those court actors who remain in the courtroom than it does for the PVL defendant. This is due to the fact that the goals of court actors are different from those of the defendant; court actors want to process and dispose of cases quickly, and interpreted communication with PVL defendants takes second place to this. This is partly because of the type of hearing (defendants hardly speak 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 2011). The court, then, can honestly believe it is successfully carrying out its legal duties and progressing cases through the system without recourse to any feedback from defendants or prison officers as to the audibility, comprehensibility or the coherence of the proceedings. Unless court actors 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. In

chapter 6 this discrepancy of view is obvious; it is the defence advocates who are least likely to endorse it. This finding concurs with most studies which have found that court staff, magistrates, prosecutors and judges are more or less in favour of videoconferencing and that defence advocates, refugee advisers and some interpreters are much less enthusiastic, sometimes even hostile (Wexler 1993, Sontheimer 2000, Ellis 2004, Haas 2006, Harvard Law Review 2009, Braun and Taylor 2011a).

7.6.2 Pre-court hearing booths at the prison

My own unsatisfactory experience with the Vietnamese interpreter (see 7.3.1) and the fact that I could only see and directly communicate with interpreters rather than any defence advocates at the prison means that interpreters assume a higher profile than that of the defence advocates who are not visible to the defendant and are therefore relegated to the background during the private legal consultation. I have shown how at least two interpreters were tempted to converse directly with defendants, departing from their interpreting role and violating their code of conduct. Section 5.9 of the Code of Professional Conduct states:

- 5.9 Practitioners carrying out work as Public Service Interpreters, or in other contexts where the requirement for neutrality between parties is absolute, shall not enter into discussion, give advice or express opinions or reactions to any of the parties that exceed their duties as interpreters as interpreters (see footnote 14)

7.6.3 Tracking speakers effectively

The problem of tracking speakers at the expense of the interpreter seems to be one of the major sources of confusion to an observer such as myself. 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. 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. However, defendants do not always want to gaze at

speakers but may wish to look at those whom they are addressing to see what effect their words are having on them. The failure to track speakers was highlighted as long ago as 2000 by Plotnikoff and Woolfson⁶², even though there is no reference to interpreters in their report.

Failure to match speaker with image had a most unfortunate effect on the Kurdish defendant 7 in section 7.4.7. Because the camera was focused on the defence advocate and the interpreter at the moment when the magistrates retired to deliberate, the defendant was unaware that the magistrates had left the court. The defendant saw only the defence advocate and the interpreter rising to their feet (while the magistrates left the main court), and sitting down again. The sound was then switched off, but the camera continued to focus on the defence advocate and the interpreter, who laughed and chatted together, apparently unaware that the camera was still on them. No-one told the defendant what was happening, and this hiatus in the proceedings continued for at least ten minutes.

7.6.4 The problem of visual continuity

Failure to visually and verbally acknowledge defendants when court clerks conduct the virtual tour of the court is another potential source of confusion for the observer. The fact that courts sometimes fail to conduct the virtual tour, or do it too cursorily, means that defendants have little chance of recognising speakers and understanding their status. It also means that they may not even catch a glimpse of their own defence advocate. Failure to understand the layout of the court and the configuration of actors within it has a distinctly disorientating effect.

7.6.5 The role of prison officers

Prison officers are sometimes insensitive to and unaware of the needs of non-English-speaking defendants in the video link room. Audibility, always an issue in PVL, is further degraded if prison officers open the door and talk to colleagues during the hearing, something that happened whilst I was present. Prison officers are the only other people present with the defendant, and although some officers do monitor audibility during a hearing (when in the main courtroom I sometimes heard them saying that they could not hear), the officers I

⁶² See chapter 1 section 1.3.2 for a fuller discussion of the findings of this report.

observed did not do so, even when there was major interference on the connection. Plotnikoff and Woolfson are quite clear that:

Prison Officers must ensure that the defendant can see and hear the proceedings at all times. They also lack a basic familiarity with courtroom procedure, a skill largely lost since the role of escorting prisoners to court was transferred to the private sector.

(2000: 4.73)

This is clearly still a problem.

7.6.6 The importance of defendant back-channelling

Defendant back channelling seemed to be ignored by all court actors, including the interpreter. It is possible that it was not heard back in the main courtroom, especially if it occurred during overlapping speech. To be sure, back channelling does not always require an intervention by the interpreter, but the court should have been alerted to the Yoruba-speaking man who did not know his age and who muttered “fifty six fifty seven” (in English), as this comment, which passed unnoticed, might have assisted the court. This lack of feedback from defendants is one of the concerns expressed by interpreters I interviewed in chapter 6 (see section 6.4.1).

7.6.7 Obtaining reliable information about interpreted cases

Obtaining clear and reliable information about interpreted court hearings varies according to the area and method of passing information from the Crown Prosecution Service to the court listing office. In smaller metropolitan areas (such as Birmingham) it is relatively straightforward, but in other areas where there is a high volume of interpreted cases (such as London) it is a frustrating and time-consuming business. HMP Wormwood Scrubs records prisoners’ difficulty with spoken English, but not their interpreter requirements, which are probably of little significance to prison officers as communication with foreign-language speaking prisoners is normally facilitated by other prisoners from the same language background. My field notes show how haphazard is the system for recording the language of the defendants:

Nobody in the prison knows or seems to be interested in whether cases are interpreted or not. The only indicator is a tick box on their [the defendants’] prisoner record that says “limited English”, and to find out you have to ask them whether they have an interpreter by going into the holding room, and risk not being understood, or

hang about in the video link suite to see if there is more than one person visible in the private booths before the prisoners arrive.

If interpreting services are to be improved, this information ought to be more easily accessible and consistently recorded.

7.6.8 Comparison of vantage points

The vantage point of the PVL defendant is quite different from that of the face-to-face defendant, who never sees close-ups of court actors. When court actors in the main courtroom look at the screen, their facial expressions can be seen in much greater detail. Live defendants cannot usually see magistrates' expressions as they talk to one another or see what is on their desk, or watch them look in their handbags, write notes or look at files. Similarly court clerks, defence advocates and crown prosecutors rifling through their papers and looking through reference books are activities which are either hidden from view or much less obvious from the dock. Overall, then, the PVL defendant gets a much closer frontal view of all court personnel, particularly of the magistrates, but also of the crown prosecutor, the defence advocate and the interpreter, compared with face-to-face cases. Conversely, the view that interpreters have of PVL defendants is much more distant than if they were sitting next to them in the dock.

7.6.9 Gaze patterns in the PVL court

The court actors in my sample gazed at the defendants at intervals throughout the hearings, although it would have been helpful to defendants if they had gazed more. In a live court, however, only the Magistrates and the court clerk can gaze at the defendant unobtrusively, since advocates would have to turn round to do this (defendants are in the dock which is at the side or the back of the court). It seems safe to say that there is more, though not enough, eye contact between PVL defendants and court actors than there is between live defendants in the dock and court actors. This is not particularly surprising because the view that PVL defendants have of court actors is closer and more intimate. In one of the PVL hearings, a crown prosecutor looked directly at a defendant before and during his submission (although the effect of this direct gaze was rather intimidating, or so it seemed to me). The fact that defendants can see their defence advocates means that they can check that they are working hard on their behalf (see chapter 6, 6.8.5). I observed far more eye contact between defence

advocate and defendant than in some face-to-face situations, although it is not possible to generalise because different speakers behave differently in different courts. There is certainly the potential for more eye contact, and this would make it easier for the defendant to orientate himself to the court process.

7.6.10 Disorientation of defendants

For someone like myself who has spent many years working in the court alongside court actors, training interpreters and observing interaction, it is difficult to imagine what the experience of first appearing in an English (or any other) court must be like for foreign national defendants who are also unable to speak the language. 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 of various court actors which help to create the formality of the atmosphere are not apparent. There is also, perhaps, an odd sense of detachment, of being an onlooker whilst others discuss your case.

7.6.11 Variations in audibility

The poor audibility of the speakers in the main courtroom is in direct contrast with the relative clarity of most of the interpreters I observed; because they are there specifically to make contact and communicate with defendants they seem to make more effort to lean towards and speak directly into the microphone. One could say that interpreters serve two functions, firstly to render speakers' utterances and secondly to act as mediators between the court and the defendant. Those who do not require an interpreter seem to be at something of a disadvantage here; unless speakers in the main court lean towards the microphone they cannot be heard clearly (often the case during my observations). My field notes describe how the sound system captures every small sound:

At present when the system is switched on, the movements of the whole court can be heard. Where there are microphones switched on, the movements occupying those seats 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.

7.6.12 Out-dated technology

Perhaps the greatest barrier to interpreter-mediated communication in the PVL court is the out-dated technology. Image quality is sometimes poor, and audibility is very variable, even amongst the same speakers within the same court. 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 PIPs often obscure part of the defendant's face. Inadequate lighting may mean that the features of darker-skinned defendants cannot be made out (Ellis 2004 also makes the same observation). There is the recurring problem of communication within the pre-court booths where defendants cannot see or hear their own advocates.

7.7. Conclusions

Even if state-of-the-art video conferencing systems were to be installed in courts throughout England and Wales, that audibility, image jerkiness and quality were no longer at issue, and that all of the recommendations set out in the Braun and Taylor (2011) report were to be adopted and implemented, some difficulties with interpreter-mediated PVL communication will remain, not all of which are necessarily to do with technology. These problems are described as follows.

