The Bilingual, Bimodal Courtroom: A First Glance

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Introduction

In this initial exploratory paper, I aim to take a closer look at features of interaction between signing and speaking people mediated by a BSL/English interpreter. The spotlight will be on interaction in an area that many interpreters refuse to touch because of its inherent complexity, i.e., the courtroom. The paper can be seen, rather than as a detailed analysis of the scenario in question, as initial broad-brushed background material identifying certain issues to be considered in the course of more detailed analysis.

In the longer term, such study should not only provide valuable information to feed back into training and awareness programmes, but also offer insights into what goes on in the course of bilingual, bimodal (that is, signed and spoken) talk-in-interaction. To borrow a phrase from Deborah Cameron's keynote paper (Cameron 1994) to the British Association for Applied Linguistics conference, it's a case of "putting practice into theory": analysing practices as a potentially fruitful way of grounding and developing theory.

The tension that is felt within applied linguistic circles between 'doing theories' and 'doing practices' comes into very sharp focus throughout sign linguistics, and it is always worth trying to keep in

mind what language researchers are aiming to achieve in this context. In keeping with the valuable critique of research practices that is set out in Cameron et al (1992), an 'empowering' approach to this study has been adopted wherever possible. The study is, for instance, informed to a considerable degree by practitioners' own beliefs about their interpreting practices.[2]

Patsy Lightbown's opening plenary at the recent American Association for Applied Linguistics annual meeting (Lightbown 1994) counseled that we must (a) continue to admit what we do not know and (b) refrain from making premature pronouncements. Sign linguistics is a young field, but the applied issues are—after many decades of oppression of signed languages—urgently in need of attention. As a consequence, we frequently find ourselves torn between two goals. On the one hand, as scientists, we want to assert our right (and indeed our duty) to be ignorant and naïve and to explore questions to which we do not yet know the answers. On the other—knowing the positive effect linguists' work can have in terms of empowering signing communities—we want to fulfil our role as agents for change by the application of what little we know. Within the sign linguistics field, this position, and the stance of engagement-beyond-the-theoretical which this paper implicitly adopts, has been most clearly articulated by Mary Brennan (1986:14—16).

Firstly, then, I shall try to put my remarks into some kind of context, and then go on to indicate some dimensions or themes that seem worthy of attention.

Context

Why is the courtroom a particularly important area to study in the UK? After all, article six of the European Convention on Human Rights already includes the instruction that criminal suspects have the right to be informed in a language which they understand about any accusation made against them, and also to have free assistance of an interpreter in court. A December 1993 judgement of the European Court of Human Rights—the Kamasinski case of a US citizen imprisoned in Austria—also stressed that the institution responsible for providing the interpreter is subsequently responsible for the standard and competence of the actual service (Polack and Corsellis 1990).

Is there any reason to be concerned about that standard? The general legal interpreting field in the UK has come under some scrutiny lately—notably through the work of the Nuffield Interpreter Project (Nuffield Interpreter Project 1993)—and a number of cases have been quite well publicised. In 1981, for example, a woman who had come from rural Pakistan to an arranged marriage in Birmingham, England went to prison having killed her husband with an iron bar. She pleaded guilty and served four years of a life sentence before the Court of Appeal acknowledged that the interpreter—an accountant—had spoken to her in Urdu, while her preferred language was in fact Punjabi and she spoke very little Urdu. She probably grasped virtually nothing of what was going on, and certainly not the distinction between murder and manslaughter crucial to her life sentence (Parker 1993).

In a case involving BSL-English interpreting some years ago, a Deaf man was expected to stand trial for rape with interpretation provided by the holder of a Stage 1 certificate in BSL skills—a language skills certificate, not an interpreting qualification. It is required by the regulatory body (the Council for the Advancement of Communication with Deaf People) that a Stage 1 course involve 60 hours of teaching (CACDP no date:2). The exam takes approximately 15 minutes. In fact, the situation with respect to BSL-English interpreting is in many respects markedly better than for most linguistic minorities in the UK (Nuffield Interpreter Project 1993). There are official registers of signing interpreters, and police forces keep their own lists for police station work.

One source of pressure that impacts upon this type of situation is from the interpreters themselves, who are struggling towards notions of increased professionalisation (see Scott Gibson 1990; 1994). "Call me mercenary," wrote then-trainee interpreter Mohammad Islam in a recent issue of the Association for Sign Language Interpreters magazine (Islam, 1993:31):

> "but I am not getting up at two in the morning, driving for an hour to the police station, working for two hours, spending another hour driving home—all for £26. Would you?"

An Impossible Situation?

One conclusion that might be drawn from all this is that there is a fundamental problem in a judicial process that requires interpreting. The system is full of holes which can add spin in any direction. In fact, there are those—such as the Canadian Freedom of Choice Movement—who have concluded (Berk-Seligson, 1990:215) that the presence of an interpreter is actively prejudicial to the interests of the minority-language-using defendant. The group has argued that the defendant has a right to a trial conducted entirely in his or her preferred language. The Supreme Court of Canada has disagreed.

