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Contents

Videoconference in French Courtrooms: Its consequences on judicial settings

Maud Verdier and Christian Licoppe

The use of videoconference has increased considerably in French courtrooms in order to minimize the costs of extracting defendants from prisons to attend various types of judicial hearings. It is often understood by its promoters in such settings as 'transparent' (when it works) on the basis of a dyadic model of communication, in which judicial proceedings would involve one speaker and one listener most of the time. However, 'multi-party' situations in which three participants or more are simultaneously relevant visually often occur during courtroom proceedings. This makes salient specific concerns regarding the production of relevant video frames on a moment-by-moment basis. Based on a video recorded corpus of pre-trial hearings involving remote participants connected through a video link, this paper examines the practical and multimodal work required to produce proper mediated frames as the judicial hearing unfolds. The main objective of our approach is to uncover the practical and social consequences of a videoconference system on the organization of the court hearings.

Keywords: conversation analysis, court, judicial setting, justice, sociology, videoconference, workplace studies

1 Introduction

The uses of videoconference systems and media spaces are extensively studied since the 1990s, at a time when there have been extraordinary technological innovations for audio-visual technologies which provide

real time access to individuals situated in different geographical places (Heath & Luff, 1993). The videoconference system has been studied in various settings, such as institutional (Dumoulin & Licoppe, 2011) and informal professional meetings (Fish & al., 1992; Gaver, 1992; Dourish & al., 1996; Heath & Luff, 1992), with a focus on cooperative work. Studies have scrutinized the nature of the setting induced by videoconference, showing the kind of "fractured ecologies" it implies (Luff & Heath, 2003). Scholars have shown how such an interactional artefact as videoconference results in the "fragility of the interaction frame" (de Fornel, 1994). Studies on videoconference offered new insights on the nature of interaction itself. Heath & Luff (1992) have shown, for instance, that audio-visual technology introduces certain asymmetries into interpersonal communication that can transform the impact of visual and vocal conduct.

This paper is based on an ethnographic study about videoconference systems in judicial settings. The opportunity has been given to conduct a research in French courtrooms where videoconference is widely used today. Indeed, since 2007 the Ministry of Justice initiated a program to equip every court and every prison in France with videoconference systems. This program was implemented mainly to reduce the security risks and to cut down on operating costs. Indeed, the prisoners attend the proceedings from the videoconference room in their prison, which considerably cuts down the mobility costs. As a consequence, the videoconference technology was thus used in France as a tool for managerial reform in line with the more general trend, which pushes towards the rationalization of the management of the judicial administrations worldwide, with information and communication technologies as key resources for that change. In practice, if only some judges have implemented it during the work of the hearings they conduct, others are still reluctant to do so. In the court we are currently studying, the judge who conducts the trial - the "Président" as he is officially called - is very favorable to the use of the videoconference system, as we shall see later.

And yet, the uses of videoconference in judicial settings have not been studied from an interactional perspective to this date. At the intersection of sociology of work and conversation analysis along with a situated action perspective, our research attempts to fill in the gap by

focusing on user's behaviors and the social as well as organizational transformations induced by new technologies of communication. When remote participants are attending the judicial hearing through a video link, it thus becomes a multimedia event. This calls for fine-grained descriptions of the activity at a level of detail in which audio and video recordings are required. We have been able to observe and video-record the public proceedings of the "*Chambre de l'Instruction*" in Rennes, a Court of Appeal in the south west of France. Data collection consisted of fieldwork and extensive video recordings of videoconference settings in the court. Data was collected over a period of one year, which has enabled us to constitute a video corpus of about sixty cases. Our data collection is transcribed and analyzed using conversation analysis framework (Sacks, 1992; Sacks, Schegloff & Jefferson, 1974). Video recordings having provided the principal source of materials for examining, our research is therefore based on these cases.

This paper examines the way the President of the court takes the videoconference system into account and the practical and multimodal work required to produce proper mediated frames as the judicial hearing unfolds. We will particularly focus on the interplay between the asymmetries generated by either institutional talk and video mediated interaction. The main objective of our approach is to uncover the practical and social consequences of a videoconference system on the organization of the court hearings.

2 Video-mediated talk in institutional settings

According to Schutz (1962) participants in interaction presuppose that one environment is commensurate with the other:

> I take it for granted, and I assume my fellow-man does the same, that I and my fellow-man would have typically the same experiences of the common world if we changed places, thus transforming my Here into his, and his – now to me a There – into mine. (Schutz, 1962, p. 316)

Participants presuppose reciprocity of perspectives or interchangeability of standpoints in producing their own conduct and in recognizing the actions of their counterparts. However, in video

mediated presence, the participants first discover that their local environment is not entirely accessible to the other within the course of the interaction; secondly, the bodily activity one participant produces is rather different from the object received by the co-participant because the camera and the monitor transform the environments of conduct (Heath & Luff, 1992, 1993; Heath & al., 1995). The conversational resources participants rely on to interact are weakened by the medium and thus, generate an asymmetry of perception of the resources on which speakers ordinarily rely on to coordinate their activities.

The settings we examine are also defined by the kind of asymmetries that characterize institutional talk (Drew & Heritage, 1992; Heritage & Clayman, 2010), where there is often on the one hand, a direct relation between status and role, and on the other hand discursive rights. Institutional interactions are defined by structured role and by an unequal distribution of knowledge, an access to conversational resources, and even to participation in the interaction (e.g. the relationships and the inequality of participation between speakers as it is the case in the relation between doctors and patients, Heath, 1992). Asymmetries are important between professionals and lay perspectives, and arise from restrictions (1) on the access to the setting, (2) on the participation rights, and (3) on differential access to organizational routines and procedures (Drew & Heritage, 1992, p. 49).

Therefore the asymmetries implied by either an institutional talk and a video mediated interaction are tremendously significant. We will focus in this paper on the interplay between these two kinds of asymmetries. Therefore we will examine and analyze the way the President of the court takes the videoconference system into account and the asymmetries generated by it.

3 Videconference in the courtroom

Each environment of the participants is not commensurate with the other as there is no equal perceptual access of the environment between the court and the defendant appearing from his prison. On the one hand, the visual access of the court to the room where the defendant is seated is partial: indeed, the image shows a close-up of the defendant (see the picture 3, on the left). On the other hand, the defendant has an even

more partial visual access to the court, as we shall make it clear in this section. The difference lies in the fact that the defendant is not allowed to manipulate the camera and therefore cannot act on the situation, whereas there is a possibility for the people in the courtroom to control the cameras: first, the judges can modify the angle of the camera in the prison as they can manipulate the camera remotely located in the room of the prison or ask a technician present in the prison to do it. [1] They can also use the remote control that allows them to modify the angles of the camera of the courtroom at anytime. As a result, only the court can modify the image displayed for the court itself and for the defendant in the videoconference screen. We will show that the President of the court, who is usually in charge of the remote control during the hearings, while manipulating it, is well aware of these perceptual access asymmetries and tries to overcome them as much as he can while manipulating it. [2]

3.1 The Setting

The "*Chambre*" where the research took place holds mostly pre-trial hearings in which defendants who are remanded in custody are appealing against the decision passing by the Judge of Liberty and Imprisonment – remember that the preliminary investigation is still in progress and that the defendants are incarcerated while they are waiting for their trial. The "*Chambre*" decides whether to release or not the defendant. The latter appears before a court composed by one President of the court and two other judges. These three judges decide on the sentence. The prosecutor, the defense attorney or the public defender (and also sometimes the prosecution) are also present. There is neither jury nor cross-examination. The passing of sentence is publicly announced the following day of the hearing.

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[1] This situation has never occurred yet. The angle of the camera inside the prison has been pre-programmed and the judges are reluctant to change it. If there is a problem in the image from the prison (e.g. the defendant is too far or appears against the light), the technician is requested to modify the angle of the camera. In practice, we can notice that when there is no technician available, they usually ask the defendant to move about or to move his chair or the table before he is seated.

[2] We have noticed that the participants have not yet been trained for such camera work. Nevertheless, the behaviour of the President of the court is not an isolated case: similar activities occur 1) when another person is in charge of the remote control during the hearing and 2) in other identical situations in other French courts.

The Court of Appeal of Rennes has jurisdiction over most of Western France, which represents about one sixth of the French territory. As a result the defendants are incarcerated in prisons that are often in a distance of three hundred kilometers away from the Court. It therefore makes sense to rely on the videoconference technology to try to cut down on prison extraction. The government has been pressing the regional courts to apply this policy and use the videoconference as much as possible. Pre-trial hearings, which are short, functional and do not judge the facts of the case have been targeted as one of the main field of application for this technology. It is in this context that the use of videoconference has spread to the "*Chambre*" of Rennes, where its President is in charge of the remote control.

3.1.1 The spatial organization of the courtroom when using videoconference system

When videoconference is being used, the courtroom becomes spatially distributed.

Photo 1 A wide shot of the "Chambre de l'instruction" of Rennes, France: on the left, the prisoner's dock; on the right, the judge's bench where the clerk, the three judges and the prosecutor sit.

Instead of being present in the prisoner's dock (which one can see in this picture above), the defendant appears from his prison, on a screen, which is placed behind the clerk, on the right side of the judge's bench.

Photo 2 The usher is connecting the videoconference system of the court with the prison.

The picture above shows the placement of the screen in the courtroom. Notice that the videoconference system in the courtroom is composed of a large plasma screen, with a camera on top of it. When the video connection works, as in the picture below, the screen is split in two: on the left, the image from the prison; on the right, the image of the courtroom, which is the one that the defendant is watching in prison.

Photo 3 On the left, the defendant who bends to the microphone, while the court, on the left on the screen in the courtroom, watches and listens to him.

When talking or listening to the defendant or other persons who appear on the screen, the judges of the court have to reorient

themselves towards the screen. As shown in the photo 4 and the following one, the judges and the clerk are orienting to the screen while listening to the person talking on the screen as the orientation of their body clearly demonstrates.

Photo 4 From left to right: the usher, standing, the clerk, one of the two deputy judges and the presiding judge.

When her client appears to the court via the videoconference system, the lawyer has the choice either to come physically in the courtroom or to appear besides the defendant from the prison.

Photo 5 On the left, the defendant appears alone while his defendant is in the courtroom; on the right, the defendant and his lawyer appear on the screen side by side.

One "deviant" case, with respect to the spatial organization of participants for it happened once during our fieldwork: the defendant is present in the courtroom while her counsels appear from a remote site at their request.

Photo 6 On the left, the view of the courtroom where the defendant (on the right) is standing in front of the court; on the right, the videoconference screen showing the counsels (on the left) and the court (on the right).

This case, even if it is unique, shows that the videoconference technology in the courtroom can become a resource to manage new mobility-related practicalities and produce configuration of spatial distribution in the courtroom which was not really foreseen by the texts of law (Licoppe, Verdier & Dumoulin, 2012). This situation is rare because most of the time lawyers prefer to come in the courtroom to defend their clients as in the case examined in this article[3].

3.1.2 The production of relevant angles for an adequate institutional frame

Most of the time, the President in charge of the Chambre de l'Instruction chairs the debates and handles the remote control at the same time. When he is not chairing and the deputies who replace him do not want to manage the video, this task is taken up by the usher. The camera is mobile but in a way in which it can only record one part of the room. For instance it is unable to show a good part of the public attending the hearing and can only film part of the defense counsels'

[3] The fact that lawyers prefer to come in the courtroom can be notably explained by the fact that they can transmit files and information more easily than when they interact via videoconference.

bench. Therefore, during the hearings, the President moves the camera and chooses the angle according to what he considers to be most important for the participant(s) in the remote site. Thus, in moving the camera according to what is currently going on, the President provides different successive views of the courtroom:

a) He provides either a broad view of the bench when opening or closing the hearing, and also during the Questions/Answers episodes (see picture (a1)); the view can be narrower showing only the judges of the bench (see picture (a2));
b) He focuses on the judge who is reporting the facts of the case (see picture (b));
c) He focuses on the prosecutor when she is making her accusatory statement (see picture (c));
d) He focuses on the lawyer of the defendant when he is in the courtroom (see picture (d)).

(a1) Prison view Courtroom view

Photo 7 The defendant is being shown the bench at the beginning of the hearing (including the prosecutor).

(a2) Prison view Courtroom view

Photo 8 The defendant is being shown the bench at the beginning of the hearing (only the three judges of the court).

(b) Prison view Courtroom view

Photo 9 One of the judge, reporting the facts of the case, is shown on the screen.