7.7.1 Seating position

The first problem is to find a dedicated seating position for the interpreter, which takes account of the need for neutrality, optimum audibility and visibility of both court actors and defendants. The seating position must also allow the interpreter to have full frontal images of the faces of all the speakers, including the defendant.

7.7.2 Tracking speakers appropriately

The second problem is how to track speakers so that the defendant can choose whether to look at the interpreter or the current speaker, bearing in mind that a part of the video monitor is

occupied by the picture in picture (PIP). This might involve the installation of an extra monitor.

7.7.3 Eliminating extraneous sound

The third problem is how to eliminate extraneous sound made by court actors which is magnified to the point where audibility for the defendant and the interpreter is compromised. This is a technical problem which can probably be overcome if each PVL court has a soundproof booth (in which case the defendant would not be able to see the interpreter) or if special microphones able to screen out extraneous noise were to be installed.

7.7.4 Defendant back channelling

The fourth problem is the danger of the court (and the interpreter) not being able to hear, and take action as a result of, significant defendant back-channelling.

7.7.5 The prolonged use of consecutive interpreting mode

The fifth problem is reliance on the sole use of consecutive interpreting mode for both defendant-focused and non-defendant-focused Moves, which encourages fragmentation of advocates' submissions to the point where their rhetorical styles are compromised. The fragmentation necessitated by the prolonged use of consecutive full volume implies that there could be a cognitive processing problem for the defendant.

7.7.6 Interpreted communication in pre-court booths

The final problem is the inadequate and unsatisfactory arrangements for communication between interpreter, defendant and defence advocate in pre-court booths.

7.8 Closing comments

All of the technical and non-technical problems mentioned in the summary will involve a great deal of capital investment, and, at a time of considerable economic restraint, installation

of upgraded equipment for Magistrates Courts to the standard recommended by Braun and Taylor (2011a) may be some way off. In the final chapter, I will make a series of practical recommendations which will serve as the basis for guidelines for courts when using interpreters for PVL and as elements in a court interpreter training curriculum.

Chapter 8: Conclusions and recommendations

8.1 Introduction

This chapter will revisit the original aims of the research in the light of the results of my field work in chapters 4-7. I aim to:

- Review the concerns of legal and interpreting researchers presented in chapter 1
- Review the contexts for interpreting presented in chapter 2
- Discuss the main themes which have emerged from the field work
- Unpack the additional layers of complexity which appear to be due to PVL
- Articulate a series of practical recommendations for implementation in courts and interpreter training programmes
- Make recommendations for further research

8.1.1 The aims of the research

The main aim of this study was to investigate the effect, if any, that PVL has upon court interaction in interpreted proceedings. I compared communication in interpreter-mediated cases in two court contexts (face-to-face and prison video link) in order to gain information about the differences in court actors' behaviour, and to examine how changes in behaviour might affect the communicative relationship between the interpreter and the defendant. Of course, the most important question was to discover whether these changes might have an effect upon the course of justice for the non-English-speaking defendant.

8.1.2 Review of research concerns about video link

It is clear from the literature that VC communication in general degrades and attenuates the visual information that is normally available to face-to-face interpreters and other court actors. This is shown in chapter 1 (1.2.2) in the comparative studies in the AVIDICUS report (2011), Napier's (2011) study at 1.2.4., Mouzourakis (2003) and Moser Mercer (2003, 2005a, 2005b) and Bailenson *et al* (2006) at 1.3.1. Interviews with different court actors and court interpreters (chapter 6) and my own ethnographic observations of court cases whilst located in prison (chapter 7) seem to support these studies.

Since research in the domain of conference interpreting shows that multisensory stimulation is a pre-requisite for optimal quality in interpreting, it is not surprising that most, but not all of the interpreters I interviewed found PVL more challenging than traditional interpreting, even though they have probably not reflected upon it very much. They “feel” the presence of the defendant next to them, and they subconsciously use this proximity to evaluate the level of understanding of the defendants they are interpreting for.

From a jurisprudential point of view too, chapter 1 (1.3.1) highlighted concerns expressed by US defence attorneys about the increasing separation from their (English-speaking) clients (the defendants) and the consequent difficulty of taking instructions in their physical absence, also seen by them as possible violations of the fifth and sixth Amendments of the US constitution. In the same chapter (1.2.3) Braun and Taylor (2011a) mention similar concerns expressed by Law Societies in Europe, who view VC as being inconsistent with human rights. These concerns were certainly echoed by the five defence advocates I interviewed in chapter 6(6.8).

8.1.3 Review of research about the challenges inherent in court interpreting

In chapter 2 I showed how four sets of problems combine to make court interpreting particularly challenging. Firstly the unique **ecology** of the court often creates unfavourable working conditions for interpreters. The fact that there is no simultaneous interpreting equipment, together with poor acoustics and sightlines seem to militate against accuracy of rendition to the target language, whichever interpreting mode is used. Secondly, the institutional **status** of the court interpreters is often a negative one. Since they are not lawyers (like crown prosecutors, most court clerks or defence advocates) or do not have some legal training (like magistrates) there is no pre-determined physical or legal space allotted to them in the courtroom. Seating position, audibility (2.3.5) and visibility are crucial, yet interpreters sometimes *stand* outside a secure dock and risk not being able to hear what the defendant is saying, or sit *next* to the defendant and risk not being able to hear what court actors are saying. Sitting next to a defendant generates its own risks (see Hale and Luzardo (1997) at section 2.3.1); the defendant may engage the interpreter in conversation, or the interpreter may be tempted to engage in conversation with the defendant. At the very least, this risk is obviated in a PVL court, where the defendant and interpreter are not co-present. Thirdly, the **nature of triadic communication** is not well understood by interpreters (2.4) and even less

so by other court actors (2.3.1). And fourthly, the **critical nature** of court interpreting means that interpreters are under pressure, and that the slightest inaccuracy may result in a miscarriage of justice (2.6).

Since interpreters themselves have not had much training in court interpreting (in some languages there *are* no such opportunities) many feel intimidated by the court and rarely intervene for clarification or repetition when they are unsure.

8.1.4 The Evaluation of the Video Link Pilot project

The Plotnikoff and Woolfson (2000) report mentioned in chapter 1 clearly and unequivocally documented the advantages and the shortcomings of the system as it was piloted in 1999 in Manchester Crown Court. Reviewing this report at the time of writing (February 2012) it is dispiriting to see how many problems were identified 12 years ago and how few of them have been rectified. Here are some examples (all of which came to light in this study, my emphasis in bold):

- 4.4 **The quality of sound** received at the prison proved to be very sensitive to the positioning of microphones at the Crown Court. The microphone on the clerk's desk sometimes picked up the distracting sound of papers being shuffled; on the other hand, if the mike was moved too far from the clerk it became **hard to hear** what was said.

- 4.6 Picture quality was generally good throughout the pilot but the limitations of the equipment caused a problem of another kind. A delay of a few seconds occurred when switching between the wall-mounted courtroom camera and the camera on the judge's desk. Because of the speed of exchanges between courtroom participants, **the delay made it impractical to switch views in this way**. Instead, the judge's camera was not used and the wall-mounted camera was used throughout. A technical solution to the delay problem was available but the cost of around £1,500 was not thought to be justified under the circumstances.

- 4.8 ...Concerns about **defendants' ability to hear what was happening** in the courtroom were expressed by both prosecution and defence advocates:
 "The defendant could clearly not hear what was happening in court."
 "The defendant could not hear any of the proceedings after the arraignment."

- 4.9 One defence advocate complained about **the sound in the [pre-court] videoconferencing booth**: "In conference the link was poor. The defendant could not properly understand me."

- 4.14 Only one prison officer commented adversely on performance:
 "You could hear everything in court but there was a lot of **distracting residual noise** i.e. papers being shuffled, which at times made it difficult to hear what people were saying."

- 4.15 During the pilot, members of the evaluation team observed a number of video link hearings both in the prison and in the courtroom. The sound quality on these occasions was adequate but not perfect....Most speech comes from the participants in the courtroom and so the **quality of sound** at the prison end is of particular importance. In the view of the observers, the **sound at the prison end had a "fuzzy" quality** particularly when the clerk was speaking and prisoners often appeared to be **straining to hear** what was being said.

- 4.71 In hearings observed by the evaluation team, clerks, not surprisingly, had difficulty in performing all these tasks effectively. Rather than continuously moving the camera, some clerks showed a wide-angle view of the advocates for most of the hearing. The judge was brought into shot only for his opening and closing remarks. **The distance shot made it hard for the viewer to discern which advocate was speaking**, particularly because advocates remained seated while addressing the court.

(Plotnikoff and Woolfson 2000: 16-18)

The problems caused by such defects will be magnified when communication is interpreter-mediated. There are many more examples of persistent problems documented in the 2000 report which are too numerous to mention here; this is not a very hopeful sign that defects still present in the system will be remedied soon.