If interpreters must be used, then perhaps it is most advantageous to consider this a tactical strategy, just another part of the legal 'contest'. This kind of perspective has been quite convincingly articulated by the Australian Kathy Laster (1990:17):

> "The law, while formally assigning only a narrow role to interpreters, in practice makes ambiguous and contradictory demands of them. As a result, non-English speakers are not necessarily always better off when an interpreter is used. The issue whether to use an interpreter in individual cases therefore is best conceived of as a tactical one rather than as an abstract question of 'rights'. The advantage of this approach is that it focuses attention on the aspects of the legal system itself which militate against social justice for non-English speakers rather than allowing interpreters to be regarded as 'the problem' requiring 'reform'."

This proposal clearly requires greater attention, since the implications are considerable. As Ruth Morris concludes from her case study of the Ivan Demjanjuk trial, it seems minimally to be the case that interpretation of legal proceedings has "a persona of its own" (1989a:36).

Perceptions

What are the sources of the problems in legal interpreting? It seems that one set of problems derives from various participants' perceptions of norms and practices relating to this setting.

There are general perceptions to do with Deaf people[3] and signed languages that are as likely to be held by legal professionals as by other members of the public. Deaf communities all over the world are still struggling to escape the oppressive weight of pathological or medical models of what it means to be Deaf, in favour of cultural and linguistic models (see Lane 1992; Padden and Humphries 1988). Non-Deaf participants in the court are as likely as non-Deaf people in any other walk of life to expect someone else to be speaking 'on behalf of' the Deaf person—the 'does he take sugar?' syndrome. This can result in a great deal of confusion over the role of the interpreter. Many people doubt the interpreter's impartiality, or indeed assume partiality. The result (as reported by a number of practitioners) is that interpreters are frequently instructed by the court to 'just relay everything verbatim'. Such an instruction serves only to underline (a) the court's lack of awareness of, or trust in, interpreting procedures, and (b) a lack of appreciation of what must occur in the very nature of the process of interpreting.

The visual-gestural nature of BSL also raises problems of perception of at least three kinds. Firstly, many other participants in the process may have the sneaking feeling that they understand, perhaps quite clearly, what's being signed. Lochrie (no date:5) gives an example from a situation involving a late colleague of his:

> "The Advocate asked the deaf witness ... 'Are you single?', the interpreter changed the question to 'Are you married?' which signs easier. The witness shook his head vigorously. The interpreter speaks and says

> 'Yes, I am single'. The Advocate is nonplussed and says 'But the witness shook his head'. The interpreter then explained that the words are you single would not be easy for the witness to understand, so I asked him 'Are you married?'. The Judge, while understanding the situation, cautioned the interpreter."

Secondly, there is an issue of awareness concerning perceptions of the adequacy of court records. Court records—and records in police stations, where audio recording is standard practice—are kept as written English text, with no further checks and balances built into the system for being assured of interpreting accuracy. BSL does not have a conventional writing system comparable to that for English[4]. Keeping a written record of the signing itself would be impracticable under current constraints.

Thirdly, it is widely believed that signed languages are modelled on and run structurally parallel to the spoken languages with which they co-exist (though attempts have been made to create artificial systems organised along these lines, or to adapt natural signed languages to accommodate spoken/written linguistic structural principles—see Anthony 1971; Bergman 1979; Bornstein et al 1975; Gustason et al 1975). It is therefore widely, and entirely erroneously, believed that the interpreter's job is therefore a simple matter of adjusting the modality from speech to sign and back.

BSL-English interpreters are no different from any others in many respects, though, such as the outsider's perception that their task is a straightforward matter of input and output, a simple 'conduit' task. Many lawyers, judges and other legal professionals indicate (Butler & Noaks 1992) that they are not in the least concerned with the need for competent interpretation, assuming instead that interpretation is an entirely mechanical task requiring negligible analytical skills. That lack of concern is itself part of the problem, because (a) it means that any time the interpreter becomes obtrusive for any reason, that will automatically be viewed as something going wrong; and (b) because it is indicative of the fact that, as long as the interpreter is producing something that looks and especially sounds plausible, there is nothing to worry about. I shall come back to this point.

What about the interpreter's own perception of his/her role? Here, too, there is potential for conflict. It is not unusual for the interpreter to be expected to be, and thus to get drawn into being, an agent of the court. One result of this is the interpreter finding him/herself taking on the interactional patterns of the court instead of merely facilitating their flow. Susan Berk-Seligson (1990:62) provides a clear example of this in the Spanish-English courtroom in the USA. A long exchange is reproduced in which the judge and attorney are trying to get the defendant to state her plea, guilty or not guilty. The defendant keeps answering 'yes' (meaning 'guilty'). Finally, the attorney tells the interpreter "So she's gotta say it, tell her to say it", and the interpreter takes on an instructing role, herself saying (in Spanish), "That is, you have to say it. Say it! What are you?" Anecdotal reports tell us that such exchanges are not uncommon in the BSL-English courtroom.