(c) Prison view Courtroom view

Photo 10 The prosecutor who is speaking in the courtroom is shown to the defendant and his counsel who are watching from the prison.

(d) Prison view Courtroom view

Photo 11 The counsel who is speaking in the courtroom is shown to his client.

We will examine in detail the latter case in the following section to show that the fact that the camera cannot film the room all at once, but only part of it, has some crucial consequences on the setting. Since the camera of the videoconference system in the courtroom can be moved with the remote control and zoomed, it constitutes a resource for the President to show various features of the courtroom, and particularly various persons attending the hearing. As one may have noticed, the angles chosen by the President are linked to the phases of the hearing,

the activity of the court being divided into a number of subparts, or episodes. The episodes of the hearing and their relevant angles can be summarized as follows:

Episodes Of The Hearing	**Relevant Angle Of The Camera Chosen By The President Of The Court**
Opening of the hearing: it includes a greeting from the President to the defendant (and also to the police escort or the prison guard) who appears on the screen.	Wide angle on the bench (which can include or not Prosecutor).
Presentation of the different persons involved in the hearing (the judges counsel, the counsels, the Prosecutor).	Wide angle on the bench and a short camera motion in the courtroom to show the counsel on the screen.
The statement of the case by the President or one of the two judges counsel.	Smaller angle on the bench, showing only the judge or wider with the three judges.
Questions-answers (1) between the President of the court (and the judge reporting the facts) and the defendant.	Wide or smaller angle on the bench.
The pleading of the defendant's counsel (and the pleading of the victim's lawyer if needed).	Focus on the defendant's counsel (and the victim's lawyer).
The charge of the public Prosecutor.	Focus on the public Prosecutor.
Questions-answers (2) between the President of the court and the defendant.	Wide or smaller angle on the bench (which can include or not the Prosecutor).
Closing of the hearing.	Wide angle on the bench (which can include or not the Prosecutor).

This summary shows that the videoconference system constrains the President (or any other person in charge of the remote control) to perform constantly the settlement for two different participants' stances: the defendant who can only deal with *the reception* of the images on the one hand, and the court who can deal with *the production* of the images and their *reception* on the other hand. We will show in the next section that substantial additional work is required of the President, due to the fact that in addition to his regular work he has to take into account the reception of the images he produces.

4 The interactional work of the judge

We will now present an extract of an interaction that took place at the beginning of a hearing. You will notice in this example that the President in charge is chairing the debates and handling the remote control of the camera at the same time, which is usually the case. We have explained previously that the camera is mobile but in a way that it can only record part of the courtroom. Recent evolutions of video communication systems have made the issue of camera motion more central. In everyday settings, it is possible to re-orient the camera with little effort because of the mobility and the portability of the video devices (laptops and webcams in Skype interactions, mobile phone in mobile video calls), thus making relevant the question of what to show at any time themselves (Licoppe & Morel, 2009). In professional systems and telepresence rooms, the devices are much less easily moved, but the camera can usually be oriented within a rather large solid angle, and a discrete set of interesting camera orientation can be pre-programmed on the remote control, which is particularly interesting in multi-party settings such as the one we will study here.

As we will see it in the excerpt, it has thus become a ritual for the President to mention the presence of the defendant's counsel at the beginning of the hearing, and to show the counsel onscreen at the same time, so that the latter becomes visible to his client. How are such sequences accomplished, and what does their organization tell us about the use of videoconference technology in the courtroom?

4.1 Showing the counsel onscreen: excerpt[4]

The following extract provides an example in which the President uses the video to make the counsel visible. (The following pictures, which illustrate the transcription, are taken from the video recording of the interaction.) It is the opening of the hearing. The President (P) greets the defendant who has appeared in the videoconference screen. The defendant (D) is in the videoconference room of the prison, while his counsel is in the courtroom.

First, the President greets the defendant:

1. P : monsieur monsieur Cameri £ bonjour
   monsieur monsieur Cameri good morning
2. £((*the President leans forward and picks up the remote control*))
3. D : £ bonjour
   good morning
4. £((*leans forward towards the microphone*))

Photo 12 The President greets the defendant, before announcing that he will show the counsel onscreen (L1).

[4] To transcript this excerpt, we use the transcription conventions of conversation analysis, with two supplementary markers. Star signs * are used to mark the beginning of camera motions and place them with respect to the conversation, and double star signs ** the moments where these camera motions stop. Signs £ are used to signal significant changes in the participants' embodied behaviour. We have used dashed lines to indicate mere adjustments of the video frame. See p. 22 for the table of transcription.

After greeting him, the President (P) uses the video (Cam) to make the counsel visible: he changes the angle of the camera to focus it on the counsel while making some statements about what is going on.

```
5. President :    hein je vous montre à
   l'image
                  uh I am showing you on
   screen
6. President :    £ donc euh*:: (0.3)
   votreuh::** (0.5)   *excellent
                     so e::r*
      your e::r ** (.) *excellent
                  £ ((brief look towards
   counsel and back to screen))
7. Cam :               *((pans to the right))
   *((resumes
8. P : conseil Maître Martin** a:: a fait
   l'déplacement depuis Nantes hein
      counsel Maître Martin** ha::s has done
   the trip to come from Nantes uh
9. Cam : panning towards counsel))
10.   (.)
11.   P : i:: il vous salue sous *notre
   regard** puisque  *bien entendu** (.) euh
         he:: he greets you      *under our
      gaze* since    *of course (.) **
12.   Cam :          *((correction))
                      *--------------**
13.   P: >*vous l'avez** compris<
         >*you have   ** understood it<
14.   vous êtes en *dans la salle**d'audience
      you are      * in the  courtroom*
15.   Cam:*------------**
                   *------------**
```

Before the judge starts to move the camera towards the counsel, the control image of the court shows, on the right, the image of the court, which is also visible from the prison; on the other half of that screen figures on the left the image from the prison. Then, the President is handling the remote control (Line 5), ready to modify the angle of the camera (Line 7).

Photo 13 The President is handling the remote control (L1).

The camera is moving to the counsel while the President announced to the defendant that his lawyer is in the room, "counsel Maître Martin has done the trip to come from Nantes" (Line 6-9).

Photo 14 The President is moving the camera to show the counsel onscreen (L6-9).

Then the President, while still talking to the defendant, adjusts the angle of the camera twice, first while saying (Line 11) "under our gaze", then while saying "since of course".

Photo 15 The President adjusts the angle of the camera while saying "he greets you under our gaze" (L11).

Photo 16 The President continues to adjust the angle of the camera while saying "since of course" (L11).

Then, he moves the angle of the camera to focus more closely the angle to the specific zone of the lawyer (Lines 13-14). The counsel is now on screen and can be seen by the defendant.

Photo 17 Images onscreen after the multiple frame adjustments, which provide a larger and closer view of the standing counsel (L15).

When the introduction of the lawyer is over, the President reorients himself to the next phase of the hearing, namely the statement of the case, moving the angle of the camera again. Thus he displays a wide view of the judges of the court, as it was the case before the presentation of the counsel onscreen.

4.2 Showing the counsel onscreen: a multimedia performance and a multimodal accomplishment

The actual visual appearance of the lawyer constitutes a multimodal accomplishment and a mundane multimedia performance which interweaves the design of turns-at-talk and camera motions. The greeting in line 1 was preceded by the audio and video connection and various preliminary exchanges, some involving the warden, and during which the defendant was already present. The greeting itself is meant to be heard as moving the interaction forward with respect to this particular type of institutional meeting. Then the President prefaces a camera motion by announcing he will show someone (Line 5). The announcement is immediately followed by a rapid camera rotation towards the defendant's counsel (Line 7), and conversationally by hesitation markers, a possessive with a lengthening of its end (which

may also count as a hesitation marker), a slight pause, and then only by an explicit nominal reference to the counsel (Lines 6 & 8). Such a temporal organization of the turn suggests that the orientation towards reframing the image and showing the lawyer as a kind of typified and routine action comes first, before the President is actually able to muster the particulars of the situation (*i.e.* here the name of the lawyer). The production of the name of the lawyer is delayed further by a relational reference "your excellent counsel maître Petit") which emphasizes the relationship between the counsel and his client (Line 8). Interestingly the camera motion is done in two separate motions, the first at the start of this turn constructional unit (Line 7) and the second near its end (Line 9). One consequence of this is that the lawyer appears on screen at the precise moment his name is uttered.

The panning motion of the camera towards the counsel is achieved in two steps. The image actually freezes in an intermediate position in which the counsel is not yet visible, and in the middle of line 8 at a moment in which the flow of the turn also breaks down (lengthened discourse markers and pause). After this, the President does several successive small corrections to the counsel's video shot (lines 12-15). The start and the end of these video frame adjustments are also associated to pauses, breaks, hesitations and repetitions in the developing turn of the President (for instance in line 11). The production of a proper turn-at-talk is a multimodal accomplishment, which is sensitive to the changing contingencies of the situation in which it unfolds. Here a specific contingency is the fact that the President is engaged into another stream of action, *i.e.* producing a proper video shot while he utters his turn-at-talk. Conversely, the placement of some of these camera moves suggest it is easier or more convenient for the President to initiate them when the immediate constraints on producing a relevant turn-at-talk are in part relaxed, *i.e.* during such pauses and hesitations. Talking while moving the camera is more than just the juxtaposition of two separate courses of action, and their temporal articulation on a fine time scale testifies to the kind of strain that this particular form of multi-activity generates.

5 Discussion

The judge does some interactional work to shape the potential reception of the images he is producing. For instance he mentions that the counsel's greeting he is "reporting" is "performed" under "our" gaze (Line 11), an ambiguous reference which at this point might mean the court professionals as well as the whole attendance in the courtroom. In all cases the referent group indexed by the use of the first person possessive lies outside of the video image shown at that time. It is the fact that these people are visually unavailable which makes it relevant to state explicitly that the counsel's "greeting" is a public gesture performed in front of an attendance. We add to this that if the President utters the greetings instead of the lawyer (Line 11), it is first of all because the lawyer does not have a microphone, and thus, cannot be properly heard by the defendant[5]. The judge's statements along with his activity with the camera make salient a central interactional property of video-conference setting, *i.e.* that much of one participant's context is visually unavailable to the other and vice versa, thus breaking routine expectations about the reciprocity of perspectives. The judge's utterance acts as a possible reminder of this fundamental source of interactional asymmetries in videoconference settings. It provides an interpretive framing for how this particular video moment is to be read, and more generally a template on how to read the future video images of the hearing which will be made available to the defendant: he should read everything which will happen on screen as performed in front of a partly invisible audience, some of whom may never appear on screen.

How can we explain such a multimodal accomplishment and multimedia performance? And what can we conclude about it? Remember the issue we raised at the beginning: what are the consequences of videoconference system on the organization of the hearings? One could notice in the excerpt the asymmetries related to institutional talk such as the access to the conversational resources and even to participation in the interaction. We emphasize that the asymmetries already at work in institutional settings are intensified by the videoconference system. In the usual setting, the courtroom speech

[5] If he wants to be considered by his client as performing a greeting, the lawyer has to substitute an ostensive sign for an utterance, for instance waving his hand in the direction of the camera.

exchange system with its pre-allocation system of question and answer constrains the rights to speak of the defendant (Drew, 1992). With the videoconference system as it is salient in the excerpt, new constraints arise that limit the visual and audio access to the setting.

Nevertheless, we notice that the institutional nature of the situation has not been altered by the videoconference system. And for this reason, the President could decide that he and the other judges can accomplish their institutional task ignoring the additional asymmetries generated by videoconference at the interpersonal and intersubjectivity level. In other words, participants could ignore the fact that a part of the debates are mediated. But obviously it is not the case in the situation studied here. As we have explained, because videoconference introduces disruptions and modifies the usual conditions of communication in the setting at the interpersonal level, the President prefers to maintain a certain level of intersubjectivity in order to achieve his institutional tasks. Therefore, to transform this exceptional situation into the usual one, the President of the court develops all kind of practices that allows him to have his usual behaviour, in order to fit the conditions of any judicial setting, and particularly the nature of the co-presence it implies. [6] These practices imply for him to take into account at the same time the reception and the production sides. Regarding the reception side, namely the visual dimension, the President uses the video and the possibility to move the camera as a resource to orchestrate the visual appearance of the counsel to the defendant. Regarding the production side, namely the audio dimension, the President produces the adequate utterances in a way, which is relevant to the production of proper courtroom participation frames and interactional sequences: this explains why he utters the greetings instead of the lawyer. It is striking to notice that when these new practices work out, then everything is performed (almost) as usual, even if the situation is not at all the usual one.