8.2 The main themes to emerge from the study

Courtroom interaction is utterly dominated by its own ecology; the proximity of prominent court actors within it in turn can determine such phenomena as interpreting mode, volume, the role of the interpreter, and the level of formality and style of all court actors. These court actors follow strict legal protocols for every kind of situation that may occur within the Magistrates Court - except in the case of interpreter-mediated hearings (whether PVL or not). In this case, court actors and interpreters (who are often not even ratified as court actors) work intuitively and inconsistently, without any formal guidance, or, in the case of interpreters, proper training. In PVL courts, there are crucial points of pre-, in- and post-court contact for non-English-speaking defendants, defence advocates and court interpreters; however, these interpreter-mediated events can be conducted in very cramped conditions where confidentiality is compromised, where the main interlocutors (defence advocates and their clients) cannot see or hear each other and can only communicate by passing a telephone handset back and forth. Court actors, on the whole, have never been to a prison courtroom to gain a non-English-speaking defendant's eye view of the court, and are not aware of the distractions in terms of noise, poor quality of sound and fuzzy images, all of which can interfere with communication between the defendant and the interpreter.

I will now discuss some of these themes before making short-term and longer-term recommendations.

8.2.1 The importance of physical layout

One of the over-arching themes in this study is the part played by the physical layout and environment of the typical Magistrates courtroom. It determines how court actors relate to one another in terms of status, language, speech volume and behaviour, and also, according to Gobo (2008, see chapter 1,1.6) in terms of *attentiveness*, since the sightlines afforded by layout exclude those who are *outside* the well of the court. Observers seated in the public gallery can either assert their right to observe the criminal justice process or be baffled into incomprehension by poor sightlines, acoustics and sound systems. Most importantly for the purposes of this study, the influence exerted by the layout of the court can either elevate the court interpreter to prominence or relegate her to obscurity. Given the challenges inherent in court interpreting, then, the courtroom gives rise to a whole set of complex communication problems, which are often not apparent to court actors themselves. The superimposition of interpreter-mediated PVL adds another layer of complexity and magnifies any advantages or disadvantages associated with these challenges.

8.2.2 Three points of contact between advocates and non-English-speaking defendants

Any limited English-speaking defendant is at a disadvantage when all communication has to be mediated through an interpreter, however competent and skilful that interpreter may be. Appearances by prison video link are mandatory for all defendants who have been remanded in custody pending the hearing of their cases, and this raises the question of the extent of that disadvantage, bearing in mind that interpreters, defence advocates and defendants are not normally co-present for three crucial points of contact between advocate and client at court.

Firstly, instructions are taken by means of PVL in “private” consultations between advocates and their clients. In chapter 5 (5.1.5) I have documented the difficulties that advocates and interpreters face when communicating through PVL with defendants, where the latter can see and hear the *interpreter*, but *not* their defence advocate. In many Magistrates Court booths, there is not enough room for two people (the door has to remain open and so it is hardly private), and the fact that communication is directed to the interpreter via a handset means that it is tempting for the interpreter to direct the communication herself and *report* rather than *interpret* what the defendant is saying (this is what happened during my observation of a pre-court interpreter-mediated consultation at 5.1.5 and my own interpreter-mediated consultation with a defendant in chapter 7, 7.3.1). This is in violation of the interpreter’s code

of conduct⁶³, and contrary to good practice. Defence advocate interviews in chapter 6 (6.7.4-6.7.8) raised their own concerns about using private booths with interpreters, and my own experiences of observing and participating in such interaction show that it is a highly unsatisfactory method of communication. Added to this, the poor quality of images, the small size of the screen and the limited time slot available (fifteen minutes, whether interpreted or not) seem to make such communication a mere token to comply with human rights laws. However in reality, this adds yet another layer of disadvantage to the defendant's experience.

Secondly, the non-English-speaking defendant appearing via PVL in the courtroom whose defence advocate is not co-present is entirely dependent upon the images which the court clerk selects for him. Although there is supposed to be a virtual tour of the PVL courtroom for the defendant, only *two* out of *ten* court clerks recorded actually carried out that tour, and only *one* of these two remembered to point out the presence of interpreter. (This underlines my contention that interpreters are prone to being disregarded and forgotten during the court process.) One of the camera shots is supposed to show the well of the court and all prominent court actors, but once the hearing starts the focus is usually on whoever is speaking, and there is little sense of being in a courtroom from the defendants' point of view (see my observations in chapter 7 at 7.5.10).

The defendant's third point of contact with the advocate is in the booth immediately *after* the PVL hearing, (although this post-court consultation routinely does not happen, a disadvantage shared with the non-English-speaking defendant). The advocate will usually take such an opportunity to explain anything the defendant did not understand in court and the implications of any court decision. The same comments I made in the second paragraph of this section apply equally to this third point of contact.

8.2.3 Camera configurations in the courtroom

Throughout chapter 5 and in chapter 7, I have referred to the fact that the camera positions are controlled by the court clerk. S/he is supposed to track speakers effectively, so that the camera focuses upon the court actor who happens to be speaking. In PVL, however, this poses a

⁶³ The National Register of Public Service Interpreter's Code of Conduct can be found at <http://www.nrpsi.co.uk/pdf/CodeofConduct07.pdf> and states that:

- 5.12 Practitioners shall not interrupt, pause or intervene except:
 - 5.12.1 to ask for clarification;
 - 5.12.2 to point out that one party may not have understood something which the interpreter has good reason to believe has been assumed by the other party;
 - 5.12.3 to alert the parties to a possible missed cultural reference or inference; or
 - 5.12.4 to signal a condition or factor which might impair the interpreting process (such as inadequate seating, poor sight-lines or audibility, inadequate breaks etc.).

problem, since every utterance has to be interpreted immediately after it is spoken. This means that in interpreter-mediated cases, court clerks have to make a choice between focusing on the interpreter or focusing on the court actor whose utterance the interpreter is rendering. One of the major findings of this study is that there are several possible configurations of camera shots in relation to the interpreter, all of them with negative consequences of one kind or another. I will now discuss the possible configurations and their consequences for the defendant.

8.2.3.1 Configuration 1

Once the hearing has started, a court clerk may choose to ignore the presence of the interpreter and focus the camera upon whichever prominent court actor is speaking at the time. If that court actor should *happen* to be the defence advocate, the interpreter will usually appear on the defendant's screen too (bearing in mind that the interpreter is usually asked to sit next to the defence advocate). If this strategy is used, the defendant will *hear* but not *see* the interpreter unless the camera is focused upon the defence advocate's bench. As I have demonstrated in chapter 5, defence advocates often say little or nothing in PVL hearings, and thereby gain little or no camera time. In this configuration there is a strong possibility that the defendant will not see his/her advocate.

8.2.3.2 Configuration 2

The court clerk may choose to follow a different course of action and focus the camera exclusively upon the interpreter, ignoring all other court actors in the courtroom (although I have never come across this arrangement). This strategy means that the defendant will not see any of the other court actors at all, even his/her own defence advocate.

8.2.3.3 Configuration 3

The court clerk may decide to track each of the court actors as they speak, including the interpreter. The result of this is a disorientating and confusing blur of images for the defendant as the court clerk switches from one actor to another (see chapter 7, 7.4.4). In this configuration the defendant will see his/her interpreter and may have a fleeting glimpse of his/her defence advocate.

8.2.3.4 Configuration 4

The court clerk may direct the interpreter to the “private” telephone at the side or back of the court. This means that the interpreter loses the advantages afforded her by being in the well of the court with its optimum audibility and visibility conditions, and, moreover, she will not be seen *at all* by the defendant. The defendant will only *see* prominent court actors and hear the *voice* of the interpreter, and, if the defence advocate does not speak, s/he will see neither.

8.2.3.5 Configuration 5

The court clerk may decide to ask the interpreter to sit next to him/her at his/her desk. The result of this will be that, depending on which strategy he uses to track speakers, the interpreter will only be seen if the court clerk is speaking, unless the camera focuses solely upon the interpreter, in which case the defendant will not see any of the other court actors.

8.2.3.6 The ideal configuration?

Which one of these configurations is best for the interpreter and the defendant? The reality is that none of them is satisfactory. The ideal screen view of the courtroom for the defendant would comprise:

- A constant image of the *whole* courtroom, including the public gallery, showing full frontal views of all court actors and their seating positions within it, so that their relative status and their relationships within it are apparent to the defendant and such that friends and relatives of the defendant can be clearly seen by the defendant,
- A clear full frontal view of the interpreter’s face,
- Mutual gaze between the defendant and other court actors including the interpreter.

These three conditions most nearly approximate to the “true-to-life” requirements for using videoconferencing in legal proceedings stipulated by van den Hoogen and van Rotterdam (2011:193) in the AVIDICUS report. These authors recommend that *two* screens are used, one for focused images (say, for current speakers) and one providing an overview of the courtroom, although the configuration of court actors in the Netherlands does not appear to bear much resemblance to a PVL facility in an English/Welsh Magistrates Court. But even the two-screen solution does not address the problem of how the image of the interpreter is to be displayed to the defendant when other court actors are speaking, and who will be responsible

for the tracking of these speakers. Any up-dating of equipment risks focusing solely on the *technical quality* of images (obviously an important aspect of PVL) and not upon the necessary *large-scale re-configuration* of equipment conducive to good quality interpreter-mediated communication. The court clerk is, by default, the sole co-ordinator of PVL in the courtroom, and, although trained to operate the system, operates intuitively through practice and experience when it comes to interpreter-mediated hearings.

8.2.4 Interpreter strategies and training issues

Another major finding of this study is that face-to-face court interpreters use a *range* of different interpreting strategies and that, depending on which they choose, they can make themselves more, or less, visible and audible during a hearing. They appear to make use of these strategies randomly and unreflectively, without appreciating the communicative significance of defendant-focused and non-defendant-focused Moves in a hearing. This lack of understanding shows itself when modes are inappropriately matched to certain types of Moves. For example, whispered interpreting (whether simultaneous or consecutive) is inappropriately used for defendant-focused Moves (see chapter 4: 4.4.4 and 4.8.4) and consecutive full volume is inappropriately used for non-defendant-focused Moves (4.11.4.1).