Conversely, consider this (Nusser, 1993:4), especially point three:

> "The facts are clear: 1) Though Americans believe that all people should be treated equally, hearing people have more power (i.e. employment and educational opportunities, role models, language recognition, status, etc). 2) In a mixed group of individuals, such as in an interpreting assignment or professional conference, relational power dynamics also exist because of differing values and stereotypes. 3) Hearing interpreters must try as much as possible to act as allies among members of a linguistic and cultural minority."

It is absolutely true that BSL-English interpreters are trained to know about Deaf people's lives and Deaf community and cultural issues. Models of interpreting are changing (McIntire & Sanderson in press; Roy 1993a; Witter-Merithew 1986). But I think one can clearly see where this statement might be perceived to lead—in respect of its effect on the neutrality, or otherwise, of the interpretation—if followed through in a courtroom situation. Other professionals in the courtroom can feel threatened by interaction taking place in a language which they do not understand. 'Inter-

preter as ally' is a position which must be treated, especially in public fora, with the greatest of care, and will doubtless be a point of considerable debate in the near future.

And the interpreter also knows that it is part and parcel of his/her role to be a cultural broker or mediator, smoothing over gaps in cultural knowledge. Learning to do that effectively is part of the training. But again there seem to be lines to be drawn. The point is very well made by Jon Leeth, one of Berk-Seligson's interviewees (Berk-Seligson, 1990:40), who said:

> "The Court Interpreter's Act is not designed as an intercultural tool to integrate people into American society. It is an Act designed to bring justice to these individuals just as if they were English speaking. It is not designed to give them an advantage...only to prevent miscarriages of justice. They have the same responsibilities as anybody else...to say 'I don't know what you're talking about. Could you make that clear?"

One BSL-English interpreter I interviewed recently made a similar point. This person said:

> "I interpreted a case once where the judge and the clerk went into a heated exchange on some technical detail. As I tried to convey something of it to the Deaf defendant, his counsel said to me, 'Don't bother! It's too technical. He won't understand it'. To which I replied, 'That's okay: he has a right not to understand'."

Some Features of Court Talk

If there are problems for interpreters of a linguistic nature, where are they? There is—as there has long been in the wider sphere (e.g., Crystal & Davy 1969)—a strong feeling that the particular vocabulary used in the courtrooms is the real problem (Caccamise et al 1991; in the UK, the point is also implicit in the recent Royal Commission's recommendation (HMSO 1993) that glossaries of technical terms be developed for minority languages). And even

those whose first language is English would acknowledge that the specialised and somewhat arcane formal language of the court can, in itself, cause major problems of comprehension.

Powerless speech

The lexical problems are certainly an issue, but there are others, more disturbing for the fact that they are not widely appreciated. A whole host of issues are raised in connection with work done by William O'Barr and associates (O'Barr 1982), demonstrating that the features of what has been dubbed 'powerless speech' can play a significant role in courtrooms. Bear in mind that, in court, participants seek to appear honest, trustworthy, and so on, and that judges and juries use these impressions in framing their decisions. Powerless speech is associated—in the court setting—with weakness, indecision and evasiveness.

These features include, for example, the group of items known as hedges—'kind of', 'sort of', 'I guess', 'you know'—which sound non-committal, cautious, hesitant, uncertain or indecisive. Observation confirms that they are sometimes introduced into the simultaneous, unscripted language produced as BSL-to-English interpretation. Other features of powerless speech can also be heard being introduced as a kind of by-product of the interpreting circumstances.

These points are addressed with respect to the work of interpreters in considerable detail by Susan Berk-Seligson (1990:148ff). It is beyond the scope of the present paper to draw detailed parallels between Berk-Seligson's findings, relating to Spanish/English interpretation, and the situations under scrutiny here. One can, however, begin to see that one not unlikely effect of the interpreter's intervention between the overt conversational participants is that the contributions of the signing person are rendered more or less 'powerful' than the original texts. In other words, the impact of testimony given by a Deaf person in court can be altered for better or worse in the interpreted rendition. No analysis of 'powerless signing' has ever been done to date, and so it is impossible to say whether the reverse effect is also occurring.

Progress of Discourse

The progress of the discourse is an additional matter for attention. O'Barr (1982:76—83) compares 'narrative style' as a discourse pattern in court—i.e., longer, more elaborately constructed sections of talk—against 'fragmented style', whereby the discourse is broken up into shorter turns, for instance in rapid question-and-answer exchanges. 'Narrative style' has the appearance of being credible and confident, and is encouraged by lawyers asking open-ended questions to their own witnesses: 'fragmented style' is almost inevitably the result of tightly constrained, quick-fire questioning. Thus, as Berk-Seligson makes abundantly clear (1990:178), if interpretation renders the message more or less fragmented than the original utterance, it has altered the effect of what was signed or said. Such alterations, though their effects may not be immediately apparent, are unlikely to be inconsequential, particularly when they accumulate throughout the duration of a section of testimony.