Does this situation imply that the defendants' rights to talk could be altered, in contradiction to the jurisprudence on this matter? As we have underlined in our introduction, the conversational resources participants rely on to interact are weakened in mediated interaction. It

[6] His behaviour has not yet been described in any Handbooks and there are no regulations of any sort.

is thus more difficult for the defendant appearing via the videoconference system to take his turn. To this asymmetry of perception can be added the inequality of participation between speakers that characterizes institutional talk such as the one studied here. Nevertheless, we must emphasize that the participants in charge of the debates have a constant preoccupation of maintaining symmetry to the access of the conversation that the judicial setting requires (such as the opportunity for the defendant to utter a last comment before the closing of the hearing by the President).

6 Conclusion and Implications

Our interactional perspective offers significant insights on the use of videoconference in judicial settings by showing the way videoconferences necessarily influence the judicial practices. First, we have focused on the issue of the interactional asymmetries of institutional talk as well as the asymmetries the videoconference system inevitably produces. We have analyzed the strategies deployed by the participants to get over the asymmetries generated by the system: as we have shown, the President has developed the necessary skills in handling the remote control of the camera of the videoconference during the hearings, in order to adapt the communication to the system, or rather, to create an adequate interactional frame.

To demonstrate it, we have presented an excerpt where the President moves the angles of the camera in the courtroom, during distributed courtroom hearings where some parties participate from a remote site by videoconference, to accomplish relevant social actions. We have studied the kind of work, which is accomplished to provide relevant video images on screen. We have shown how this kind of camera work is made possible by and relied on the fact that in most videoconference systems today the camera is mobile and can be oriented within a relatively large aperture angle. An accurate analysis of this has revealed that showing the counsel onscreen is a multimedia performance and a multimodal accomplishment.

We have then revealed the interplay between institutional and technical asymmetries. The videoconference emphasizes the inequality of participation between speakers in institutional talk. Therefore, it has

been significant to show the way the President, while oriented to perceptual access asymmetries, develops all kind of practices that allow him to establish a symmetry of perspective on the setting in order to maintain a usual situation. Thus, the situation, even while implying videoconference, fits the usual conditions the nature of the co-presence the judicial setting implies.

This has tremendous implications on the kind of work that has to be done in the courtroom. Articulating talk-in-interaction and video-in-interaction introduces additional cognitive and interactional burden. We have shown that when the judge handles the camera while he talks, the strain of the subtle adjustment of conversation and video frames to stage the 'appearance' of the counsel on the screen is made obvious by the way he produces his ongoing utterance. We stress that many judges are reluctant to handle the remote control themselves because they are aware of the difficulty of managing these new participatory roles and their usual functions at the same time, even if they are nevertheless accountable at the juridical level for the way the hearing proceeds.

The findings from this study need to be confirmed in future research of other types of judicial settings. Thus, it will be of great importance to conduct observations of the introduction of screens and live recording systems in it for high profile trials. Indeed videoconference could change the work led on by the judges, at a cognitive and organizational level. This system introduces additional tasks and competence requirements for the legal professionals involved which puts pressure on their usual routines for managing courtroom proceedings. They have to become 'videoconference literates', who must articulate continuously the video images they produce to the unfolding courtroom interaction. And yet, there has been no training for such delicate accomplishments. This is quite striking given the fact that equity in access and participation rights and resources is crucial in judicial settings. Because judicial hearings will increasingly make use of videoconferencing, research of the kind we have conducted here is particularly useful to identify the relevant phenomena and their organization.

Acknowledgements

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Appendix: The transcription conventions of conversation analysis (*based on the work of Jefferson, 2004*)

Characteristics of speech production	
[	The point of overlap onset.
]	The point at which an utterance/a part of an utterance terminates *vis-vis* another.
(.)	A gap within or between the utterances.
.	A stopping falls in tone.
,	A continuing intonation.
><	An utterance/part of an utterance speeding up.
::	A prolongation of the immediately prior sound. Multiple colons indicate a more prolonged sound.
((italic))	Description of other things than what was said happening in the setting.
Characteristics of camera motions	
.....	Movements of the camera.
*	Beginning of camera motion (placed with respect to the conversation).
**	Indication of a stop in the camera motion.
£	Significant changes in the participants' embodied conduct.

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A Survey of Court Interpreters' Use of Direct versus Reported Speech in the Hong Kong Courts

Eva Ng

The findings of my ongoing data-based study of courtroom interpreting in the Hong Kong courts reveal a deviation from the generally held principle which requires professional interpreters to interpret in the first person. It has been observed from the data that when interpreting the speech of legal professionals, the interpreters would invariably avoid speaking in the first person. The shifts are so uniform in the sense that they occur only in one direction—a phenomenon which theories previously advanced fail to explain. This has led me to the hypotheses that interpreters in the Hong Kong courtroom are reluctant to assume the voice of the legal professionals because of their consciousness of the power asymmetry between lay-participants and legal professionals in the courtroom and that the practice has little to do with the content of an utterance. In order to test my hypotheses, an online questionnaire was conducted with court interpreters. The results of this survey seem to contest the widely held view that the use of reported speech is a distancing tactic used by the court interpreter to disclaim responsibility for what was said by the speaker, but lend support to my hypotheses.

Keywords: first-person interpreting, third-person interpreting, direct-speech, reported speech, power asymmetry

1 Introduction

A generally established principle among professional interpreters holds that they should always interpret in "the same grammatical person as the speaker of the source language" (NAJIT, 2004) or in other words "using the first person as if the interpreter does not exist" (ITIA, 2009). There is also a general agreement among researchers on the use of direct speech in interpreting (Colin & Morris, 1996; Gentile, Ozolins, & Vasilakakos, 1996; B. Harris, 1990; Wadensjö, 1998).

In courtroom interpreting, there is a myth about the role of the court interpreter as a mere *conduit* or a translation machine. It is believed that the conception of the court interpreter as a *conduit*, was first initiated out of the need to overcome the evidentiary problem of excluding hearsay evidence (Fenton, 1997; Laster & Taylor, 1994), because in the common law tradition, evidence overheard or acquired second-hand is not admissible. That means when a case involves an interpreter, what the parties hear is technically second-hand information, that is, hearsay evidence. However, with the interpreter perceived as a machine, a non-human, the problem of hearsay evidence is solved.

The use of direct speech helps obscure the interpreter's presence and creates the illusion of direct and dyadic communication between the interlocutors as if the interpreter were invisible or a *mere conduit*, though the invisibility of the interpreter has been proven to be more of a myth than a reality by studies conducted over the past two decades (e.g. Berk-Seligson, 1990; Hale, 2004; Morris, 1995; Wadensjö, 1998).

On the other hand, the use of indirect speech inevitably highlights the presence of the interpreter and may give rise to the problem of hearsay evidence. For example, when the interpreter renders a defendant's guilty plea in indirect speech (i.e. He says he's guilty), the record reflects the voice of the interpreter, not of the defendant, and the plea may thus be considered void and this has actually led to the nullification of a number of guilty pleas in the United States (NAJIT 2004).

2 Literature review

Despite the prescription of first-person interpreting, empirical studies over the past two decades, demonstrate that interpreters, trained and

untrained, depart from this norm and from time to time lapse into the use of third-person interpreting knowingly or unwittingly.

In a study of the US courtroom, Berk-Seligson (1990, pp. 115-116) finds that many interpreters avoid the subject pronouns "I" and "you" particularly when the judge is declaring a sentence, by either changing active to passive voice, thus doing away with the subject pronoun, or by adding "the judge" after the first-person pronoun "I" (I, the judge) or by simply referring to the judge in the third person. Berk-Seligson sees the interpreter's switch from first-person to third-person reference as a self-protective device against the wrath of the defendant, who might otherwise conclude that the interpreter is speaking for him/herself.

Bot's study (2005) of interpreter-mediated psychotherapeutic dialogue between patients and therapists in the Netherlands finds that the three *professional* interpreters frequently deviate from the "direct translation" style, by either introducing a reporting verb at the beginning of a rendition, or changing the personal pronoun "I" to "he" or "she". Bot suggests that interpreters' deviation from direct translation style may originate from the fact that "they may feel the need to distance themselves from the words they translate and may have doubts regarding the primary speakers' understanding of their role" (2005, p. 244).

While the subjects of Bot's study are all professional interpreters with formal training in interpreting, the four subjects in Dubslaff and Martinsen's study (2005) on interpreters' use of direct speech versus indirect speech in simulated interpreter-mediated medical interviews are all untrained interpreters. Like Bot's study, Dubslaff and Martinsen's study suggests that the interpreters shift from first to third-person reference to distance themselves from the source speaker and to disclaim responsibility for the source speaker's utterance when there is an interactional problem.

Leung and Gibbons (2008) suggest that the interpreter's shift from first to third-person reference has to do with his/her personal belief and ideology. They observe from a rape case in Hong Kong that when counsel expresses something which the interpreter does not agree with or finds offensive, she is observed to interpret in the third person by specifying who the *principle* is, drawing on Goffman's (1981) framework of participant roles. Ideology is however a loaded word, as

it would be difficult, if not impossible, for any observer to tell if one's deed is a direct result of one's belief. What can be inferred from Leung and Gibbon's argument nonetheless is that the content of an utterance has a direct bearing on the interpreting style adopted, and that when the speaker expresses something offensive (as perceived by a *reasonable* person), the interpreter would use reported speech to make it clear to the audience that she is simply the *animator*, not the *principal*, of the source speaker's words.

In a study of interpreter-mediated court proceedings in three Small Claims Courts in New York City, Angermeyer (2009) observes that all fifteen interpreters, mostly full-time certified interpreters, use third person from time to time to refer to the source speakers. A quantitative analysis of the data shows that interpreters overall use third-person reference more frequently when it is the voice of the arbitrator or an English-speaking litigant that they are interpreting than when the source speaker is a speaker of the LOTE (language other than English).

Angermeyer suggests that the use of first-person interpreting illustrates that interpreters "are less likely to explicitly indicate non-involvement with their fellow native LOTE speakers than with other participants who speak English or another language" because most interpreters are themselves immigrants and non-native speakers of English. This view is shared by Dubslaff and Martinsen (2005), who suggest that interpreters' preference for direct address with speakers of their mother tongue may reflect their sympathy with their compatriots, which is in line with Anderson's view (2002, p. 211) that interpreters in general are more likely to identify with speakers of their dominant language or mother tongue than with speakers of their other language.

Another reason as suggested by Angermeyer is that interpreters, when interpreting into English, are mindful of the professional norm that prescribes first-person interpreting. If interpreting is done in the third person, arbitrators, other interpreters or anyone concerned with upholding the institutional norms can notice their "non-normative behaviour" (2009, p. 11); whereas when interpreting from English into the LOTE, the LOTE-speaking litigant is the exclusive audience, who may have no knowledge about the institutional norms and is thus less likely to object to the use of third-person reference. Angermeyer views these deictic shifts as a form of accommodation, citing Giles, Coupland

& Coupland (1991), and as addressee design following Bell's model of audience design (1984, p. 161).

3 Aims and methodology

The author's ongoing data-based study of 9 interpreter-mediated trials in the Hong Kong courts reveal a certain pattern in the interpreter's switch from first to third-person interpreting: whereas *ngo5* in Cantonese or *wǒ* in Mandarin (meaning 'I' or 'me') is always rendered as 'I' or 'me' in English, the reverse is not always the case. Where the singular first-person pronoun "I" is uttered by the judge or counsel, most of the time it becomes a third-person reference in the Chinese interpretation as illustrated in Examples 1 and 2 below. (Words in italics are the author's translation of the witness's utterance in Cantonese or back-translation of the interpreter's Chinese rendition; see Appendix for the abbreviations and transcription symbols used in this study.)

Example 1, (Wounding, District Court)

1 J And, as well, **I**'ve looked at the photographs.

2 I 同埋，**法官**亦都睇過有關(.)嗰啲嘅(.)er 相片㗎喇。
*And, **the judge** too has looked at those (.) related (.) er photos.*

Example 2 (Trafficking in Dangerous Drugs, District Court)

1 DC **I** suggest that was done during some time of the 22nd of August, possibly in the afternoon (.) of it

2 I 噢，咁**辯方大律師**就向你指出啦，嗰個補錄呢其實做嘅時候呢咁就係八月廿二號㗎……
*Now, **the defence counsel** is suggesting to you that the post-record was actually made on the 22nd of August…*

In terms of the direction of interpreting, interpretation from Chinese into English is always done in the first person, whereas interpretation from English into Chinese is invariably conducted in the third person as shown in the above examples.