Although all the interpreters observed were registered, it is clear from their behaviour that many of them are not properly trained. None of the interpreters took any notes to support memory; at least three were observed talking to defendants whilst waiting for cases to begin, whilst others simply did not interpret at all for relatively long periods of time. Hardly any of the interpreter sample intervened for clarification or for repetition and seemed content to omit formulaic and administrative exchanges between court actors in low inaudible voices and to put up with poor audibility generally, whether in or out of the secure dock. One interpreter inappropriately prefaced virtually every rendition with a feedback token (SFF), and yet another could not disguise her distaste at the prospect of entering the dock, even momentarily, with three female Romanian co-defendants. Those who were not directed to take the oath or the affirmation did not prompt the court do so, and when they did, they did not think it necessary to convey this to non-English-speaking defendants. Very few of the sample were able to perform simultaneous interpreting. These are obviously crucial training issues which will be discussed further in chapter 8, 8.4.1.

8.2.4.1 **The effects of ‘non-standard’ application of interpreting techniques in face-to-face and PVL settings**

The non-standard (in the case of face-to-face hearings) application of whispered simultaneous and consecutive full voice interpreting modes (see chapter 2) can have potentially negative effects upon the interpreter, court interaction and the behaviour of other court actors. Any form of whispered interpreting, whether consecutive or simultaneous, is likely to be inappropriate during *defendant-focused* Moves such as the virtual tour of the courtroom, the checking of the defendant’s personal details, the putting of the charge, and the magistrate’s pronouncement. There is a danger that whispered simultaneous mode is not accurate enough to capture the intricacies of defendants’ personal details, the complex wording of charges, and the often bewildering detail of a magistrate’s pronouncement, which the defendant is expected to commit to memory (see Russell (2005) at chapter 2, 2.2.2). My own view is that whispered interpreting can also detract from the solemnity of defendant-focused Moves and interfere with the rhetoric of magistrates’ pronouncements. Morris (2012), an experienced conference and court interpreter and academic, says:

“I couldn't agree more. If there were proper simultaneous, with headphones and good acoustics, then both the interpreter and the defendant would have a reasonable chance to "get it right". But to provide the defendant with a whispered version of what is arguably (one of) the most important phase(s) in the whole trial - and something that is probably fairly dense and delivered at speed - borders on the inhumane. It may be argued that the defendant's lawyer will inform him of the content of the sentencing in any case: but that's not the point. There is a procedural issue that will have to be addressed in advance (and I'm sure will be in your guidelines). If up to this stage everything has been conveyed to the defendant using whispered interpreting, it must be agreed in advance with the judge that the interpreter will use consecutive for the sentencing”⁶⁴.

On the other hand, interpreters who use consecutive full volume interpreting in non-defendant-focused Moves (as is necessary in PVL hearings, for example) risk holding up the court and inducing irritation amongst court actors. Consecutive at full volume interferes with advocates’ rhetorical style by encouraging them to fragment their turns into semantically incomplete fragments. This in turn may have an effect upon the defendant’s understanding of the interpreter’s fragmented renditions (so-called *semi-consecutive interpreting*, as identified by de Groot (1997) and mentioned in chapter 2).

Court authorities might assert that PVL hearings are of short duration, and that any shortcomings in the hearing can be remedied afterwards in the post-court private consultation between advocate and defendant. Interpreters (whether face-to-face or PVL) could easily be provided with low-cost electronic transmission equipment which would enable them to

⁶⁴ Personal communication. Email received March 12th 2012.

interpret simultaneously, although it is doubtful that many court interpreters have the necessary training in simultaneous interpreting to take full advantage of such equipment.

Finally, it is my contention that defendants may be assisted by the *appropriate* use of whispered simultaneous mode (for non-defendant-focused Moves) and full volume consecutive mode (for defendant-focused Moves). If interpreters, taking their cues from the court actors' utterances they are rendering, clearly differentiate between these Moves by using different interpreting modes, defendants may be helped to orientate themselves to the different stages of a hearing, even though they may not understand their significance. However, interpreters in the audio-recordings in this study were often taken by surprise and faltered when the defendant focus changed or when dialogues changed to monologues or vice-versa (see chapter 5: 5.4.2, 5.15.1), and there is obviously an important training issue here.

8.2.4.2 The effect of PVL on interpreter interventions and defendant back-channelling

The effect of PVL on interpreter interventions and defendant back-channelling seems to be minimal. Contrary to my expectations interpreters intervened more frequently in PVL hearings than in face-to-face hearings (see chapter 5), although my observations show that interpreters seem to intervene rarely whatever the context. Defendants back-channelled more frequently in PVL cases than in face-to-face cases (chapter 5), although their back-channelling was ignored both by interpreters and by the court. The reasons for this are not clear. It is possible, though, that poor sound quality meant that PVL defendants who back-channelled were not heard in the courtroom.

8.2.4.3 Ratification of the court interpreter

There is wide and disturbing variation amongst courts in formal ratification of the interpreter. Although in my sample of 21 recordings of court hearings two face-to-face interpreters and one PVL interpreter were *not* sworn in, my observations of other court hearings show that it is far from uncommon for interpreters to remain unratified by the court in this way. Moreover, interpreters do not always routinely sight translate the oath/affirmation to defendants, and court clerks often forget to remind them, or do not understand its significance. In theory, ratifying the interpreter reminds the court of her presence, and renders her an official member of the court team. In reality, however, this and other such open acknowledgements of the

interpreter did not automatically lead the court to accommodate to her professional needs, and I surmised that this was probably because court actors do not have the training that would enable them to facilitate the interpreter's task.

8.2.5 The view from the prison

As I demonstrated in chapter 7, I found watching PVL cases from the prison at times disorientating, confusing and inaudible, with little sense of being present in a courtroom. In some cases the voice of the interpreter came across more clearly than those of the court actors themselves (because the interpreters leaned towards the microphone), giving rise to the concern that, in fact, it is *English-speaking* defendants who would be at a disadvantage (because they have no interpreter to orient them to the proceedings) and who might find it difficult to follow proceedings in terms of audibility, visibility and coherence. Completely by chance, I have discovered that an English-speaking PVL defendant might receive a better auditory (rather than a visual) signal, and that it is the transmission equipment itself which makes the difference. Because non-English-speaking defendants thus rely completely on the intelligibility of the court interpreter for their own orientation to the proceedings, it appears that PVL creates a new court interpreter role, that of a *guide*, similar to that of an escort interpreter who accompanies a person or a delegation on a tour, on a visit, or to a meeting or interview.

8.2.6 The interview responses of court actors

The distinction between translation (a literal rendering) and interpretation (a non-literal rendering) is often erroneously made by the judiciary. The response of the district judge in chapter 6 (6.5.5) exemplifies this. He asserts that there is more “chat” between interpreters in the dock than with PVL interpreters (something that he views negatively), and that PVL encourages what he calls “pure translation” rather than “interpretation”. Morris sees this assumption as the root of the judiciary's misconceptions about the role of the interpreter:

When it comes to court interpreting...the law distinguishes between the prescribed activity of what it calls translation – defined as an objective, mechanistic, transparent process in which the interpreter acts as a mere conduit of words – and the proscribed activity of interpretation, which involves interpreters decoding and attempting to convey their understanding of speaker meanings and intentions. In the latter case, the interpreter is perceived as assuming an active role in the communication process, something that is anathema to lawyers and judges. The law's attitude to interpreters is at odds with the findings of current research in communication which recognizes the importance of context in the effective exchange of messages: it simply does not allow interpreters to use their discretion or act as mediators in the judicial process. The activity of interpretation, as distinct from translation, is held by the law to be desirable and acceptable for jurists, but utterly inappropriate and prohibited for linguists.

(1995:26)

The district judge's comment above shows that this attitude is still prevalent, as can also be seen by DA1's response at 6.8.4.

Interpreters' attitudes to PVL interpreting were complex; some conceded the loss of non-verbal feedback but, with some exceptions, did not say what action they took to compensate for this loss. On the one hand it is possible that interpreters do not realise the extent to which they *do* rely upon non-verbal feedback to be able to interpret successfully, but on the other, it has to be said that these PVL interactions are almost always *unilateral*. The PVL interpreter is mostly interpreting *from* English *to* the foreign language, and not vice-versa. In this situation the body language of the court actors present in the well of the court assumes a greater importance for the interpreter than the body language of the defendant on the screen. Provided that the interpreter is seated amongst the other prominent court actors in the well of the court and that she is competent in consecutive interpreting and note-taking, the loss of non-verbal feedback from the defendant will probably not impact much upon her interpreting. For the defendant who is the end-receiver of this unilateral interpreting, of course, the picture is very different (see chapter 7 and chapter 8 section 8.3).

It was interesting to see how two magistrates experienced in PVL spoke about the merits and de-merits of video conferencing, claiming on the one hand that a PVL hearing is the *same* as face-to-face one, and on the other hand conceding that PVL is an inferior form of communication in which the intricacies of non-verbal communication and demeanour are lost (see 6.5.5). It was also interesting to hear how other court insiders such as court clerks and crown prosecutors, whilst conceding the same point, were decisively against extending the use of PVL for trials, and on the whole, would not advocate it for themselves or their relatives. It did not occur to respondents that body language, though crucial for the evaluation of the defendant's demeanour for magistrates and district judges, is equally crucial for interpreters in the determination of meaning.