Of course, question-and-answer as a mode of exchange is very typical of courtroom interaction, and so it matters greatly that interpreters are aware and in control of the effect of how they present questions (cf. Eades 1988; 1992 for discussion of cultural differences in patterns of questioning and their effect on the non-interpreted courtroom). Brenda Danet (Danet 1980) has shown that questions vary in the extent to which they coerce or constrain the answer.

- "You left the pub at midnight....", a declarative that does not ostensibly even ask a question, but leaves the witness to challenge if he/she wishes, is maximally constraining.
- "Did you do it?" or "Did you leave at 7pm or 8pm?"—any kind of question that gives a limited number of choices is still clearly constraining: it is very difficult, for instance, to challenge the premiss upon which a question is founded when all the court is interested in is 'just answer the question: yes or no?'.
- "Where were you on the night of the twelfth?"—WH-questions like this are much more open, giving the respondent more scope to tell things their own way.

- "Can you tell the court what happened?"—this kind of 'requestion' is typically used by lawyers to let their own witnesses tell the story comfortably, in their own words.

Danet shows that the more coercive the question, the greater the tendency for short, fragmented, powerless answers. Clearly, then, the interpreter's control of exactly how these questions can be interpreted is crucial.

Linguistic Manipulation

The adversarial contest that the court engages in is also characterised by a degree of linguistic manipulation to control testimony. I will briefly mention two classic examples. The first shows that a skilled questioner can introduce presuppositions that constrain witnesses' answers—and which the interpreter must somehow faithfully maintain. In an experimental study, in which subjects were first shown a short film as evidence, Loftus and Zanni famously showed that the query "Did you see the broken headlight?" produced affirmative responses more frequently than "Did you see a broken headlight?" (Loftus and Zanni 1975). The second example (Loftus and Palmer 1974) showed that asking "About how fast were the two cars going when they smashed into each other?" produces higher speeds in answers than "About how fast were the two cars going when they hit each other?" These examples seem quite clearly to demonstrate the degree of absolute harmony the interpreter must achieve between source message and interpretation in order to be truly unobtrusive or non-distorting in the courtroom.

Linguistic Image

I would like to mention one additional issue to do with linguistic image, i.e., the impression one gives simply through one's own vocal presentation. Matched guise testing—in which listeners are asked to rate various voice styles, without realising that they are actually hearing the same person using different 'guises'—has

shown admirably that dynamic delivery, fast speech rate, lack of pauses and repetitions and 'normal', steady voice quality are all associated by hearers of English with notions of competence, trustworthiness and likeability (Berk-Seligson, 1990:147). Simultaneous interpretation is not the best place in the world to look for examples of such vocal presentation: it is in the nature of the task—given the cognitive processing being done incessantly by the interpreter, for instance—that these qualities are going to be difficult to achieve.

Linguistic image also comes into play here in connection with our lack of knowledge about how different varieties of BSL are viewed and perceived by other users of the language. Are there signed accents associated with, for instance, boredom and lack of inspiration just as there are amongst spoken varieties? We do not know. On the other hand, we do know from accounts of hearers' attitudes to accents of English (see, for instance, Giles 1970; 1971) that the interpreter who happens to have a strong West Midlands accent may be giving out a potentially misleading and damaging impression of the Deaf person whose comments they are giving voice to.

Issues in 'Deaf Courts'

In the following section, I will briefly identify some issues directly related to bimodal interpreting in legal settings. I use the term 'Deaf court' as a shorthand for 'court in which a Deaf person and an interpreter are active participants'.

Eyegaze

As Diana Eades has found in her very illuminating work in courts with speakers of Australian Aboriginal English (Eades 1988; 1992), averting your eyegaze from the court looks evasive. But it is in the nature of signed languages that Deaf people will do so. They will, for instance, be looking at the interpreter when the cross-examining barrister wants to look them in the eye at the point of the crucial question.

And it is in the nature of signed languages that Deaf people will, as far as the court is concerned, lose their eyegaze almost at random into the middle distance if they are ever given an opportunity to launch into any kind of complex narrative answer (the effect of role shifting and use of eyegaze to locate referents, et cetera).

Exchange Norms

Anecdotal accounts from Deaf people suggest that question-and-answer is not a typical form of exchange within the Deaf community, and that longer, more narrative contributions are more common. The constraints of a courtroom system managed in such a manner may serve to disadvantage BSL users (cf. Eades 1988; 1992).