At other times, the interpreters are observed to omit the English first-person subject "I" produced by counsel, thus rendering a subjectless sentence in the Chinese interpretation as shown in the following example:

Example 3 (Murder, High Court)

1 D Er…**我**唔係好專業。

*Er...**I**'m not that professional.*
2 I Well, **I** wouldn't claim myself to be a professional.
3 PC **I** am not suggesting that you are, Sir.
4 I ϕ 亦都唔係話你好專業。
ϕ not suggesting you are very professional.

Note that the first-person pronoun "I" uttered by the prosecution counsel in turn 3 was omitted by the interpreter in turn 4. Example 3 also serves to illustrate the usual first-person interpreting style for utterances produced by lay-participants, as evidenced in the rendition of the Chinese first-person pronoun **我** *ngo5* uttered by the defendant in turn 1 as "I" in turn 2.

To avoid the need to render the pronoun "I" uttered by the legal professionals into Chinese, a less commonly adopted strategy by the interpreter as observed from the court data is to change an active sentence into a passive one. Here is an example:

Example 4 (Theft, Magistracy)
1 J Having (.) having reached this factual conclusion, **I** must (.) bring in a conviction against the defendant as charged
2 I 咁呀就呢係考慮咗呢係頭先嗰啲元素之後呢，咁所以呢**你係罪名成立㗎**。
*Now, having considered all the above-mentioned elements, so **you are (found) guilty.***

The use of a passive voice in the Chinese interpretation in lieu of an active one as shown in Example 4 is marked in that it is ungrammatical as the expected subject in the main clause should be **我** *ngo5* (I), instead of **你** *nei5* (you).

An in-depth analysis of the findings has rendered the theories advanced in studies mentioned above unsatisfactory or inadequate in accounting for the interpreting phenomenon in the Hong Kong courtroom (see Ng, forthcoming). This has thus led me to the hypotheses that interpreters in the Hong Kong courtroom are reluctant to assume the voice of the legal professionals because of their consciousness of the power asymmetry between lay-participants and legal professionals in the courtroom and that the practice has little to do with the content of an utterance.

This study aims to investigate the prevalence of first-person and third-person interpreting styles among court interpreters and to find out

the rationale behind their choice of interpreting styles. As we understand that what people claim to do is not necessarily what they do in reality, the results of the study will be compared with the findings of the court data to see if any inconsistency or conformity can be identified between the two, and will be analysed with references made to the respondents' professional profile.

An online questionnaire was designed, using a free online survey tool – Kwik Surveys (http://www.kwiksurveys.com). The initial plan was to send the link out to all the some 140 serving full-time court interpreters through the Court Interpreters' Association of the Judiciary, with the help of an ex-colleague, who is an Executive Committee member of the Association. It was later known that at a subsequent Exco meeting, some members expressed concerns over the use of the survey results and the possibility of "upsetting the senior management team". Consequently with the help of the same colleague, the link was sent to individual court interpreters (with whom he is or I am acquainted), who were then asked to forward the link to other fellow colleagues close to them. Altogether the link was sent to 53 interpreters, including two retired interpreters, though there is no knowing if any of these primary recipients had helped to forward the link to their colleagues.

The questionnaire consists of 15 closed multiple choice questions, some of which also contain open options and allow respondents to type in their answers in a text box. Questions 1 to 7 deal with the respondents' profiles, which include their native languages and working languages, years of experience in court interpreting, job titles, academic qualifications and interpreter training; questions 8 to 12 inquire about the respondents' interpreting styles adopted for lay and legal participants in court proceedings, and the final three questions (13 to 15) explore the respondents' rationale behind their choice of a first-person or a third-person interpreting style.

4 Results and discussion

A total of 25 questionnaires were filled and collected at the conclusion of a two-month surveying period, which represents a reply rate of 47%

(based on a number of 53 primary recipients) or less than 20% of the strength of staff court interpreters in the territory.

4.1 Profile of respondents

4.1.1 Working languages and native language

The majority of the respondents (80%) are trilingual with Cantonese, English and Mandarin as their working languages; Four (16%) are only bilingual and work between English and Cantonese, which are the usual languages spoken in the courts of Hong Kong; one has four working languages, namely English, Cantonese, Mandarin and Minnan[7] (Figure 1). All of them speak Cantonese as their native language.

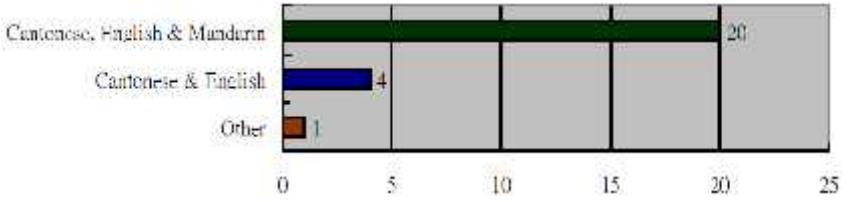

Figure 1: Working languages.

4.1.2 Education level, experience and seniority in court interpreting

84% of the respondents have a Bachelor's Degree and 48% of them hold a Master's Degree, reflecting an overall high educational level of the respondents (Figure 2). Most of the respondents are at the grade of Court Interpreter I or Senior Court Interpreter, accounting for 48% and 40% respectively (Figure 3); two of them are Court Interpreters II and one of them specified in the open option as Lecturer, who is actually a retired Senior Court Interpreter. In Hong Kong, all full-time court interpreters start from Court Interpreter II before they are promoted to higher grades along the ladder. Promotions are both performance- and seniority-based and may also depend on the vacancies of the senior grades.

[7] A Southern Min dialect.

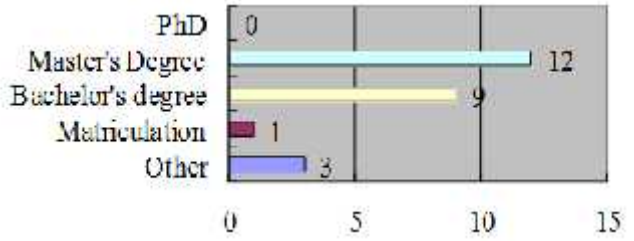

Figure 2: Academic qualification.

Figure 3: Job titles.

All the respondents have over 3 years of court interpreting experience and over 80% of them have more than 10 years of experience in court interpreting (Figure 4).

Figure 4: Experience in court interpreting.

4.1.3 Pre-service training

The number of respondents with pre-service training in interpretation and that of those without are roughly the same (see Figure 5), reflecting the lamentable fact that pre-service training has not been a requirement for the job even to this date but is merely considered an advantage.

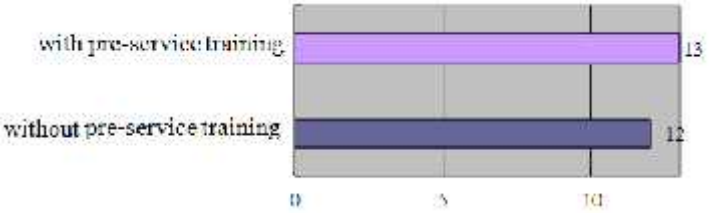

Figure 5: Pre-service training.

Most of the respondents received their training in interpretation from degree or diploma courses run by tertiary institutions, while three of them received their training organized by the Judiciary of Hong Kong. Of the three respondents who claimed to have received training from the Judiciary, two specified that to be a 6-month student interpreter training scheme, a scheme introduced in the early days, which is now replaced by a 4-week induction course for new recruits.

4.1.4 Training in first-person interpreting

Question 7 aims to find out how many of those with pre-service training (13 as indicated by the answers to Question 6) have been trained to interpret in the first person in consecutive interpretation, which necessarily excludes those who have had no formal training in interpreting. Respondents who had responded negatively to Question 6 were thus asked to skip this question and to proceed to Question 8. The results of Question 7 however indicate a total of 18 respondents to this question, of which 11, or 61% claimed to have received training in first-person interpreting while the remaining 39% indicated that they had received no such training (Figure 6).

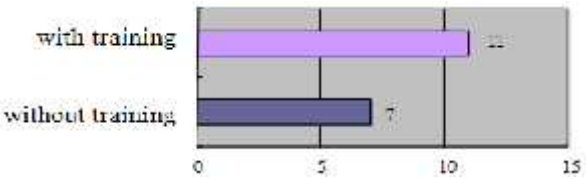

Figure 6: Training in first-person interpreting.

The total number of subjects responding to this question exceeds the number of respondents with pre-service training by five. This suggests that the respondents to this question include five of those

whose answer to Question 6 is negative. A review of individual questionnaires produces the following results:

Table 1. Individual responses to Question 7.

Training in first-person interpreting	Yes	No	No Answer	Total
from subjects responding affirmatively to Q.6				
i.e. with training	9	4		13
from subjects responding negatively to Q.6				
i.e. without training	2	3	7	12

Obviously five of the respondents did not observe the instruction to skip this question. Of these five, two claimed to have received training in first-person interpreting despite their claim to have received no pre-service training. The training they received is presumably on-the-job training. Of the 13 respondents, who claimed to have received pre-service training in interpreting, nine indicated that they had been trained in first-person interpreting, bringing the total number of respondents with this training to 11.

4.2 Interpreting styles for lay and legal participants

Since the court data manifest different approaches adopted by the interpreters in their representation of the voice of different speakers, Questions 8 to 12 deal with the respondents' rendition of the first-person pronoun uttered by lay participants and legal professionals.

4.2.1 Rendition of lay-participants' first-person pronoun

As witnesses in the Hong Kong courts usually testify in Chinese, mostly Cantonese, the local dialect, Question 8 inquires the respondents about their frequency of rendering the Chinese first-person pronoun produced by witnesses or defendants into English in the third person.

Responses to this question largely deviate from the findings of the recorded court proceedings, where the interpreters are found to interpret utterances produced by witnesses and defendants in the first-person. As

many as 48% of the respondents indicated that they would always render the Chinese first-person pronoun *ngo5* as "he" or "she" in English, and in other words use reported speech. (Figure 7)

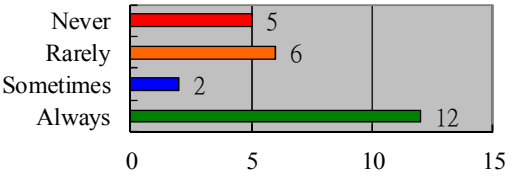

Figure 7: Frequency of 3rd-person interpreting for witness/defendants.

In order to find out whether there is a correlation between the respondents' interpreting styles and the training they have received, individual questionnaires were reviewed with the following findings produced:

Table 2. Frequencies of third-person interpreting for lay-participants between respondents with and without training.

respondents with training in 1st person interpreting (11)			respondents without training in 1st person interpreting (14)		
Always	7	64%	Always	5	36%
Sometimes	2	18%	Sometimes	0	0%
Rarely	1	9%	Rarely	5	36%
Never	1	9%	Never	4	28%

Surprisingly enough, the results show that respondents with training in first-person interpreting are twice as likely to render defendants'/witnesses' Chinese first-person pronouns into a third-person reference in English as those without such training. The results seem to suggest a negative correlation between the respondents' adoption of first-person interpreting for witnesses/defendants' utterances and their training in this respect.

4.2.2 Renditions of legal participants' first-person pronoun

4.2.2.1 As a first-person pronoun in Chinese

In Question 9, the subjects are asked how often they render the English first-person pronoun "I" produced by counsel/judges into its Chinese equivalent *ngo5* in utterances like "I find (the defendant)…", "I would like to ask you…" or "I put it to you…"

Responses to this question (Figure 9) show that only 12% of the respondents would always assume the voice of the judge or counsel by adopting a first-person interpreting style while close to one third (32%) of them think they would sometimes do that. The results likewise are not entirely consistent with the findings of the recorded proceedings, which manifest few instances, if any, of the judge's or counsel's speaker "I" being rendered into its Chinese equivalent *ngo5*.

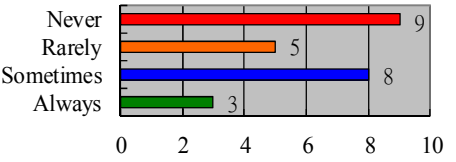

Figure 8: Frequency of first-person interpreting for judges/counsel.

Again to identify any correlation between the respondents' training in first-person interpreting and their practice of it, individual surveys were examined and the following statistics have been produced.