The most detailed and enlightening responses were those of the five defence advocates I interviewed. Defence advocates are the only legal practitioners who have an extended professional relationship with defendants in the court context. Defendants rely upon them for the quality of their legal advice and for the skill with which they present their cases in court. Criminal defence advocates are often represented negatively in the press, and, contrary to popular belief, undertake legally aided work which is paid at a relatively low rate compared to

other types of legal work. They are often under pressure of time, meeting new clients sometimes minutes before a court appearance in unpleasant surroundings such as police or court cells, or via video link in the Virtual Court. Yet they are professionally obliged to represent their clients as best they can with minimal information. It is not surprising that all the random sample of advocates I interviewed echoed the concerns of the legal practitioners in chapter 1: 1.3.1. For defence advocates, the physical separation from their clients often impacts negatively upon the relationship between them, because they depend on body language to make an assessment about the mental state of their clients; when such communication is interpreter-mediated and changes from dyadic to triadic, the problems inherent in interpreting are magnified. Who is now to co-ordinate the triadic relationship in the pre-court booth and how can confidence and trust be fostered within it? If this *can* be successfully done, what visual continuity can be afforded to the defendant so that he can recognise his own defence advocate and the interpreter in the courtroom? How can the defendant orientate himself to the configuration of the courtroom in terms of the status of the court actors within it?

What follows is a series of recommendations based upon the empirical evidence of the court recordings, the observations and the interviews with court actors.

8.3 Recommendations: short term

The picture that emerges from this investigation into court interpreting in both contexts is one of inconsistency of practice resulting from a lack of training on the part of all concerned, as well as a pre-occupation of court staff with the smooth through-flow of court cases, to the detriment of the communicative needs of the foreign-language speaking defendant.

These recommendations are based upon the perspectives of all users of court interpreters and upon those of the interpreters themselves. Although the data sample is relatively small it has been possible to compare the perspectives of a wide range of court actors who have conflicting interests and institutional goals with regard to interpreter-mediated cases. Court actors often make sincere and well-meaning attempts to accommodate court interpreters, but since the former have no guidance in working through an interpreter, and the latter are operating with minimal formal training and may have little understanding of the interpreter's role, the result can often lead to confusion, poor quality communication and inconsistency.

Recommendations are of two kinds. Firstly, I advocate best practice for the situation court actors find themselves in here and now, taking into consideration the existing shortcomings of the PVL technology and the time it will take to implement changes to the system. Secondly, I put forward recommendations for best practice when all the technical recommendations have been implemented and when all the configurations of screens and cameras have been resolved. I intend communicating these findings to the SPJ⁶⁵ in the hope that he may be able to take the appropriate action.

8.3.1 Recommendation 1: reserve PVL for short preliminary hearings

Interpreter-mediated PVL hearings should be reserved for re-remands in custody, sendings and committals to the Crown Court only. In other words, the range of situations for which PVL is mandatory should kept as it is and should not be extended to evidential hearings or trials without further extensive research and consultations with interpreting researchers. This recommendation is in line with Braun (2011:280), who urges caution and recommends that video link should only be used for “low impact-crime and short procedures” with “trained, qualified and experienced interpreters” and “legal practitioners...who are experienced in working with an interpreter”.

8.3.2 Recommendation 2: implement a “best practice” protocol for working through court interpreters

There should be a single protocol, but with some crucial additional items for PVL cases. This recommendation could be implemented *immediately*, after some training. The protocol should include the following items which cover both face-to-face and PVL contexts:

- (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.

⁶⁵ The Senior Presiding Judge of England and Wales should be approached with the findings of this study with a view to the devising of rules, protocols and guidance for all court staff working with interpreters. The guidance, which should include an *aide-mémoire*, should be located on each Bench so that it can be quickly referred to by court actors such as magistrates and district judges. In addition, the SPJ should be approached so that he may further facilitate the audio-recording of cases in court, or make official recordings of Crown Court hearings available for academic research purposes. The resistance to change of most court staff and their hostility towards audio-recording in court is hampering the development of best practice, and courts are missing out on research, particularly in the field of forensic linguistics, which could greatly improve communication in the courtroom.

- (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 strictly 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.

8.3.3 Recommendation 3: training for court actors

All court actors including prosecution and defence advocates, court clerks, magistrates and district judges as well as all legal practitioners in Crown Courts and Immigration Appeal Tribunals should undergo in-service training in how to work through a court interpreter. The training could be undertaken in one day. In the first place, magistrates and district judges should be specifically targeted, as 97% (see footnote 10, chapter 1) of all criminal cases begin and end in the Magistrates Courts, and they have the authority to create favourable working conditions for court interpreters.

8.3.4 Recommendation 4: training for prison officers

Prison Officers who sit with defendants in the prison video link courtroom in prisons should undergo basic training in court procedures and should alert the main courtroom when there is poor quality sound or image. They should also protect the defendant's hearing from any interruptions. To this end, no-one should be admitted to the video link courtroom at the prison after a hearing has commenced.

8.4 Recommendations: long term

8.4.1 Recommendation 5: training for court interpreters

During my time as a trainer of legal interpreters, I incorporated 50 hours of work-based training into the curriculum, using practising police officers, defence advocates, crown prosecutors, probation officers, court clerks and magistrates, using real courts and police stations. Most interpreters have never received any court-specific work-based training and have simply learnt on the job. Interpreters in the UK are allowed to take a generic legal option examination without having had any training at all; they can simply turn up for the examination.⁶⁶ A nation-wide programme of state-sponsored court interpreter training should be urgently devised, and all interpreters should be required to *attend and pass* a specific court interpreting examination. The programme should include a module on interpreter-mediated

⁶⁶ See DPSI examination information on the Institute of Linguists website at <http://www.iol.org.uk/>

video link hearings. The Diploma In Public Service Interpreting⁶⁷ should, in future, include a specific court interpreting option over and above the existing generic “legal option”, which currently does not include any court interpreting scenario at all.

Interpreter training should reflect the complexities of working in different court contexts. Court actors themselves should be recruited to the training process for interpreters. This echoes the recommendation by van der Vlis in the AVIDICUS report:

The findings of tests conducted within the context of AVIDICUS make it clear that interpreting in criminal cases in which video conferencing is used requires additional skills. It is generally accepted that these skills can only be obtained in sound interaction with the legal practice. Deploying judges, police detectives, Public Prosecutors and lawyers as teachers in the training of interpreters is therefore essential.

(2011:25)

The advantage of using legal practitioners in the training of interpreters is that it is a mutually beneficial exercise, since each group learns about each other’s professional needs at one and the same time. The government should implement a national interpreter training strategy so that court interpreters are fully prepared for the challenges inherent in court interpreting. The training should be carried out by interpreting experts to include intensive practice in simultaneous and consecutive modes of interpreting and the specific application and effects of these modes in the courtroom. All interpreters should undergo systematic training in the challenges of working through PVL and video conferencing generally. In face-to-face proceedings all interpreters should understand the difference between defendant-focused and non-defendant-focused Moves in court hearings and be able to move competently between them. This would involve interpreters being able to recognise the pragmatic signals marking the boundaries between defendant-focused and non-defendant-focused Moves and adjust their interpreting mode accordingly. Interpreters should be encouraged both by courts and by trainers to intervene where repetition or clarification of formulaic language is required. All court interpreters should undergo training in note-taking and should not attend any court assignment without a note book and pen.

8.4.2 Recommendation 6: upgrading PVL equipment in Magistrates Courts

A major programme of up-grading videoconferencing equipment should be undertaken by government. The up-grade should not *only* take account of image and sound, but of the

⁶⁷ The DPSI is the main examination for gaining entry to the National Register for Public Service Interpreters. The examination is validated by the Chartered Institute of Linguists. Website is at <http://www.iol.org.uk/>

optimal configuration of camera positions and screen provision for (i) the interpreter and (ii) the defendant (see configuration 5 at 8.2.3.5). In addition, simple mobile electronic transmission equipment should be available in courtrooms for interpreters to use so that there is no further need for interpreters to sit in the dock next to the defendant or stand outside secure docks to interpret. This is not only for safety reasons, but to ensure audibility for the defendant, to avoid the impression of collusion and to discourage the defendant from conversing with the interpreter.

8.4.3 Recommendation 7: improving pre- and post-court consultation booths in the Magistrates and Crown Courts

Those Magistrates Courts where the pre-court consultation booths are too small to hold the defence advocate and the interpreter comfortably, where the screen is too small and there is only one handset, should be upgraded *as soon as possible*: many Crown Courts already have much better facilities where there is no need for a handset, and where several parties can be easily viewed by the defendant from his booth at the prison.