Secondly, because there will usually be one interpreter relaying messages in both directions during any one exchange, at any point where there is overlapping talk (i.e., two or more signed or spoken utterances being made simultaneously), the interpreter is forced to decide whose talk to represent (Roy 1993b). Because there may be two modalities being used at once by two participants, it is perfectly possible for speakers and signers to overlap each other for seconds at a time with no-one feeling uncomfortable—except the interpreter!

Slow Interaction

There will always tend to be a moment between the end of the Deaf person's signed answer, and the start of the next spoken question during which only the interpreter talks. Since the interpreter's presence will introduce a time lag, it will be difficult to aggressively cross-examine the Deaf witness. Of course, no one is supposed to harrass the witness anyway, but attempts are nevertheless

made to do so, and the interpreter's presence introduces a discrepancy between what happens otherwise and what happens in a Deaf court.

As Emmanuel Schegloff (Schegloff 1994), Adam Jaworski (Jaworski 1993) and others have been showing recently, silence plays no small part in everyday spoken interaction, and reactions occurring or not occurring (i.e., silences) at any point in the interaction are a significant element, contributing to the patterns of discourse. In response to a comment about how late one is for work (made in the hope that an offer of a lift might be forthcoming), for instance, a silence can be extremely eloquent. In a 'Deaf court', there are both unusual silences in the lagtime where the Deaf person signs and the interpreter has not yet begun to voice over; and there are 'delayed reactions' by both parties to each other's contributions (i.e., the reaction time is conditioned by the lagtime).

Politeness

Firstly, if, as Berk-Seligson demonstrates (Berk-Seligson, 1990:154—169), politeness is a favourable strategy in court, then interpreters need to know a great deal more than is presently known (precious little) about politeness marking in BSL. Signed languages tend not to have direct person-to-person forms of address. Interaction typically does not begin until eyegaze is established: once it has been established, identifying the addressee by name is superfluous. So when the court is addressing the judge as 'Your Honour', what is the interpreter to do?

Secondly, one aspect of the impersonal nature of much legal interaction is the use of the full names of witnesses and other individuals named in testimony. In a recently observed trial, the interpreter reduced these forms to first name terms. "Did you see Arthur Jones enter the premises?" became "Did you see Arthur enter the premises?" The testimony has been altered, and native-user intuitions at least suggest that the latter utterance is considerably less formal and forbidding. Does this constitute cultural bridging—on

the basis that Deaf people would not use full names—or a subtle but significant adjustment in the court procedures? Certainly this is a question of a type worthy of further attention.

Thirdly, I would like to mention here another phenomenon noted by Diana Eades (1992:8—10) that she refers to as 'gratuitous concurrence'—i.e., answering 'yes' or 'no' to questions without understanding them, just in order to get the business over with. This practice is encapsulated in a BSL sign which might be glossed as nod indiscriminately. This sign relates to a practice widely commented on in Deaf-hearing relations—pretense of understanding of, or wilful disregard for, a message conveyed incomprehensibly, typically due to poor signing skills on the part of a hearing person attempting to communicate with Deaf people—and it seems very likely that it occurs in court as elsewhere.

Anticipating Questions

It is appropriate in BSL interaction to use headshake and nod in anticipation of certain answers when asking questions: but the interpreter who does this without great care will be leaning into or presuggesting the expected answer. Other questions can become problematic due to the unaddressed assumption, even among interpreters, of word-to-word equivalence between BSL and English. Translating the English question "How did you feel about that?", in a sentence using the sign commonly glossed as how, to many BSL users actually means "By what process did you feel about that?"

Indirect Questions

It is commonly reported by BSL-English interpreters that when they interpret English indirect questions—"They asked who was in the shop, and you explained, is that correct?"—into BSL, they are treated by default as if they were in fact direct questions of some sort. This can cause all sorts of problems in question-and-

answer exchange: the response "Sally was in the shop: I've already told you this!" would be the kind of response an interpreter often finds him/herself giving voice to in such a situation.

Visual Encoding

Many people manage, surprisingly frequently, to overlook the fact that signed languages encode meaning visually. Of course, fingerspelling exists, and many Deaf people are quite happy to see interpreters using fingerspelling when no conventional BSL sign is available to them (Sutton-Spence & Woll 1990; 1993). Many other Deaf people, however, are not sufficiently fluent in English to access meaning via fingerspelling in this way.

And BSL is fundamentally a visual language, a point that is made most clearly and followed through most profoundly by Mary Brennan (Brennan 1992). The result of this is that, for instance, in a recent murder trial, the interpreter needed to know how the murder was perpetrated—it was a stabbing—and to render the English word 'murder' with the sign that might be glossed as stab.

BSL is a language that tends not to use umbrella terms like 'vehicle', 'weapon' or 'assault'. Any weapon one could mention in BSL has a lexical form that is consonant with its visual image: any form of assault likewise, and so on. It is impossible to give coherent visual form to the concept of 'weapon' as a category.