Table 3. Frequencies of first-person interpreting for legal professionals between respondents with and without training.

respondents with training in 1st person interpreting (11)			respondents without training in 1st person interpreting (14)		
Always	2	18%	Always	1	7%
Sometimes	4	37%	Sometimes	4	29%
Rarely	2	18%	Rarely	3	21%
Never	3	27%	Never	6	43%

Contrary to the results of the preceding question, the statistics generated from the individual responses to this question seem however to suggest a positive correlation between the subjects' training and their adoption of first-person interpreting for utterances produced by judges and counsel. That is, the respondents with training in first-person

interpreting are more likely than those without to interpret the legal professionals' utterances in the first person.

4.2.2.2 As a third-person reference in Chinese

Question 10 explores how often the respondents would render the English first-person pronoun "I" produced by legal professionals (counsel/judges) into a third-person reference by referring to the speaker in his/her official capacity. Answers to this question show that an overwhelming majority of the respondents would always (72%) or sometimes (20%) adopt this third-person interpreting style for rendering the legal professionals' utterances (Figure 9), which is consistent with the findings from the recorded court proceedings.

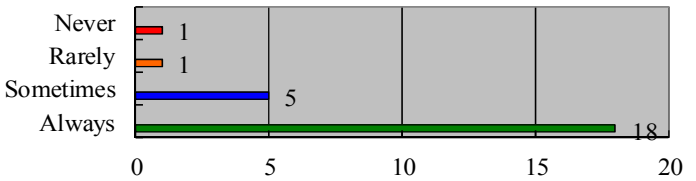

Figure 9: Third person interpreting for legal professionals.

An examination of individual answers to this question seems to suggest that those with training in first-person interpreting are less likely to adopt third-person interpreting for legal professionals than those without (see Table 4 below), consistent with the results of Question 9 as illustrated in Table 3.

Table 4. Frequencies of third-person interpreting for legal professionals between respondents with and without training.

respondents with training in 1st person interpreting (11)			respondents without training in 1st person interpreting (14)		
Always	7	64%	Always	11	79%
Sometimes	2	18%	Sometimes	3	21%
Rarely	1	9%	Rarely	0	0%
Never	1	9%	Never	0	0%

4.2.2.3 Use of passives in Chinese interpretation.
In the question that follows, the respondents were asked how often they would render a sentence in the active voice with "I" as the subject uttered by the judge or counsel into a passive voice, thus dispensing with the need to render "I" into its Chinese equivalent, *ngo5*.

Only three (12%) and six (24%) of the respondents respectively chose "always" and "sometimes" as their answers (Figure 11), conforming to the findings of the court data, in which the interpreters are found to use passives only occasionally to avoid the mention of the subject in a sentence like "I convict you…". The use of passives hardly presented to the rest of the subjects as an option, which nonetheless does not come as a surprise, given that the use of passives in Chinese is far less common than in English.

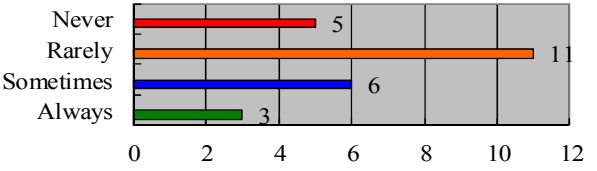

Figure 10: Change of active into agentless passives.

4.2.2.4 Omission/Ellipsis in Chinese interpretation
Question 12 asked the respondents how often they would ellipt the English first-person pronoun "I" in the Chinese interpretation, thus producing a subjectless sentence such as "向你指出" (ϕ put it to you). The subjectless construction is grammatically allowed in Chinese especially in spoken Chinese where contextually understood information can be ellipted, though the ellipsis may lead to semantic ambiguity as verbs in Chinese have only one basic form and do not conjugate according to the subject or the tense as they do in most Romance languages.

Again the results are consistent with the findings of the court data with 60% of the subjects indicating they would always (24%) or sometimes (36%) adopt this strategy (Figure 11) to avoid the mention of the first-person pronoun in the Chinese interpretation.

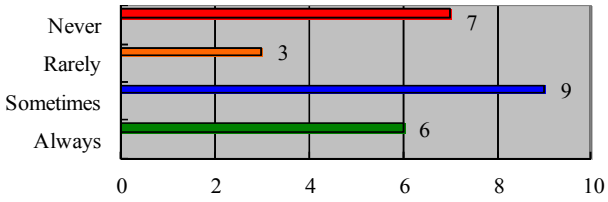

Figure 11: Ellipsis of first-person pronoun subjects in Chinese interpretation.

4.3 Interpreting styles and the rationale behind

The last three questions (questions 13 to 15) aim at exploring the reasons behind the respondents' choice of interpreting styles.

4.3.1 Content of utterances and interpreting styles

Previous studies have suggested the use of reported speech in interpreting as a distancing strategy on the part of the interpreter to disclaim responsibility for the utterances of the speaker (e.g. Berk-Seligson, 1990; Bot, 2005; Dubslaff & Martinsen, 2005; Leung & Gibbons, 2008). Many of these studies suggest content of the utterances as a deciding factor for the interpreter's adoption of reported speech as a distancing strategy. In Question 13, respondents were asked if their choice of interpreting styles had anything to do with the content of the utterances. It is my hypothesis, based on findings of the court data and my own experience in court interpreting, that the content of the utterances has least to do with the choice in this regard, and this hypothesis seems to be supported by the results of this question. The majority (17 or 68%) responded negatively to this question (Figure 12).

Figure 12: Relevance between content of utterance and interpreting style

Those who had responded affirmatively to this question were asked to explain how the content of the utterances would affect their

interpreting styles. The following table contains all the explanations supplied by the eight respondents.

Table 5. Explanations offered for Question 13

1	Choice of 1st or 3rd person is sometimes made to avoid ambiguity of the content.
2	When I interpret witness' testimony, I always use 'I' but when when [sic.] I interpret counsel's questions, I always use 'counsel put to you that... ...'
3	when I interpret from English to Cantonese/Mandarine [sic.], I always use reported speech. When I interpret from Cantones/Mandarine [sic.] to English I always use First person.
4	如果問題內容令人尷尬，容易令證人台上的證人/ 被告人反感，我一定不會用“我”這個字，以免證人/ 被告人向我發脾氣。*If the content of the question is embarrassing and offensive to the witness/defendant in the witness box, surely I won't use "I", lest the witness/defendant should vent his/her anger on me* (my translation).
5	Eg. Witness asked me quietly whether he/she could go to the toilet.
6	I think it's better to interpret in direct speech what a witness/defendant says to avoid confusion. But I take care to distance myself from contents like "律師向你指出..... (*counsel puts to you* – my translation)" and "法官裁定 (*judge finds* – my translation)", which may provoke the message recipients and evoke negative feelings.
7	e.g. counse [sic] puttting [sic]/suggesting question to witness.
8	If the original utterance is in direct speech, I will deliver the interpretation in the same of speech especially when it's the evidence of vital witnesses.

Obviously, some of the explanations supplied (remarks 2, 3 & 8) nonetheless seem irrelevant and non-responsive in that the respondents merely reiterated what they did without explaining why they did it. These non-responsive answers leave one to wonder whether the question had been correctly comprehended.

Remark 1 suggests that the choice is made out of pragmatic consideration, that is, to avoid ambiguity. While this point is consistent with some studies which suggest that the use of reported speech is to

avoid confusion over who the speaker is (e.g. Angermeyer, 2005; 2009), it cannot, in the absence of examples or further elaboration, serve as a valid explanation as it fails to account how his/her choice is affected by the *content* of the utterances.

Only remarks 4 to 7 appear to be valid explanations. Remarks 4, 6 and 7 suggest that a third-person interpreting style is used as a self-protective device against the anger of the defendant or witness when counsel are putting questions to witnesses or judges are delivering their verdicts, which may embarrass, offend or "provoke the message recipients and evoke negative feelings", consistent with suggestions proposed in previous studies (Berk-Seligson, 1990; Leung & Gibbons, 2008). Interpreting a witness's request for a toilet break in the third person (Remark 5) may be regarded as a strategy to disclaim responsibility as well as one to avoid confusion over who is making this request.

Taking into consideration the irrelevant explanations offered by the 4 subjects responding affirmatively to this question, the results of this question may not reflect a true picture of the reality. These 4 respondents should probably have chosen the negative answer, and the actual number of affirmative answers should then be 4 instead of 8.

4.3.2 Different interpreting styles for different speakers

Question 14 asked the respondents if they agreed that on the whole they would interpret utterances produced by witnesses and defendants in the first person and those by the judges and counsel in the third person. Twenty-one (84%) of the respondents responded affirmatively to this question (Figure 13). The results conform to the general observation of the court data, but contradict responses to Question 8, in which close to half of the subjects indicated an indirect third-person interpreting style for witnesses and defendants.

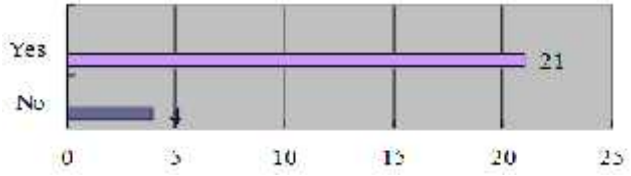

Figure 13: First-person for witness/defendants and third-person for counsel/judges

4.3.3 Rationale behind the styles of interpreting

The last question of the survey aims at identifying all the possible reasons for the different interpreting styles for different speakers. Those who responded affirmatively to the preceding question were asked to state their reasons by choosing from 4 suggested answers and/or by providing their own in the open option, and that multiple answers were allowed. Results have been presented in the following tables (Tables 6 and 7):

Table 6. Options as indicated for Question 15

Option	Suggested answer	No. of replies	Percentage of total no. of replies
A	I feel uneasy assuming the voice of counsel or judges because they are on a higher hierarchical level.	5	12%
B	I don't want to give the impression to all those in court that I am pretending to be the counsel and the judge by assuming their voice.	10	24%
C	I don't want the witnesses/defendants to conclude that I am speaking for myself if the interpretation is done in the first person.	17	40%
D	I just follow what other colleagues (e.g. the interpreter I understudied) are doing.	6	14%
E	Other (Please specify)	4 (see Table 7)	10%

Table 7. Reasons as specified in Option E

Option	Reasons specified
E1	if i were the judge or counsel, i'd want a direct quote of the testimony (2) but on the other hand, i don't want to assume the "responsibility" of counsel challenging

	witnesses or the judge "talking to" a deft
E2	Please include my explanations in Answer 13 above[8].
E3	I do that for self-protection. I take care to distance myself from contents like "律師向你指出 (counsel puts to you – my translation)….." and "法官裁定 (judge finds – my translation)", which may provoke the message recipients and evoke negative feelings.
E4	to help witnesses/defendants understand questions more easily.

Results of this question seem to suggest that the respondents' choice of interpreting style is affected by a mixture of factors, some of which are however not supported by the court data.

4.3.4 Psychological factor

Of the answers suggested in the 4 options, Options A and B represent a psychological decision on the part of the respondents, in which the concept of power asymmetry in the courtroom is in play.

In the adversarial common-law courtroom, the imbalance of power between legal professionals and lay-participants is palpable. Walker (1987, pp. 58-59) has identified three sources of power enjoyed by the legal professionals, namely a sociocultural base of power stemming from their roles as participants authorised to resolve disputes in a recognised societal institution, a legal base of power, which stipulates attorneys' right to ask questions and at the same time impose sanctions against those refusing to answer, and a linguistic base of power, which originates from the right to ask questions and thus to manipulate the question forms in order to control the answer to the question put. These sources of power necessarily render judges, as participants authorised to resolve disputes, and counsel, with the stipulated right to ask questions and thus to control witnesses' testimony, in a more powerful position than the lay-participants, witnesses and defendants alike. (see

[8] explanation given by this respondent in Answer 13:
If the content of the question is embarrassing and offensive to the witness/defendant in the witness box, surely I won't use "I", lest the witness/defendant should vent his/her anger on me (my translation).

also Atkinson & Drew, 1979; Cotterill, 2003; Gibbons, 1999, 2008; S. Harris, 1984; Maley & Fahey, 1991; Woodbury, 1984.)

This power asymmetry between legal professionals in their roles as the questioners (powerful participants) and lay-participants as answerers (non-powerful participants) in court is also highlighted by Fairclough's definition of power in discourse:

> Power in discourse is to do with powerful participants controlling and constraining the contributions of non-powerful participants. (1989, p. 46)

Options A and B accentuate this hierarchical power enjoyed by the legal professionals, the respondents' consciousness of this power asymmetry in the courtroom and thus their uneasiness in assuming the voice of the powerful participants, i.e. the legal professionals, for fear that those unaware of the professional norm of first-person interpreting may regard them as pretending to be the powerful participants. Together these two options were chosen by 15 respondents, accounting for 36% of the total replies. This suggests that there does exist a psychological element in the subjects' choice of interpreting styles, though there is no knowing whether this percentage represents a true picture of the rationale of all the respondents behind their choice of interpreting styles, being that the respondents might not want to admit a deviation from their ethical code for psychological reasons.