8.5 Indications for further research

1. This study has been dedicated to the exploration of the use of PVL in the *Magistrates Court* context, although some of the interpreters I interviewed had worked in other video-link contexts such as the *Crown Court*, the *Virtual Court* and *Immigration Appeal Tribunals* and with the *Probation Service*. Research is urgently required to consider the impact of interpreter-mediated video link upon hearings which take place in these other settings, especially in light of the interview response of INT(viii) who was told to interpret only the appellant-focused part of the proceedings by the Immigration Adjudicator (chapter 6).
2. This study has investigated court actor behaviour rather than comparing source utterances and target renditions. Further research is urgently needed to examine whether or not there are any significant language transfer issues when interpreters are not co-present with defendants.
3. In chapter 1 I referred to Gobo's (2008a) study on visual orientation in the workplace. As Gobo himself points out, his study "clearly shows the concept of situated communication" (2008a:184). My comparison of face-to-face and PVL hearings

showed how an interpreter's shift of position from the dock to the well of the court influences her interpreting mode as well as the delivery style of the other court actors. Further research should be carried out to show the extent of the influence that visual orientation has upon all interpreter-mediated interaction in the courtroom.

4. The data I have collected would lend itself to investigation through a variety of different methodological perspectives such as conversation analysis, discourse analysis and multimodal analysis. In particular, it would be interesting to study the construction of power relationships amongst different actors when people speak remotely and how power is shifted from the point of view of the defendant.

8.6 Closing comments

Article 14(d) of the International Covenant on Civil and Political Rights (1976)⁶⁸ came into force well before routine videoconferencing in criminal proceedings could have been envisaged. It states (my underlining):

“in the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:.....

(d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing....

“Looking one's accuser in the eye” is one of most ancient of judicial rights, the bedrock upon which the art of cross-examination in English common law is based. Porcius Festus, a Roman governor, said:

"It is not the manner of the Romans to deliver any man up to die before the accused has met his accusers face-to-face, and has been given a chance to defend himself against the charges." (my underlining)

Video link certainly interferes with this right. A PVL defendant cannot really “look” his accuser in the eye. “Presence” is a vital element in court hearings, and it cannot be effectively simulated by substituting a live person with a screen appearance. PVL cannot be extended to include trials without compromising defendants' rights. Non-English-speaking defendants already suffer a considerable disadvantage by not understanding the

⁶⁸ This can be found at <http://www2.ohchr.org/english/law/ccpr.htm>

language of the court. Researchers from the disciplines of law, interpreting, philosophy and linguistics should jointly explore these over-arching issues, since they do not only affect non-English-speakers but have implications for the quality of justice for all defendants.

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Appendix A: four reflexive commentaries on interviews

Introduction

In line with a constructionist approach to interviews (see chapter 3), these four reflexive commentaries are meant to provide interactional context to show how a selection of the interview extracts in Chapter 6 were co-constructed by myself and interviewees, and how the extracts were “interactionally occasioned” (Mann 2010:18) in the course of the interview. Comments about the effect and significance of prior relationships I had with respondents are also included. All italics are to emphasise elements discussed in the commentaries. It can be seen that I have used some typical neo-positivist interview strategies throughout the interviews such as attempting to be neutral by not being critical about respondents’ answers, reacting to them as little as possible, and resisting explanations of questions. However, my commentaries offer a critical and constructionist analysis of the interviews.

Extract 1

Relationships and context

INT(i) is an interpreter whom I had encountered and observed in court, but with whom I had no prior relationship. She had agreed to a telephone interview. There are moments during the interview where she adopts two roles, that of interviewee and that of interpreter. In the rapport-building interaction which takes place before I start asking her the first question, she adopts the interviewee role; she asks me not to “make it public if I sound not very sure or if I mumble”. At my first interview question she adopts the interpreter role. I ask her how long she has been an interpreter (18 months, in fact) and whether she has received any training (apparently she has not). These are questions likely to unsettle an inexperienced interpreter. She explains how, at first, she worked frequently in local courts, but that

3 INT(i) ...it [the work] started to slow down

4 YF Okay, right ho, right ho

4 INT(i) And if I didn’t have good feedback from legal advisers or the judges or barristers, I would have doubted myself but er it is I think the nature of that [the job]

Her lack of confidence in her abilities is probably evoked by my question about the level of her experience and training.

Analysis

The interaction presented below show examples of researcher-provoked responses from the interviewee, originating in a confusingly worded question by myself as interviewer at 44. I meant to ask two allied questions from my interview guide, which were: *what interpreting technique do you usually use when you interpret for a live defendant in an open dock ? And for a defendant using prison video link ?* However, I do not actually use this wording. The way I phrase the question at 44 is confusing, starting with a reformulation of the interviewee’s previous answers at 33-34 and followed by two questions. In the first of these two questions I ask her to compare the two techniques of simultaneous and consecutive interpreting, which in essence, is a quite meaningless task. What I really meant to find out is which interpreting techniques she uses in the two different settings. Realising that

I have not formulated the question clearly enough, I then follow this up with a second question: “*Er, when you’re interpreting for a live defendant in an open dock, what kind of interpreting technique do you usually use?*” I expect her to say that she uses simultaneous interpreting for defendants in the dock (my field note confirms that I had observed her using the simultaneous technique appropriately in a face-to-face case), but she gives me an answer (44) I am not expecting: that it is her duty to interpret every word uttered. At 45 I continue my attempt to elicit an answer regarding the two techniques, but she responds with a puzzled clarificatory request, in clear deference to me as an interpreter trainer. My response at 46 “er-” is a stalling technique to enable me to think of a strategy that complies with her request for clarification without stating possible answers to the question. In other words, I do not want her to infer that simultaneous is a more appropriate technique for a defendant in the dock, and that consecutive is more appropriate for video link. Unable to think quickly enough how this task can be accomplished, I refer the interviewee to the occasion when I had observed her in court (47) and I amplify my answer at 48. She recognises my final attempt (at 48) to elicit the type of technique used as a sort of “test” of her knowledge of interpreting (hence the rather embarrassed laughter) and at 48 she gives up trying to guess what I mean, explaining that she hasn’t seen other interpreters at work. At this point I am forced to use the word *simultaneous*:

- 44 YF Okay so, er, if you, er, you usually sit next to the defence advocate for a prison video link and you just talked about being, er interpreting for a live defendant in an open dock, like when I saw you that time, you were doing that. Er, could you compare the two techniques that you use? Er, when you’re interpreting for a live defendant in an open dock, what kind of interpreting technique do you usually use?
- 44 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
- 45 YF Yes, so interpret in terms of technique, what would that involve?
- 45 INT(i) Er, what do you mean by technique?
- 46 YF Er
- 46 INT(i) The language?
- 47 YF Well, I saw you use a particular interpreting technique when you were working with the defendant
- 47 INT(i) Right, right
- 48 YF When I sat behind you, when you were working with the defendant
- 48 INT(i) Yeah- what was it- I don’t-because I haven’t seen other interpreters working (laughter)
- 49 YF Well you seemed to be, you seemed to be using *simultaneous*
- 49 INT(i) Yes, oh I see what you mean, what I do, it depends on the clarity-yeah ? of the sound
- 50 YF Yeah
- 50 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
- 51 YF Yes
- 51 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, you know er
- 52 YF Yes

52 INT(i) Is it *simultaneous* is while one is talking you are interpreting?

53 YF Yes

At 51, she initiates a topic change midway through her answer to my “techniques” question. My confusingly worded question about techniques gives rise to her own perceived inability to respond “correctly”, and this is potentially face-threatening for her. She then attempts to save face at 51 by telling me about her top grade in the simultaneous interpreting examination. Although she could legitimately expect me to make some comment on the grade (and perhaps even to congratulate her), I do not do so. My responses at 50-53 are my neo-positivist attempts at “doing being neutral towards the topic while displaying interest” and not engaging in any critical or other comment (see Rapley 2004:21). I react little or not at all to responses and try not to suggest the answer to a question. I also resist explaining the meaning of a question. There is a power imbalance between this interviewee and myself, mostly because of her perception of me as an experienced interpreter trainer.

Extract 2

Relationships and context

INT(iv) is an experienced and trained interpreter and one of my former students from a few years before. I had met and observed him in court and he agreed to a telephone interview. In this extract he describes graphically what it is like to sit next to defendants in the dock.

Analysis

Fascinated by his unexpectedly detailed description of defendants’ display of body movements, I ask him whether these movements are important to him in some way. He replies by saying that if he were to concentrate on such matters he would not be able to interpret properly. The implication of this is that he would find it *distracting* to do so, and I introduce the word *distracting* into my next question at 41, a word which he uses himself later in his answer:

- 38 YF Let’s think now about the physical behaviour of the defendant. Could you compare the physical behaviour of a defendant when you’re sitting next to them in the dock and when you’re seeing them on the prison video link ? are there any differences ?
- 38 INT(iv) There are- there are- that’s quite an interesting question, because when you sit next to the defendant in the dock, you physically- you feel the defendant, because next to you you feel his body language, whether he’s happy or not in terms of what has been said, but in the video link interpreting the defendant is more strict to himself, to the camera ,and he can see that he has no way to contact me directly, he feels that difference and that gap geographically or physically, so his movement- the defendant’s movements are different from the dock and from the video link.
- 39 YF So does that mean then that your relationship is different ? you said that when you’re sitting next to the defendant you can feel them, so does that mean that you can’t feel the defendant who’s appearing on the camera ?
- 39 INT(iv) No, I feel the defendant er that is in need of er my interpreting, er- equally, whether he is in the dock or he is in prison, but the difference here is as I said, you have to pass everything to the defendant whatever been said in the courtroom and er you have to do it one to one, sentence to sentence, but in the dock, as I said, it’s quite different, some movement, some gestures, you can feel it more than the person sitting on the screen.
- 40 YF So these gestures and this body language that you say you feel when you are sitting next to the defendant, are they important in some way ?