BSL is also a spatial language. So if English says "the two cars crashed", the form taken by the signed interpretation will be influenced by the spatial layout—whether the cars crashed head-on, side-on, et cetera. Interpreters are trained to become adept at using the spatial domain—as native signers do—to establish points of reference and to maintain these points throughout a chunk of discourse. In fact, of course, the interpreter, in attempting to process at incredible speed the information coming across to him/her will make what he/she hears or sees fit to his/her mental model of the scenario. This can cause problems. Observation of an interpreted trial dealing with a violent attack revealed a situation in which it was not until the third day of the trial that the interpreter realised

they had consistently reversed the positions of the defendant and the victim. In this instance, it did not become significant, but one day it may.

It is a common strategy among interpreters to solve the problem of visual ambiguity in the English wording (which cannot be sustained in BSL) by offering a series of alternatives. So the interpretation of the English question "How did you get into the factory grounds?" might take the signed form more literally equivalent to "Did you get into the factory grounds by climbing over the wall, through a window, breaking in the door, or what?" The question (specifically in respect of the possible answers it foregrounds) has been altered in the interpretation.

Once again, lack of awareness on the part of the court as to the fundamentally visual nature of the language means that any time when the interpreter has to come out of his/her normatively non-participatory role in order to clarify on grounds such as those noted above, the court is reminded that the interpreter is there and is not a robot undertaking a mechanical task unaffected by the possibility of human error. The interpreter runs the risk of looking incompetent, but the real problem is others' lack of appreciation of differences in the nature of the languages being used.

Co-Construction

One of the interactional issues that is beginning to come to the fore in work on this project is to do with the necessarily multi-party nature of interpreter-mediated interaction. A typical model of 'the best of all interpreted worlds' would have the interpreter utterly unobtrusive and the dialogue continuing as if it were monolingual. But since this is not the case, what are the implications of the interpreter's presence for this as talk-in-interaction in which there are, in fact, minimally three co-actors (Roy 1989; Wadensjö 1992)?

The concept of co-construction, or 'discourse as an interactional achievement', is currently enjoying attention from scholars such as Charles Goodwin (1994), Marjorie Harness Goodwin (1994) and Emmanuel Schegloff (1994) as a central process in social life. Co-construction is conceived as a joining together of participants in the joint production and interpretation of utterances, ideas, and so on. One of the central implications of the idea is that meaning in talk is necessarily not something one person does by themself: meaning is created between producers and perceivers, speakers and hearers. In the interpreted situation, therefore, meanings are in a sense developed and distributed between producer, conveyor and perceiver. What happens if we look into the bilingual, bimodal courtroom for evidence of co-construction?

Well, first of all, there are instances in which the interpreter overtly takes on his/her own persona in what is ostensibly a two-sided exchange between two other people. (Does this affect Deaf people's access to justice? Well, remember, it suits the court to believe that the interpreter is an input-output robot. And remember, the interpreter would not be there but for the Deaf person. So if the interpreter has a problem and becomes 'present', i.e., the robot fails, then in the court's eyes, the root of the problem is somehow connected to the Deaf person.)

Instances in which the interpreter becomes present may include the following (cf. Berk-Seligson, 1990:55—96).

Direct Address

Someone may address the interpreter directly—e.g., "Please ask him how many books he stole."

Anticipating Interjection

The interpreter may interject to anticipate a misunderstanding—e.g., "I don't think I made the question clear"—or to block an irrelevant answer—e.g., "The defendant has responded, but he doesn't understand the question, so his answer doesn't make sense."

Clarification Request

The interpreter may interject to clarify what someone is saying—e.g., "Could you be more specific about the weapon, because it is hard for me..." This may easily be seen as incompetence, an attempt to criticise the speaker's lack of clarity, or an unwarranted taking control of part of the exchange.

Explanation for Approval

The interpreter may interject to explain his/her interpretation: in effect, a way of seeking approval or confirmation from the court that his/her behaviour is acceptable—e.g., "I asked him if he was in contact with his extended family, and I added 'aunts, uncles, grandparents, et cetera.'"

Signed Asides

The interpreter may address 'side comments', in a language that the court as a whole cannot access, to the witness/defendant—e.g., when the witness interrupts a rambling section of explanation by the lawyer, signing not true, not true!, and the interpreter responds (in the midst of signing the lawyer's words) tell him, not me!

Indicating Direct Address

The interpreter may draw attention to what is happening if the witness makes comments directly to the interpreter—e.g., by saying "He says he doesn't understand the question, and he asks me if I understand it."

Unless some strategy (e.g., switching to consecutive interpreting) is found to ensure otherwise, these points are significant because they mark clear instances where the proceedings are abso-

lutely not parallel for both linguistic groups. The co-construction of the discourse is therefore altered: linguistically, something with considerable 'spin' is happening here.