The interpreter's uneasiness in assuming the voice of the powerful participants has to be understood in the special context of the Hong Kong courtroom, where interpreting is ironically provided for the linguistic majority and many participants in the court proceedings including bilingual legal professionals share the interpreter's bilingual skills. In Hong Kong, unlike in many other jurisdictions, the defendant and witnesses requiring interpreting services are *not* the exclusive audience of the Cantonese interpretation, which is also accessible to the majority of the participants in the court, including Cantonese monolinguals such as audience in the public gallery and English/Cantonese bilinguals like bilingual legal professionals. In the course of interpreting, the interpreter is conscious of the presence of these third person audience roles as "auditors", "overhearers" or "eavesdroppers" (Bell, 1984), especially the bilingual legal

professionals, for whom the Cantonese interpretation is in fact not intended. In other words, the shift from a first-person to a third-person interpreting style can be regarded as interpreters' response to these unaddressed recipients, and they may consider it impertinent to assume the voice of the legal professionals, but wish to show their respect in order to win approval by referring to these powerful participants in their official capacities, just like speakers accommodating their speech style to their audience (Bell, 1984; Giles & Smith, 1979).

4.3.4.1 Pragmatic consideration

If Options A and B are understood as interpreters' accommodation of interpreting styles to the third person audience roles in the courtroom, Option C, which suggests a pragmatic consideration on the part of the respondents, can be regarded as interpreters' response to the second person "addressed recipients" (Goffman, 1981) or "addressees" (Bell, 1984) in that it takes into account the lay-participants' lack of understanding of the role of the interpreter or of the professional norm of first-person interpreting. This option was chosen by 17 respondents, representing 40% of the total replies.

4.3.4.2 Inherited practice

Option D does not represent an informed decision on the part of the interpreter, but a passive or inherited one, in that the interpreter just follows what other interpreters are doing in court. Six respondents marked this option, representing 14% of the total replies, and this has its support from the court data, in which a trainee interpreter's normative first-person interpreting style for all speakers was "corrected" by his supervising interpreter to a deviant third-person interpreting style for utterances produced by the legal professionals. The supervising interpreter's "correction" of the trainee interpreter's style of interpreting might have stemmed from her perception of the power differentials between lay and professional participants in the judicial proceedings: The trainee interpreter, being new and thus less sensitive to the courtroom hierarchy of power relations, is more ready to assume the voice of all the speakers by using direct speech, which the supervising interpreter must have deemed improper and a want of respect for the powerful participants. Meanwhile, this is evidence that a

third-person interpreting style for legal professionals is very much a norm rather an exception in the Hong Kong courtroom.

4.3.4.3 Other reasons

Option E is an open option which allows respondents to provide their own answers in a text box. Altogether four respondents marked this option and made their comments, including one who chose to adopt his/her answer to Question 13 for this question (E2, Table 7), accounting for 10% of the total replies. Of the four respondents, one stated that the strategy was "to help witnesses/defendants understand questions more easily", which suggests a pragmatic consideration on the part of the respondent. The other three remarks (E1 to E3) representing 7% of the total replies suggest the use of reported speech as a strategy for disclaiming responsibility for the speaker's utterances which may offend the message recipients, i.e. witnesses or defendants. In other words, the respondents saw this interpreting strategy as a protective device against the possible anger of the witness/defendant, as suggested by Berk-Seligson (1990, p. 116).

5 Conclusion

Notwithstanding the fact that some of the responses seem to contradict each other, the results of this survey as a whole confirm the general practice of two distinct interpreting styles adopted for lay participants and legal professionals respectively in the courts of Hong Kong, which conforms to the findings of the court data. The majority of the respondents admitted that they would adopt first-person interpreting for witnesses/defendants but not for the legal professionals, regardless of their years of experience in court interpreting and whether or not they have had any training in first-person interpreting.

The majority of the respondents indicated that their choice between first-person and third-person interpreting had nothing to do with the content of an utterance, which is again consistent with the findings of the court data, and supports my hypothesis that the practice has little to do with the content of an utterance. Although a small number of the respondents did indicate the use of reported speech as a strategy to disclaim responsibility for an offensive remark, this content-based

discriminatory use of interpreting styles is however not supported by the court data, which manifest a consistent use of reported speech for counsel/judges whether they are challenging the witness/defendant or are simply giving them procedural advice. In other words, the court data show the interpreting styles adopted depend on *who* the speaker is (or the audience are), not *what* is said. The uniformity of this practice as evidenced by the findings of the court data, reinforced by the results of this study, has effectively refuted the widely held view that reported speech is used by interpreters to disclaim responsibility for the SL speaker's words as it fails to explain the interpreting phenomenon in the Hong Kong courtroom.

The results of this study seem to suggest the shift in interpreting styles as interpreters' accommodation to their audience, not merely to the addressee (defendant/witness) as suggested by other studies (e.g. Angermeyer, 2005; 2009), but also to the third person audience roles as auditors, overhearers, eavesdroppers or referees, as Bell (1984) notes, "all third persons, whether absent referees or present auditors and overhearers, influence a speaker's style design which in a way echoes the effect they would have as second person addressees" (p. 161). The interpreters' uneasiness in assuming the voice of the legal professionals and thus the adoption of a third-person interpreting style is evidence of their consciousness of and thus a response to the power asymmetry in the courtroom.

Finally, the results of this study reflect some limitations in the online survey methodology. Firstly, the fact that the questionnaires were completed online makes it impossible to ascertain whether the questions had been correctly understood by the respondents, or to offer them explanations should the need arise. Secondly, the need to ensure the respondents of their anonymity and thus to leave their responses untracked has rendered later clarification of non-responsive or contradictory responses out of the question. In the light of these limitations, some of the questions (Question 13, for example) could have been better formulated, perhaps with detailed elaborate examples included, if ambiguity or misunderstanding were to be avoided. The fact that half of the explanations offered in response to Question 13 appear to be irrelevant and non-responsive is evidence of the respondents misunderstanding the question.

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Appendix: Abbreviations and transcription symbols

J	Judge/Magistrate
I	Interpreter
DC	Defence Counsel
PC	Prosecution Counsel
boldface	words in boldface represent elements under discussion in this paper
(.)	a dot in parentheses indicates a brief pause of less than a second
ϕ	ellipsis/omission
Italics	words in italics are the author's translations

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The Court Interpreter: Creating an interpretation of the facts

Niklas Torstensson and Kirk P. H. Sullivan

A fair trail is impossible without an interpreter when anyone taking part in the court proceedings does not know the national language, yet the use of an interpreter affects the judging of an immigrant and perhaps their right to a trial as fair as the one offered to a native speaker of the national language. At times courtroom conversation using an interpreter gets confusing, interrupted, and breaks down. These disfluencies can be the result of a lack of linguistic and cultural insight by any of the parties. This paper focuses on how interpreters and legal staff perceive the court interpreter's role, and the creation of the interpretation. Using qualitative semi-structured interviews, it became clear that the interpreter and the lay judge hold different views. The interviews also revealed a degree of mutual mistrust.. Yet, in spite of this, a feeling that the bilingual communication in the courts works reasonably well most of the time also came through in the interviews and that with better education for all parties the courtroom could become a fairer legal context.

Keywords: interpreter, discourse, courtroom, disfluencies

1 Introduction

In Sweden, as in many other countries, anyone lacking knowledge of the national language is entitled to have an interpreter present during contacts with the police, the medical or judicial system. The issues surrounding language, the right to interpretation and their importance for a fair trial are highlighted in Brown-Blake (2006), and Brown-Blake and Chambers (2007). This article focuses on the interpreting process

during court hearings and how the interpreter and legal staff perceive this process. A fair trail is impossible without an interpreter when anyone taking part in the court proceedings does not know the national language, yet how does the use of an interpreter affect the judging of an immigrant and their right to a fair trial?

The interpretation of dialogue as a monologising practice has been studied by among others Wadensjö (2004), and courtroom dialogue and interpretation has been studied by, for example, Angermeyer (2006), Berk-Seligson (1999), Filipovic (2007), Russel (2000), Torstensson and Gawronska (2009) and Wennerstrom (2008).

Torstensson and Gawronska (2009) showed in their case study of hearings interpreted between Swedish and Polish in which they studied "discourse disfluencies and discourse techniques aimed at disfluency correction and prevention" (p.60) that from time to time court-room conversation using an interpreter gets confusing, disfluent, interrupted, and can even break down but that the sources of these disfluencies cannot be ascribed to any specific party in the courtroom, and that regardless of how competent the interpreter is, a lack of linguistic and cultural insight by any of the parties can contribute to courtroom discourse disfluencies. Torstensson and Gawronska claimed that "as these factors generally are unknown, or at least not reflected upon by the legal staff, the witnesses, and the suspects, the occurrence of disfluencies in court hearings is unavoidable." (p. 69). For the purposes of their study they defined discourse disfluencies as: "not only phenomena traditionally defined as speech disfluencies (self-corrections, hesitation marks etc.), but also disruptions of the interpretation process, and of the dialogue as a whole." (p. 60).

The case study, excerpted from Torstensson's (2010) doctoral dissertation, shifts the focus from a linguistic analysis of discourse fluencies in interpreted courtroom dialogue to consideration of how those who work in the courtroom experience view the role of the interpreter and discourse disfluencies that arise in bilingual course hearings. Before presenting the interview study and the discussion of the interviewees' opinions and observations, this article initially places the study in context by overviewing the process of authorization of interpreters for the Swedish courtroom, the rules and guidelines for legal interpretation, and the interpreter's role and dilemmas.

2 Background

A fair trail is impossible without an interpreter when anyone taking part in the court proceedings does not know the national language, yet how does the use of an interpreter affect the judging of an immigrant and their right to a fair trial?

The interpreter fulfils a role in the court proceedings and the certified interpreter aims to follow the rules and guidelines of the Kammarkollegiet (2004a). The court interacts with the interpreter and is neither trained in how to communicate with a witness or the accused through an interpreter, nor in bilingual communication. This lack of training could result in different understandings and expectations about the role of the interpreter and what interpretation is, and possibly contribute to the breakdown in communication in the bilingual courtroom.

Differences in the understanding of terminology could be a source of the possible different understanding and expectations. Morris (1995) discussed how the use of the term interpretation is not without problems as the term has other implications in a judicial setting. Within the linguistic community, the term refers to the process of transferring meaning between spoken utterances in two languages[9], whereas within the legal community, interpretation is an activity associated with the use and manipulation of language reserved for the legally trained staff in the courts, for example, lawyers and judges. As a result of the situation, Morris emphasized the importance of clearly defining the terminology to reduce the risk of misunderstandings and to enable a common view of what interpretation entails. This included making clear the distinction between interpretation as an intralingual process (as in the interpretation of a legal text) and interpretation as an interlingual process (as when conveying the meaning of an utterance from one language to another).

Another aspect that could contribute to the breakdown in communication in the bilingual courtroom is the legal community's attitudes towards court interpreters and court interpreting. Morris

[9] In the linguistic community the distinction is made between interpretation and translation. Translation is the process of transferring meaning between written texts in two languages.

(1993) revealed that the legal community holds a primarily negative view of both the interpretation process and the interpreters performing the task. Further, the prevailing opinion among legal staff was that court interpreters should perform a verbatim translation of what is said in one language into another language. Morris pertinently summarized the situation as follows:

> 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 court interpreters (p. 26)

Using qualitative semi-structured interviews (Kvale & Brinkmann, 2009) with an experienced lay-judge and an experienced certified interpreter, this case study investigates the interpreted court dialogue, the problems the interpreter faces, and the views held by the interpreter and the court personnel about the nature of the commission as interpreter. Together the interview data on these topics of investigations will provide a snapshot of the feelings, attitudes, and observations about the use of interpretation in court proceedings from these two perspectives and possibly indicate the frequency with which the court dialogue is interrupted due to differences in the expectations of the interpreter's role in the court.