- 40 INT(iv) For me it's not important because if that takes my concentration then I will not be able to continue with my er with my interpreting, I have to be impartial anyway, I have to be concentrating all the time [on]what has been said, otherwise the defendant loses the chance to get the words or the things that have been said to him within the courtroom, and er I will miss the interpreting part of it
- 41 YF So in that case then do you mean that sitting next to the defendant and feeling that defendant's body language as they sit next to you do you mean that that is a *distracting* factor, that it *distracts* you ? that you have to learn to ignore it ?
- 41 INT(iv) You can say yes to that and no: yes because I have to listen to what being said, some of the defendants they are different, they, some of them- they have some er bad er what do you say, er some of them they move their legs, shaking their legs when they are sitting, because they are worried, they have bad habits as well some of them, you feel like they are swallowing something, or just shaking their teeth, these are- you can say *distracting* from the other side you have to concentrate on the courtroom because mainly as I said simultaneous interpreting, but with er video link interpreting it's more convenient and comfortable for me as an interpreter because as I said I have the weight and I have the right to stop and to ask to repeat, I have this right even in the dock, but during the video link the whole room, the courtroom I will say they look and wait from you, they look at you and wait from you because the length of the sentences that you are interpreting mainly it's measurable and they can even expect the length of the sentence, the tone and the questions etcetera, so they are waiting for you to do that job and that's very convenient and comfortable for us

There seems little doubt that my use of the words *distracting* and *distracts* at 41 has led to his repetition of the word *distracting* in his response. At 40 he implies that such defendant body movements could indeed be distracting, but that *he* does not find them so. However at 41 he seems to be less sure about how distracting they might be (*you have to concentrate on the courtroom*) and goes on to assert that video link courtrooms are less distracting for him because everyone waits for him to finish interpreting before they speak - a very interesting revelation.

At this point, conscious of the short amount of time left for the interview, I move onto the next question on my interview guide. I ask him to describe his ideal courtroom layout for a face-to-face court interpreter. He gives a lengthy answer, but just as I ask a follow-up question about his ideal layout for a prison video link courtroom he interrupts me at 43, initiating a topic change back to the question of *distractions*. Although I again use the word *distracting* in my question at 44 this seems to trigger further interesting spontaneous revelations about working in the dock and about a different, and unexpected, source of distraction emanating from security staff:

- 43 INT4 Just a second Yvonne, just let me take you back for a minute, it's quite important, whilst I am in the dock interpreting for some defendants, some security staff- they have- if the hearing is long, say it is a trial or something, they have their own business to do like to write something down, or sometimes there are colleagues downstairs in the cells so what they do, they do a lot of noise, and that really drives me really unhappy let's say.
- 44 YF So they do *distracting* things
- 45 INT4 Reading newspapers, and turning the pages of the newspaper, and that drives me unhappy very much, and with their keys as well, some of them sitting, just shaking their legs, they are nervous, or you know this kind of things, and I have to tell them immediately, please can you stop doing that please, and that's my right because I am here just to interpret and not to listen to this noise.

My own attempt at a topic change which preceded his response at 43 does not succeed. Although I encourage INT4 to talk about the distractions of dock interpreting by highlighting this as an issue and by reformulating what he says in his answer by including this word (in different forms) he volunteers yet further information, saying that he has learnt to cope with the distracting body language of defendants, that the distracting activities of security staff in the dock are much more of an issue for him, and that he is confident enough to remonstrate with them.

Extract 3

Relationships and context

I had tried unsuccessfully on many occasions to contact this respondent, a district judge, for an interview. Although we had not met for many years, he already knew me socially through a member of my family, a practising defence advocate. He had clearly indicated to this family member that he was willing to grant me an interview. However, he had failed to respond to any of my letters and emails. One day I had, quite unexpectedly, found myself in his court. He noticed me and after the morning cases had been dealt with, he let it be known that he was willing to speak to me in his private office at the back of the courtroom. I had thus observed the judge prior to the interview. I knew he would be severely pressed for time and so there was little opportunity to ask any follow up questions. In the event, the interview lasted little more than 14 minutes.

Power relationships

The unequal power relationship between us was evident from the very start. Unlike the interpreter respondents (who have a code of practice to which they are supposed to adhere) the judiciary have no specific guidelines about how they might expect an interpreter to work. Because of this, there was little for the judge to be defensive about. It is quite probable that he already knew about (and disagreed with) my earlier 2006 research pilot (see 1.1.2) and its tentative conclusions concerning some of the challenges faced by PVL interpreters. I perceived some of his responses as deliberate, and possibly playful, attempts to shock; field notes made immediately after the interview show that he often laughs or smiles when making provocative comments. For example, he refers throughout to the defendant (with one exception) as *the body*, a phrase which appears to de-humanise and objectify. It is because of my own perception of this intention to shock that I do not react (“doing being neutral”).

Analysis

I begin by asking him at 4 about the extent of his experience with PVL interpreter-mediated cases. I then initiate a topic change by asking him about the existence or otherwise of official guidance on working through interpreters. He answers in the negative and then switches topic, using this as an opportunity to give his own strongly held views in favour of using interpreters for PVL cases. At responses 4 and 7, he appears to blame the courts and defence solicitors for shying away from processing more interpreter-mediated PVL cases:

- 4 YF ...So, er, before we, before I ask you about that [working through interpreters in prison video link cases] is there any official guidance that's available to you for interpreted cases, whether it's prison video link or face-to-face, that's available to court staff, district judges, magistrates
- 4 DJ Er, I've got nothing available at all. I would like to make better use of, er, er, er interpreters over prison video links but the courts don't seem to want to do that. They, whenever I come in on matters, invariably the interpreter's there in court and the body's there in court because people have thought *it's too difficult* to do a prison video link. Hence the case that you saw today where I said *it will be on video link next time and the interpreter will be in our court*
- 5 YF Ah right okay, so that was at your..?
- 5 DJ Yes, otherwise they wouldn't have done that, they would have brought *the body* back
- 6 YF I see, right, okay

- 6 DJ *So, so if I can move it along, I will move it along*
- 7 YF Yes
- 7 DJ But so often you go along and, er, they haven't used the video link because *they think it's too difficult*, because solicitors want to take instructions and various other things and, er, they'd rather have *the body* there with the interpreter

In the italicised phrases above he takes the opportunity to show me that he is in charge of the court. He evidently regards the concerns of court staff about interpreted PVL as completely unwarranted. His impatience is evident in such phrases as “people have thought it's *too difficult* to do a prison video link” (4) and “they think it's *too difficult*” (7).

In the following two excerpts from the transcript he shows himself in a similar authoritative role when referring to the interpreter. Firstly he overrides the defence advocates' preferences for the interpreter to be in the dock:

- 13 DJ As you will have noticed here, er, er, the interpreters sit outside the dock when the prisoners are in the dock. I know from when I've been doing visits, for example, to Birmingham Magistrates' Court, they sit in the dock. The reason they sit out of the dock here is because, er, I and particularly me, and also the magistrates and, er, Reliance [the private company who escort prisoners to courts] feel it's safer to have them outside the dock, er, some advocates don't allow it, they want them in the dock but *I will not allow it for security reasons*
- 14 YF Okay, right

Secondly he overrides any professional independence and choice the interpreters might have in the matter of seating position:

- 17 YF Yes. Do you know where, who decided on the position for the interpreter? Why, why do they sit there?
- 17 DJ I've not, I've not the faintest idea
- 18 YF Has it just become a sort of tradition?
- 18 DJ It, er, I've not the faintest idea; *I put them where I want them*

One of the most interesting aspects of this interview is the way that he positions himself in relation to a particular issue which I raise at 45, that of “the jurisprudential right to look your accuser in the eye”. My question at 45 is occasioned by his claim that PVL is justified in all cases, even trials:

- 44 DJ And, er, you [already have]have witnesses who give evidence from either behind screens or on video link, special measures are granted quite readily now, er, for, for, for vulnerable or young witnesses, er, I can't see any reason at all why everything, including trials cannot be done over a video link. I can't see any reason for not doing it as long as the technology is there to, er, accommodate it
- 45 YF So there is, er, as I, as I understand it, sort a jurisprudential right, if you like, to look your accuser in the eye

As he said this (46-47 above) I noticed that he was smiling broadly. His final comment, delivered whilst he knew that the recorder was still on (and immediately before it was switched off) was “don’t tell (*name of family member*) what I said about bodies not going to court”.

Extract 4

I approached this interviewee, a senior court clerk, immediately after observing her in court one morning. We had never met prior to this encounter. She willingly agreed to an interview. This took place about two weeks later by telephone.

I have chosen this sequence of dialogue to illustrate a researcher-provoked role shift in the respondent. The final question in my interview guide (*if you were a defendant yourself, would you rather appear in court face-to-face or by prison video link?*) was designed to encourage respondents to assume a different role to their institutional or professional one: that of the non-English-speaking defendant. Its aim was to assess how far legal practitioners were prepared to go in their defence of PVL and whether and how they would be prepared to justify its use on grounds of both efficiency *and* fairness.