In considering extreme examples of instances where the interpreter makes a self-generated contribution to the interaction, there emerges a sense of the interpreter as the very antithesis of robotic. It becomes apparent that the interpreter is pivotal to the interaction, and in a very real sense is in fact holding the entire conversation alone! After all, it is the interpreter's question that gets answered, and the interpreter's answer that prompts and conditions the next question. Everyone else is left to assume—and they do assume—that they are all engaged in a dialogue with each other, and that they both have access to the same dialogue. This may or may not be the case. In a setting such as a courtroom, where the whole event and its entire process consist of talking, the contribution the interpreter makes towards deciding the direction of the whole undertaking should not be underestimated. The implications of this deserve careful attention[5].

Conclusions

The 1990s have seen something of a surge in attention to issues relating to language and the law. The first issue of a new journal, Forensic Linguistics, has appeared and commences with a valuable synthesis of some of the field's concerns (Levi 1994). A number of major collections have recently been made available (Levi & Graffam Walker 1990; Rieber & Stewart 1990; Gibbons 1994) which are likely to become primary resources. However, it has also been noted (e.g., by Tiersma 1993) that linguistic research on the law may remain underused by the legal profession because linguists are not always attuned to issues that other professionals find significant. Perhaps it is therefore worth attempting directly to highlight some of the practicable implications of the preceding discussion.

A number of pointers towards addressing some of the issues raised in this paper can briefly be set out here. These strategies will not be put into practice overnight: in fact—at least in respect of some of them—one would be wary if they were. The pressure to act now—to get more interpreters quickly, to make everyone aware of what it means to use an interpreter quickly—is so intense that the trade-off of speed against care favours short-cuts and feel-good solutions. This is a false economy: the fact that you can measure its effects in the short term does not mean that an answer is the best available. Instant remedies to profound problems may have propaganda value at best, whilst at worst papering over architecturally fundamental cracks. This point has been unequivocally made by Laster (1990:30):

> "One political danger of quick-fix solutions is that they create the illusion that a problem has been 'fixed'. Yet, in practice they allow government to abdicate responsibility for often more important reforms. Interpreting may be necessary for the community to see that justice is done but the presence of an interpreter will not guarantee that justice is in fact achieved. To ignore this does serious injustice to interpreters and non-English speakers."

The plain truth is that we do not yet know how best to face all of the challenges outlined above. We may have to accept that some of the issues pose insoluble problems. In discussion of bilingual spoken language courtrooms, Morris (1989a:31) argues:

> "The basic dilemma of court interpretation results from the double need for on the one hand dynamism in interaction, and on the other the utmost accuracy in rendering material."

This seems to present as much, if not even more, of a dilemma in the situations dealt with in the present volume. It may simply be necessary to stop trying to navigate around the cartography of the bilingual, bimodal courtroom as if one could use the same old map: perhaps this is a fundamentally different landscape. It would seem

from the accounts in this volume alone that essential features of any programme of improvements to the status quo in this field should include the following:

Awareness

It does seem vital from the foregoing that participants in bilingual, bimodal courtroom interaction should be made aware of the possible outcomes of the linguistic situation that brings the interpreter into the picture. Amongst many possible elements, this should include anticipation, in instructions to participants, of any unavoidable properties of the interpreter's input which might unduly influence decisions: Kathy Laster cites a number of studies arguing that the court system as a whole needs much greater awareness of the linguistic problems inherent in the process of interpretation (Laster, 1990:19). It should also include attempts to ensure that discipline (in the sense of Morris, 1989a:33) is maintained over turntaking and delivery. Thirdly, it is crucial that allowances are made for the additional preparation required by all parties if the interpreting is to be maximally effective[6]. Overall, justice will only be served by a wider understanding that this is a hugely complex set of issues.

> "Legal training needs to be expanded beyond simply 'recipe-like' formulae on 'how to work with an interpreter' to incorporate a self-conscious awareness in lawyers of their objectives in questioning witnesses and the impact which an interpreter might have on their approach." (Laster, 1990:29)

Provision, Recording & Monitoring

In a number of countries, calls for legislation regarding statutory provision of interpreting services where necessary have now been heeded. Of course, in the absence of official recognition of national signed languages as equivalent in all relevant respects to spoken languages, it may be a moot point as to whether such legislation can be made to apply in the case of Deaf people. Together,

these thus become primary goals for any attempt to address apparent shortcomings in the system of provision. Where these are in place, the secondary goal must be to press for certain guarantees of competence in the interpreting. Berk-Seligson reports (1990:216) that, with a failure rate of 96%, no test in the USA is as stringent as the federal certification exam for court interpreters: this is surely laudable. An appropriately comprehensive general education in interpreting may be a first stage: a demand for specialist situation-specific training should not be far behind. Attention ought also to be paid to working conditions for interpreters, covering such matters as the length of time for which one interpreter can reasonably be expected to work alone without mental fatigue detrimental to the functioning of the court.