3 Authorization of interpreters

The Legal, Financial and Administrative Services Agency is responsible for the authorization of interpreters and translators in Sweden. Applicants for authorization undergo tests and a proficiency examination at the Agency. The successful candidate interpreter is certified for a period of five years and authorized to interpret between Swedish, and one or more other languages. An authorized interpreter can specialize and be authorized as a court interpreter and/or medical interpreter after further examination. The specialization authorization tests, among other things, knowledge of legal and/or medical terms in both Swedish and the interpretation language(s), and fundamental legal and/or medical knowledge. The applicants also undergo oral tests in simulated court- and/or medical care situations in a role-play setting.

Every five years the authorized interpreter is required to undergo re-testing to retain their accreditation as a general and a specialized interpreter. This process is designed to ensure that the interpretation produced by the interpreter is both competent and reliable. This is an important feature that is designed to overcome the paradox that most often the only person able to judge the quality of the interpretation in a court setting is the interpreter themselves. Only infrequently are there other people in the court with advanced knowledge of both the source and the target languages. In Sweden, the rules and guidelines published by The Legal, Financial and Administrative Services Agency work to create a frame for dealing with this paradox.

4 The set of rules

The Legal, Financial and Administrative Services Agency's rules and guidelines for interpreters are collected in the documents "God tolksed" (Kammarkollegiet 2004b) and "Kammarkollegiets tolkföreskrifter" (Kammarkollegiet 2004a). Further rules are found in the Swedish law, for example in the Code of Judicial Procedure, the Administrative Judicial Procedure Act (1971, p. 291) and in the Official Secrets Act (1980, p. 100). The aim of these rules and guidelines is to ensure that interpreter follows a legally and ethically well-formed practice.

The directions from The Legal, Financial and Administrative Services Agency state, "During interpretation, the authorized interpreter shall reproduce all information as faithfully as possible" (Kammarkollegiet 2004a, 14 §). This has implications for the manner of interpretation beyond the pure linguistic. The Legal, Financial and Administrative Services Agency recognize this fact and write, as a comment to the statement, that "…terms and expressions as far as possible should be reproduced correspondingly. Cursing, emotional expressions or body language should not be diminished." Thus, if a suspect, or witness, answers a question with hesitation or in anger, this must come through in the interpretation as it could prove of importance for court's deliberations.

Similar rules and guidelines for interpreters can be found in other countries including Denmark, the USA and South Africa. In Denmark, as discussed in Jacobsen (2002), the guidelines are laid down by the

National Commissioner of the Danish Police (Rigspolitichefen) in a similar way to Sweden. In the USA, the Code of Ethics and Professional Responsibilities is issued by the National Association of Judiciary Interpreters & Translators (NAJIT) (NAJIT 2008) and follows the four cornerstones for interpretation: Accuracy and Completeness, Impartiality, Confidentiality and Conflict of Interest. In the USA, the need for legal interpreters has resulted in graduate programmes in legal interpreting. The need is however far greater than the education system can provide; Benmaman (1999) pointed out that the general impression was one of too little, too late as only two graduate programmes existed at the end of the 20th century to meet the USA's total demand for qualified legal interpreters.

South Africa has 11 national or official languages, with the associated need for interpreted communication. The South African constitution stipulates that, in order to get a fair trial, a person is entitled to an interpreter if he or she does not understand the language of the court. This means that the demand for court interpreters is high. However, as pointed out e.g. by Moeketsi (2000), the quality of the interpretation has historically often been low with inconsistencies, irregularities and inaccuracy. To raise the standard of court interpretation and to ensure the quality of the interpreters a university programme leading to a BA in court interpreting has been established in South Africa (Moeketsi & Wallmach 2005; Moeketsi & Mollema 2006) that follows the standards for legal interpreters follow the NAJIT (2008) guidelines.

These and other national rules and guidelines create a frame for legal translation, yet there still remain many issues surrounding the interpreter's role in the court room, the nature of the interpretation process and its dilemmas, and how these are understood by the various parties involved in the legal process.

5 The interpreter's role and dilemma

The interpreter's main task in always is to convey the linguistic message between people who do not share a common language. This is, in many cases, the only important task. In some cases however, for example, in a court hearing, the linguistic message alone is not always

sufficient. The manner in which something is said can have consequences for the judgement of the trustworthiness of a statement. The interpretation should, therefore, also convey feelings like excitement and hesitation, and, ideally, a broader picture of the client than can be gained from an emotion-free verbatim translation.

It would be natural to think that the greatest difficulties in legal interpreting arise when translating legal terminology between two languages. This can certainly pose a problem, but it is a fairly minor one once the terminology has been learnt. Far more problematic for the interpreter are the differences in pragmatic aspects such as illocutionary equivalence between the two languages of interpretation. Hale (1999) studied the consecutive courtroom interpretation of discourse markers between English and Spanish and found that discourse markers were often overlooked. Overlooking these markers considerably changes the illocutionary force and the way an utterance is understood. Incorrectly interpreted fillers such as conjunctions, interjections and particles, alter the force of an utterance and make it hard for a listener to determine, for example, the degree of hesitation, politeness or determination with which an utterance is made.

Hale (1999) furthermore found that some fillers were frequently omitted in the translation, thereby retaining the illocutionary point but changing the illocutionary force. Hale studied the English discourse markers "well", "see" and "now" in interpreted hearings, and how these were interpreted into Spanish. He found that the interpreters omitted the markers systematically. The resulting interpretations "…alter the force or strength with which the illocutionary point is presented, such as the difference between 'I suggest' and 'I insist'" (Hale 1999, p. 80). The main reason for this seems to be that translation equivalents are difficult to find in the short time available to the interpreter.

That the lack of time available to the interpreter can result in, among other things, shifts in illocutionary force illustrates the need to see interpretation more as building a bridge between people and cultures that comprises more than the verbal manifestation of language. Moreover, as pointed out by, for example, Chesterman (2001), translation and interpreting involve an extensive ethical dimension that defines the basic attitude to the translation or interpretation task, and

adds a further dimension to the dilemmas of cross-linguistic communication.

Chesterman (2001) argued that there are four partly incompatible models that describe the ethics of the translation and interpretation process: ethics of representation, ethics of service, ethics of communication and the ethics of norms. The first model, ethics of representation, focuses on the source, without adding, omitting or changing anything. In this respect, the model is similar to what Nida (1964) defined as formal equivalence and what Newmark (1988) classified as semantic translation. The second model, ethics of service, focuses on translation as a service performed for a client. The ethic goals for this model have their focus on the client, and the translator's main virtue is loyalty to the client. In this sense, it resembles Nida's (1964) dynamic equivalence.

The third model, ethics of communication, represents a shift in focus from representation to communication with others. The goal is to facilitate intercultural communication even if this is at the expense of faithfulness to the source and the target. Chesterman stressed understanding as paramount for this model, and defined this as: "*Understanding a translation means arriving at an interpretation that is compatible with the communicative intention of the author and the translator (and in some cases also the client) to a degree sufficient for a given purpose*" (Chesterman 2001, p. 141). In this respect, the model has points in common with Newmark's (1988) communicative translation with its focus on the cultural aspects of the message.

The fourth model, ethics of norms, strives to uphold the norms regarding the way a translation is supposed to be in the target language culture at the time that translation is made. The key word for this model is trust, and by conforming to predictable norms, and not surprising anyone, the translator gains trust for him- or herself and thereby for the profession.

The complexities of interpretation and the dimensions of the associated ethical dilemma feed into the different views of interpretation that members of the legal profession may hold. To explore these issues and others that may help explain why communication in the bilingual courtroom collapses and possibly impact on how an immigrant is judged, two semi-structured interviews

were conducted. These interviews have the function of providing a first insight into the explored issues and provide a basis for future interviews with court employees. The interviewed interpreter and lay judge were selected, therefore, due to their ability to analyze linguistic and narrative situations

6 The interviewees

Both interviewees have extensive experience of working in Swedish District Courts. The Swedish District Courts deal with criminal cases, contentious cases (civil law disputes) between private persons, for example family cases, and various other matters such as adoption (District Court – Sveriges Domstolar, 2009, September 30). Judgements are made by a legally trained judge together with three lay judges. The lay judges non-legally trained and are appointed by the municipal assembly for a period of four years that coincides with municipal assembly elections. The recruiting of the lay judges is run via the political parties. Recently it has become important to broaden recruitment for lay judge positions to include those who are not member of political parties. In the court deliberations the lay judge's vote has the same value as the legally trained judge's vote. Lay judges come from many walks of life, have no legal training and very few have formal insights into multilingual communication or translation theory.

The interviewed interpreter was a young certified interpreter. She has lived in Sweden for over 10 years and has extensive experience of medical and legal interpreting in a range of situations. She is fluent in Swedish at a near-native level with a moderate foreign accent, holds a PhD from a Swedish university and at the time of the interview held an academic post at a Swedish university.

The interviewed lay judge was a 54-year old Swedish native speaker who has several years of experience of judging in the District Court, and has attended many hearings with interpreters present. She holds a PhD, speaks English and French at near-native level, and at the time of the interview held an academic post at a Swedish university.

7 The interviews

The interviews were semi-structured, with open questions allowing for the posing of follow-up questions to obtain further data (Williamson 2002). The interviews were held in Swedish and lasted approximately 40 minutes. The length of the interviews was not set in advance to allow the respondents to reflect and expand their answers as they wished. The interviews were conducted on separate occasions and recorded in a studio to allow further analysis of the answers and to prevent note taking disturbing the conversation. After the interviews had been transcribed the transcriptions were sent to the interviewees for approval. This ensured the correctness of the transcription, allowed for correction of misunderstandings and answers that the interviewees felt gave incorrect impressions and allowed the interviewees to remove anything they felt could point to a specific case. The questions and the collected data were discussed in depth with colleagues in the field to ensure the internal validity of the material and analysis. In the following presentations the core findings of the interviews are presented.

7.1 Interview I – the interpreter

Asked if the legal staff show an understanding for the interpreter's work, and an awareness of what it means, that is if they realize it takes time, the interpreter reported that it varies between different courts and different settings.

> In some places they know exactly how things should be. They have planned for the extra time and they inform all involved that an interpreter is present and that they should not talk too long and that the interpreter may interrupt. Other times I come to places where they obviously have not used an interpreter before, so they go about it as usual and that makes things a little more difficult.[10]

One situation described by the interpreter as frequently difficult was the questioning of witnesses since

[10] The interview quotes are translated by the first author and agreed by the second author.

> …witnesses often are a bit stressed and not really comfortable with the situation and often not used to be in a courtroom at all. It is maybe their first time there, and they want to answer the questions really quickly and that makes things a little more difficult.

A further complicating factor is that the interviewee brought up is when a witness is questioned over the telephone. These witnesses do not have the visual clues about what is going on in the courtroom and are easily forget that an interpreter is present. Normally the court clerk will inform a telephone witness that an interpreter is present. However, it is not uncommon, in the interviewee's opinion, that this information has to be repeated during longer sessions, as what is not seen tends to be forgotten. The interviewee, however, feels that these situations are recognized by the legal staff as potentially problematic, and they most often have strategies for alleviating them.

Greater challenges exist for the court interpreter who is obliged to translate everything that is said by a client, in the same manner and style that it is said. It is not uncommon that the defendant, who might be tense and nervous, speaks incoherently with many self-corrections, hesitations and empty phrases. This poses a challenge to the interpreter as the tension, nervousness and hesitation shall be reproduced in the target language. As the manner of answering can be of significance for the judgement of a witness's truthfulness, it is important that these aspects are also conveyed in the interpretation. The interviewed interpreter admitted that this is a challenge, but one that is possible to overcome. If the person talks, but really does not say very much, for instance if the witness begins with self-corrections and empty phrases like *mmm, well, maybe, I don't remember, I don't know if...* the interpreter cannot interrupt and translate these self-corrections and empty phrases to the court but has to wait until a sentence has been spoken. About the phrases, the interviewed interpreter said:

> I think that it is evident, but as an interpreter I have to do it.

This suggests that the court may also think the self-corrections and empty phrases are evident, and their translation could irritate the court.

The interviewed interpreter pointed out that causes for confusion are not always easily recognized, as these may not primarily concern the purely linguistic aspects of the communication, but rather relate to cultural dimensions. In the case of interviewed interpreter, who interprets between French and Swedish, the majority of her clients are not immigrants from France, but rather immigrant and refugees from Africa. She estimated that 90% of her clients are from Africa. These clients often speak French as this is the language of the authorities and of the education system of their home country and not because it is their first language. The interpreter explained the cultural aspects of how questions are answered in the following way:

> Things are very formal within the political system and the school system, so it is common with very long expositions where the speaker starts to argue for a cause. That depends of course on which country they come from, but in the majority of cases I have had to interrupt when the presiding judge is irritated because he wants an answer. You ask a question and you get an answer. But this has really nothing to do with the language but more with the manner of arguing or debating that is learned.