49 YF Yes. Let's focus on the defendant now

- 49 CC(ii) Okay
- 50 YF Do you think er, that the use of video link could be extended or should be extended to include trials, for example?
- 50 CC(ii) Interesting. Er, there, there is no reason why it shouldn't work. If the equipment is properly installed and high tech, I can't see any reason why it shouldn't work. But, *from the defendant's point of view*, I think I would have to accept, sitting in a little room, I've never, I've never done it the other way around myself so I can't speak from personal experience, but you, you must feel detached. And whether that would be appropriate for a trial hearing, I'm not absolutely sure
- 51 YF Right, right, yes, yes
- 51 CC(ii) *Just trying to put myself into the-the defendant's shoes*

At this point (51) CC(ii) adopts the role shift much more explicitly and pre-empts the wording of my later questions at 54-55:

- 52 YF Yes
- 52 CC(ii) Sitting in a little room, isolated from the court room. Albeit, we can give them an overview of it and show them who's in court, how it operates, how, and I, I always personally tell them it, it is exactly the same as if they were sitting in the court room itself, as far as rules and procedures are concerned
- 53 YF Yes
- 53 CC(ii) But nevertheless, do they feel detached from it? I don't know, you'd have to speak to a defendant

At 54 I respond to the phrase that the respondent uses at 51: *just trying to put myself into the-the defendant's shoes* in order to initiate a topic change:

- 54 YF Yes, yes. Well, it's interesting that you should say you're *putting yourself in the defendant's shoes* because that's really one of my last questions really
- 54 CC(ii) Right
- 55 YF If you, yourself, heaven forefend, were ever in a position of having to choose between a, a live appearance and a remote one, which would you choose for yourself or maybe a relative? What would you advise them if you, if you were ever in that position yourself?
- 56 CC(ii) I, I think it would depend very much on the type of hearing. When we're talking about evidence, er, the person as a defendant rather than anything else?
- 56 YF Yes
- 57 CC(ii) Er, do you know what, I'm not sure I can answer that
- 57 YF That's alright
- 58 CC(ii) That's a very difficult question. I've never properly thought about it. From-from my point of view as a legal adviser, I would say it makes no difference whatsoever whether you are personally in the court room or appearing via the video link. The, the decision will not change because the same information is being received and the magistrates will make their decision based upon that information. But from a personal point of view, whether you would feel so detached that you personally thought it was making a difference, I don't know. But, I'd say from a legal point of view, I can positively say that it wouldn't make any difference whatsoever to the eventual decision

58 YF Interesting, interesting

Her response at 58 encompasses role shifts from legal adviser (or court clerk) to non-English-speaking defendant and back again to legal adviser. Despite the fact that she tries to *put herself into the defendant's shoes*, she appears to be unable to decide on the issue of fairness for non-English-speaking PVL defendants. The last part of her response (*I'd say from a legal point of view, I can positively say that it wouldn't make any difference whatsoever to the eventual decision*) denotes a final shift back to her institutional role and is perhaps designed to pre-empt any suggestions of unfairness that my research might uncover.

Appendix B: Table of prior relationships with interviewees

| Interpreter | Context | Prior relationship | Interview carried out in interviewees' L1 or L2 |
|-------------|---|---|---|
| INT (i) | Met at court, then telephone interview. | None | L2 |
| INT (ii) | Contacted me to be interviewed without being asked. Face to face in my home. | My former DPSI student | L2 |
| INT (iii) | Contacted me as result of a general appeal via IOL. Telephone interview. | Met at a conference, had a meal together there. | L2 |
| INT (iv) | Met at court, then telephone interview. | My former DPSI student | L2 |
| INT (v) | Met at court, then telephone interview. | My former DPSI student | L2 |
| INT (vi) | Met at court, then telephone interview. | My former DPSI student | L2 |
| INT (vii) | Met at court, then face to face interview in a coffee bar. | None | L2 |
| INT (viii) | Came to me and requested to be interviewed. Face to face at Aston University. | My former DPSI student | L2 |
| INT (ix) | Contacted me as result of a general appeal via IOL, then telephone interview. | None | L2 |
| INT (x) | Met at conference. Commented on my paper. Then telephone interview. | Knew her well. | L1 |

7 telephone interviews, 3 face to face interviews. 5 former DSI students, 3 not previously known, 2 acquaintances.

Appendix C: interview guide

| |
|---|
| 1. Questions for interpreters |
| 2. Questions for magistrates and district judges |
| 3. Questions for court clerks |
| 4. Questions for crown prosecutors |
| 5. Questions for defence advocates |

1. Questions for interpreters

2. How much experience of court interpreting do you have ?
3. What interpreting techniques do you usually use for a live defendant in an open dock ?
4. In a secure dock ?
5. With regard to the experiences you are going to tell me about in regard to prison video link, perhaps you could remember what kind of court were you in at the time ? Crown Court ? Magistrates Court ? Youth Court ? Immigration Tribunal ?
6. Could you elaborate on the seating positions you have been using when you have been involved in different configurations; at the prison and in the courtroom ?
7. Is there any particular reason why you sit there ?
8. Where do you think you should sit ?
9. For prison video link ?
10. Have you got any comments to make with regard to the arrangements for the private pre-court and post-court consultations with advocates at the prison ?

11. Are there any noticeable differences between the physical behaviour of a defendant when remote and when live in the dock ?
12. What would be your ideal layout in terms of interpreting in the courtroom for live defendants ?
13. For prison video link ?
14. How do you think the court perceives you when interpreting face to face ?
15. When interpreting remotely ?
16. How do you think the defendant perceives you when interpreting face to face ?
17. When interpreting remotely ?
18. If you were a defendant yourself and you could choose live or remote appearances, which would you rather do and why ?

2. Questions for Magistrates/District Judges

1. What is the extent of your experience of Prison Video Link cases ? Interpreted video link cases ?
2. What official guidance is available to you for interpreted cases, (PVL or face-to-face) ?
3. What for you are the main differences between face-to-face hearings and prison video linked ones ?
4. Where do you think the interpreter should sit in the courtroom ? What if it is an interpreted PVL case ? Whose responsibility is this decision?
5. Should Prison Video Link defendants be able to see their interpreters when they are interpreting ? Does it matter if a defendant with limited English cannot see the interpreter ?
6. Whose responsibility is it to ensure that limited English speaking defendants understand what is being said ?

7. Should PVL were used in a wider range of procedures than at present ?
8. Are any advantages or disadvantages in PVL for a limited English speaking defendant ?
9. Do magistrates/District Judges have any training in how to work through an interpreter ?
10. How can the magistrate/District Judge facilitate the job of the interpreter in the courtroom ?

3. Questions for Court Clerks

1. Do you have any experience of prison video link hearings ? Interpreted video link hearings ?
2. What are the responsibilities of a bench legal adviser in relation to defendants who require an interpreter and interpreters themselves ?
3. Are there any additional responsibilities for a bench legal adviser when you have an interpreted prison video link hearing ?
4. Where do you usually ask the interpreter to sit ? Why ?
5. One of your responsibilities is to track speakers in the court for the sake of the defendant. Does this tracking present any problems or is it a straightforward matter ? What about tracking speakers in an interpreted case ?
6. For you, what are the main differences between remote interpreted cases and cases where the defendant is in court ?
7. Do you think that the use of prison video link should be extended to include other types of hearing and not just remand and committal hearings ?
8. If you were in the position of having to choose between a live appearance and a remote one, which would you choose for yourself or a relative ?

4. Questions for Crown Prosecutors

1. Do you have any experience of prosecuting defendants in prison video link hearings ? Interpreted video link hearings ? How have you found the experience ?
2. Does a Crown Prosecutor have any additional responsibilities in relation to defendants who require an interpreter and in relation to interpreters themselves ?
3. Are there any additional responsibilities for a Crown Prosecutor in relation to an interpreted prison video link hearing ?
4. When making your submissions and you are prosecuting a defendant who is present in the dock, does it make any difference to you whether the case is interpreted or not ? If so, what difference does it make ?
5. When making your submissions and you are prosecuting a defendant who is in prison and appearing via video link, does it make any difference to you whether the case is interpreted or not ? If so, what difference does it make ?
6. Where do you think the interpreter should sit when interpreting for a remote defendant in court ? Why ?
7. Do you think that the use of prison video link should be extended to include other types of hearing and not just remand and committal hearings ?
8. If you were in the position of having to choose between a live appearance and a remote one, which would you choose for yourself or for a relative ?

5. Questions for Defence Advocates

1. Do you have any experience of working with defendants in prison video link hearings ? Interpreted video link hearings ?
2. What are a defence advocate's responsibilities in relation to defendants who require an interpreter and in relation to interpreters themselves ?
3. Are there any additional responsibilities for a Defence Advocate in relation to an interpreted prison video link hearing ?

4. Have you ever conducted a pre-court or a post-court hearing through an interpreter ?
How have you found the experience ?
5. When making your submissions on behalf of a client who is present in the dock, does it make any difference to you whether the case is interpreted or not ? If so, what difference does it make ?
6. When making your submissions on behalf of a client who is in the prison and appearing via video link, does it make any difference to you whether the case is interpreted or not ? If so, what difference does it make ?
7. Where do you think the interpreter should sit when interpreting for a remote defendant in court ? Why ?
8. Does the prison video link system affect your professional relationship with your client in any way ? What about your professional relationship with a client where an interpreter is concerned ?
9. Do you think that the use of prison video link should be extended to include other types of hearing and not just remand and committal hearings ?
10. If you were in the position of having to choose between a live appearance and a remote one, which would you choose for yourself or for a relative ?

Appendix D

National Register of Public Service Interpreters Code of Professional Conduct

This can be found online at <http://www.nrpsi.co.uk/pdf/CodeofConduct07.pdf>