Due process of law, in the event of an appeal concerning interpretation, cannot be guaranteed by an accurate record of court proceedings, but it is unquestionably impossible in its absence. Only if original testimony in both languages being used in the courtroom is recorded can material be compared, analysed and verified so as to ensure that honest and effective work has been done. As yet, however, not only is there no record whatsoever of any original signed material in the bimodal court in England, Wales and Northern Ireland, but the 1981 Contempt of Court Act actively disbars video-recording equipment from the courtroom. In the current climate of fair concern over standards as sign language interpreting emerges as a profession, this is a dangerous state of affairs that serves nobody well.

Recording of proceedings is imperative in order to substantiate any subsequent claims or appeals: as Berk-Seligson notes (1990:217), the provision of checks of this order can be seen as one test of the seriousness of the commitment the system is prepared to make to due process for the non-English speaking. At the actual time of trial, too, the introduction of basic checks and balances would contribute greatly to the cause of justice. No interpreter should be expected to work in a court of law in which he or she alone is able to gauge the accuracy and efficacy of his or her contributions. However competent that interpreter may be, he or she is also human and may make errors. Monitoring is a vital safeguard and must be carried out by trained persons able to recognise

the difference between a finely judged question of interpretation and one of genuine and potentially significant mismatch between an original and an interpreter's rendition.

Training

As Morris (1989b:10) makes most explicit:

> "legislation dealing with the provision of interpretation does not necessarily of itself guarantee the high-quality interpretation which is a sine qua non for the exercising of the rights thus recognized".

High-level education and training of bimodal interpreters is a relatively recent phenomenon.[7] From the foregoing discussion, it can be seen that the ability to attend to detail and know how to respond appropriately in the complex legal milieu cannot become firmly rooted overnight. To function with anything like truly adequate competence, interpreters must be expected to have the greatest possible general command of the two languages involved, and to know the cultural ground in which they are embedded inside out, as well as possessing knowledge of the stylistic and content norms of the courtroom. Understanding of the operational patterns of the court's business must also be developed so that the interpreter is comfortably familiar with the events unfolding around him or her. Such understanding must be genuinely profound: as Laster (1990:29) puts it:

> "Interpreters need to be made aware of the complexities of the legal system itself, not just the procedures and practices which they are likely to encounter."

In addition, whilst interpreting roles are clearly undergoing reassessment in this field, interpreters should be trained in such a way that they know as well as can be what is required of them, how they should aim to conduct themselves, and the limits of the flexibility and responsiveness to circumstances available to them.

Research

Finally, in the context of a field acknowledged to be so well-endowed with unknowns, primary research of all kinds must continue to be a priority. Approximately 35 years of sign linguistic research have produced a number of major analyses yielding a great deal of significant information concerning the elements and structures of signed languages. Nevertheless, the gaps in understanding and codification continue to be wide and much rests on scholars' collective ability to generate accounts of grammar, lexis and patterns of usage which can form the basis for other types of progress.

Research into interpreting as a process and a practice is also vital in order to expand understanding of both internal (cognitive) and external (interactional) strategies which can produce optimal performance of interpreting duties in the intense, multi-layered environment of the courtroom. Controlled experimental research, ethnographic work and action research can all be seen to have considerable contributions to make to the evolution of ever richer and more detailed descriptive and explanatory accounts. These should in turn provide suitable material for application to address the issues identified above.

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Notes

1. Graham H. Turner is currently a Research Fellow at the Deaf Studies Research Unit in the Department of Sociology and Social Policy, University of Durham. He is a member of the team which compiled the first Dictionary of British Sign Language/English for the British Deaf Association.

2. Under the direction of Dr. Mary Brennan and Professor Richard Brown, the author is currently engaged in such a programme of research. Entitled Access to Justice for Deaf People in the Bilingual, Bimodal Courtroom, the programme is supported by the Leverhulme Trust.

3. It must be clearly stated that this study could not have come together without the co-operation of organisations in the field, including the Association of Sign Language Interpreters (ASLI), the Scottish Association of Sign Language Interpreters (SASLI), the Council for the Advancement of Communication with Deaf People (CACDP), the British Deaf Association (BDA) and the Royal Association in aid of Deaf People (RAD). Individual correspondents, and persons named in examples of court interaction, are not identified for reasons of confidentially.

4. The capital 'D' here is adopted—following a convention proposed by James Woodward (1972) and developed by Carol Padden (1980)—to refer to members of the sign language using cultural minority group.

5. See Brennan et al (1984) and Brien (1992) for explanation of the researcher's notation system which is used as a tool of linguistic analysis; and Thoutenhoofd (1990; 1992) for comparison of writing systems and notation systems.

6. Some initial attempts to draw out these implications can be found in Turner & Brown (forthcoming).

7. A key example of this requirement being taken seriously would be the European Court of Justice where (Heidelberger, 1994:3—4) interpreters are allowed "ample study time to ensure that [they] are well prepared and familiar with the facts of the individual case, the legal issues involved and the working of the court in general."

8. In the UK, the first postgraduate course in British Sign Language/English Interpreting was established at the University of Durham in 1988.