This illustrates one of the central dilemmas with interpretation, namely that it is not merely a question of translating words but rather also a way of translating culture. The interviewed interpreter saw this situation as one of the major obstacles with the profession when all focus lies on the linguistic aspect rather than the broader communicative aspect and suggests that education is needed for everyone in the court to understand this:

> The point of us being there is to help everyone communicate, and the rest is really nothing we can do much about. One can only hope that everyone in the room or the involved parties can understand what can be related to cultural differences, and that is where I think there is a lack of education. This goes for lay judges as well as other involved, and it is the same story in health care and when interpreting in different contexts. Many people get irritated and interrupt the interpreter as well saying ”I’m not asking you – I want an answer” and that makes

> the situation difficult because as interpreter I have to interpret everything that is being said. And then suddenly you are faced with a couple of utterances that you don't have the time to interpret because of this… so I'm being blamed when the other person is doing the talking…

Similar situations can occur when translating proverbs and metaphorical or lexicalized expressions, as these are often culturally dependent and have no corresponding expression in the target language. The interpreter deals this with either by using a similar expression in the target language or, if no such expression exists, by explaining that "…this is a saying or proverb meaning…" This more practical or pragmatic view on interpreting is investigated in Jacobsen (2002) who found that using explanations is a common practice among interpreters. The principle of reproducing all information as faithfully as possible is thus broken in favour of the goal to convey the meaning as clearly as possible.

7.2 Interview II – the lay judge

When asked if hearings with an interpreter are generally seen as more troublesome than hearings only in Swedish the interviewed lay judge answered that this was indeed that case. She thought that one reason for this was that people do not know who they should address:

> It is impolite not to look at the one you are talking to, and that leads to that you in a way get stuck in the interpreter. That way you talk to the interpreter, not to the addressee.

The interviewed lay judge also saw the client as being, in some way, alienated by the presence of an interpreter and believes that in some way the client is perceived as more of a stranger by the court than it they were Swedish speaking.

On the other hand, the lay judge saw having an interpreter by ones' side as possibly beneficial for the client. The interpreter can, as well as translating, explain terminology and make sure that the client properly understands and follows the court proceedings in a way that is often not available for a Swedish speaker:

> Because the language used in courts can be quite complicated even for a native Swedish speaker, but the client has such a relation to the interpreter that he asks and makes sure he has understood everything. A speaker of Swedish might not always do that.

If this is the case, someone using an interpreter gets more support, morally and perhaps also judicially, than a person without an interpreter. The lay judge continued:

> I think that it may be easier for someone who has an interpreter than for a native speaker because you may have things explained in a more informal way instead of the usual legalese jargon. The translation is more ordinary in a way… And you also get the feeling that it is a bit more 'we two' so you can have things explained… so in that way it is an advantage to have an interpreter. It is a bit like having a person to support you.

When discussing what gets translated and whether everything that the client says actually gets translated, the lay judge's feeling based on her court experience was that parts of the conversation sometimes are not translated by the interpreter. Earlier field studies of court hearings have revealed that this is not uncommon view (e.g. see Case study 4). The lay judge also reported that the interpreter at times interacts with the client to explain or make something clear, and these pieces of conversation take place without translation into Swedish.

7.3 Summary of Interviewee Opinions

The interviews revealed a number of potentially problematic situations in the bilingual courtroom when an interpreter is present. It also became clear that the interpreter and the lay judge held different views.

The situations that are identified as problematic by the interpreter can be summarized as:

- Lack of experience of an interpreter being present complicates the task
- Witness hearings with stressed witnesses
- Telephone hearings

- Incoherent dialogue from the client
- Cultural differences in dialogue strategies

The situations that are identified as problematic by the lay judge can be summarized as:

- Uncertainty as to whom to address – the interpreter or the addressee
- The interpreter is perceived to more on the non-native speaker's side and rather than neutral
- Interpretation is time consuming
- It is not clear whether everything is translated?
- Even if translated – is the full message conveyed?

8 Discussion

The interpreter's mission and function in a legal setting in Sweden is clearly defined, both by the rules and guidelines for court interpreters and by the National Courts Administration. There is, however, a discrepancy in the views held by the interviewees as to how this functions between interpreters and legal staff. For someone primarily concerned with the dispensing of justice, the focus of the interpretation lies in the linguistic aspects, such as the translation of words in another language into Swedish. For an interpreter, often with deep knowledge not only of the language being translated but also of the cultural context and cultural differences, it is also necessary to, and impossible not to, include this cultural dimension in the interpretation process. The insights presented by the interviewees of their experiences and perceptions of translation in the courtroom support the claim made by Torstensson and Gawronska (2009) based on linguistic analysis of recordings of bi-lingual Polish-Swedish courtrooms that "as these factors [linguistic and cultural] generally are unknown, or at least not reflected upon by the legal staff, the witnesses, and the suspects, the occurrence of disfluencies in court hearings is unavoidable." (p. 69), yet provide insights for ways to work to reduce the frequency of disfluency occurrence.

Some of the difficulties and problematic situations are known and recognized by the involved parties, and can thus be resolved without too much concern. This includes the plan for working with an

interpreter; this includes making everyone aware of the fact that an interpreter is present. Some short instructions given to the court about the basics of working with interpreters and about giving sufficient time for interpreting is often enough. In the case of a witness being interviewed over a telephone line, this information needs at times to be repeated, to compensate for the lack of visual information that there is an interpreter present in the courtroom. Problems of this nature are, in other words, possible to eliminate with a minimum of effort and planning.

Greater challenges arise when the reasons for the problematic situations are unclear, or not known. These include the situations that originate in differences in expectations of the interpretation process in the court context, and areas of knowledge that are not shared by the legal staff, the interpreter and the interpreter's client. An example is when a client starts a narrative in a very hesitating and incoherent style, leaving the interpreter with words but without meaning. The interpreter's normal strategy is, rather than a verbatim word-to-word translation, to convey the meaning of an utterance to the court. This is clearly not an achievable goal if there is no meaning to convey. As a result, the impression of the court is that not everything that is said is translated.

When evaluating the interpreter's and the lay judge's interviews, it is apparent that both identify situations that are experienced as cumbersome or problematic. Strikingly, these situations are not experienced in the same way; something mentioned as being experienced as awkward by one of them was not reported as being experienced as awkward by the other. One explanation for this, offered by Jacobsen (2002), concerns the interpreter's focus on conveying a speaker's meaning rather than a verbatim translation. Jacobsen argued that the experienced interpreter's goal of successful interaction between the interactants presupposes more than literal translation. A common strategy is to include additions to the translation when necessary to compensate for the receiver's lack of background- or cultural knowledge. This view is not explicitly shared by the interpreter interviewed in this study, but similar ways of reasoning can be seen in the interview.

The three situations most likely to cause problems during a hearing, according to the interviewed interpreter are, one, witness hearings and witnesses heard over the telephone in particular. Witnesses are often stressed, anxious about being in the court setting and not familiar with the situation. A witness heard over the telephone is furthermore likely to forget about the interpreter as he or she does not have any visual or audio reminder that there is an interpreter at work. This also makes it more difficult for the interpreter to interrupt or be an active part of the conversation. The telephone interview sound quality has an impact as well, as difficulties in perceiving the witness often makes simultaneous interpretation impossible and the interpretation has to be conducted consecutively.

Two, the underlying meaning can easily be lost when translating proverbs, lexicalized expressions and idiomatic expressions. The interpreter is obliged to interpret everything that is said but cannot, strictly speaking, add or explain anything to make a statement clearer. It is however a known that these kinds utterances do not often translate into another language because of their cultural origin. The pragmatic way of avoiding misunderstandings in situations like this is for the interpreter to simply say something like "…and that is a proverb meaning…". Even though this procedure does not follow the rules and guidelines for interpreters, it is praxis for many interpreters. The interviewed interpreter said that her strategy is to use a corresponding proverb if one such exists, and when this is not the case to explicitly explain the meaning of the utterance.

Three, an incoherent client is always an obstacle for successful interpretation, and a reason for misunderstandings. Educating about how dialogues work and what interpreting entails could considerably reduce the uncertainty in such situations. The incoherence of the statement can have many reasons: stress, uncertainty as to what the question concerns, uncertainty about what to answer, uncertainty about in what manner to answer and being unwilling to answer. These reasons can often easily be exposed if they are expressed in a language and cultural code shared by the questioned and questioner. However, when an interpreter is being used in the questioning, the shared cultural code can be weak making resolution of the incoherence difficult and something that rests to a large degree with the interpreter. This task

would be less complicated if some knowledge about the interpretation process had been given to all the participants in the court case beforehand.

The lay judge pointed out that she had observed differences in the verbal behaviour of prosecutors and barristers when questioning occurs via a translator rather than directly in Swedish in monolingual hearings. This observation is based on informal observations of the same people from a number of hearings. It seems that many lawyers over time develop a personal style of running a case or questioning.

> This may be from watching TV, because at times you get the feeling that they sort of play a role in a way. They have their own styles, and a certain way of asking questions switching between rubbing someone the right way and then sting a bit harder. So, they have their attitudes, their body language and their voice and all of that falls absolutely flat when interpreted. It is a lot of acting from their side that is all in vain. You can tell that this is disturbing to them, when it more comes down to just reading their lines instead of acting them, as they usually do.

This observation underlines that more than the language differentiates a monolingual from a bilingual hearing. The presence of an interpreter affects both what is said and the manner in which it is said.

A more serious reflection made by the lay judge concerns the right of law based on the doubts about whether everything really comes through in the interpretation process. At times there seems to be a lurking feeling among the legal staff that everything said in a conversation is not translated. Furthermore, doubts can arise about whether the meaning of what is said and translated really comes through, or if some things are lost in the translation. This may have its ground in the incoherence-problem. If someone is speaking incoherently, or nonsensically, in a language that is not understood by the listeners and an extended passage of speech is translated to a few short sentences, the listener has a feeling of translation incompleteness.

The interviewed lay judge reported occasionally experiencing doubts about translation incompleteness both into Swedish and from Swedish. She also pointed out that when something is translated it is not possible to know how much of what is being said is understood by

the translator or the witness. This is however a factor, that is not limited to bi- or multilingual dialogue situations; these contexts however make it more difficult to notice that the witness is not, for example, understanding the questions, or the court, not understanding the answers to the questions.

Chesterman (2001) proposed a fifth model of translation; an ethics of professional commitment. Chesterman's considered the desire to be a good translator who makes the right decisions when translating as the primary motivating factor for a translator. For a translator to be able to do this, Chesterman stressed the need for language skills and cultural knowledge. The knowledge of culture and cultural difference is necessary to make translation decisions and to anticipate the effect of different choices. As part of his proposed model, Chesterman proposed the development of an official oath, the Hieronymic Oath, for all translators that would underline the importance of the work. The suggested Hieronymic Oath could, if it became widely known outside the translators' guild, have a positive impact on the view of the process of translation and interpretation, and thus also on the quality of the justice in the bilingual courtroom.

9 Conclusions

From the two interviews, the one with the interpreter and the one with the lay judge, a degree of mutual mistrust can be detected with feelings of not knowing what is being interpreted and what not, and what is being understood and what is not penetrating the courtroom. Yet, in spite of this, a feeling that the bilingual communication in the courts works reasonably well most of the time also came through in the interviews. Situations where communicative disturbances could impact upon the court process and ultimately jeopardize the dispensing of justice or the rule of law were acknowledged. One way of reducing the impact of these could be to create an awareness of these problematic situations; the introduction of a Hieronymic Oath as proposed by Chesterman (2001) could be one action that could help creating this awareness. Another action could be the introduction of training about the interpretation process for those who work in the legal system; such a training programme would hopefully facilitate the process for all

involved in bilingual hearings, and aid in the dispensing of justice. The situation, expressed by the interviewed interpreter in the following way:

> This is really the problem – you engage an interpreter to understand another person, but only to understand in the linguistic sense. Communication reaches far beyond linguistics, and that is the main concern. It is possible to be in command over two languages, but still not manage to mediate this!

illustrates the need for all members of the court to have a knowledge of multilingual, multicultural, and interpreted communication. An improvement in this competence would be beneficial for non-native speakers, for the ease of court proceedings and, ultimately, for the legal rights of the individual. This is particularly central when the accused is an immigrant, or visitor, who knows little or no Swedish (or the national language of the courtroom); the divergent views of what interpretation is, given a case, need to be reduced to increase fairness in court judgements and legal security.

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