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A legislative theatre study of simultaneous interpretation in legal proceedings

C. Ff. Huws, R. M. Jewell and H. Binks

Abstract

This paper explores simultaneous interpretation in legal proceedings. Using the legislative theatre techniques of Augusto Boal within the specific circumstances of Welsh and English in courts in Wales, the study explores a mock jury's response to experiences of hearing proceedings via simultaneous interpretation. The study explores the impact of the interpreter's presence on the process and considers the extent to which bilingual participants in the legal process are aware of non-bilinguals' different experiences, and the extent to which those who listen to the proceedings via an interpreter may conflate the identity of the party/witness with that of the interpreter. It concludes with a number of recommendations in order to make monolinguals and bilinguals aware of the effects of interpretation and of the interpreter's impact on communication.

Keywords

Welsh Language Act 1993 - translating - courts - interpreters - forum theatre

Introduction

Although many situations involve the presence of an interpreter because different participants speak different languages and cannot understand each other, the legal process – particularly court hearings – is one situation where the need for an interpreter is vital, because a person's rights and freedoms depend on effective communication between two or more people who cannot understand each other. This paper will explore a recent study conducted using the forum theatre techniques of Augusto Boal to explore interpretation in the legal process in Wales. Specifically, it will discuss how the interpreter (who is speaking into a microphone that is picked up by headsets worn by the listener) affects the dynamic of communication exchanges in courts. Much of the research into interpretation in legal settings focuses on consecutive interpretation or chuchotage, and the Welsh context presents a rare and under-explored example of legal interpretation conducted in this technology-assisted manner. Its application is significant in a wider range of other settings, such as public meetings, formal (e.g. police) interviews and the legislative process and a range of other linguistic contexts, especially where simultaneous rather than consecutive interpretation is used, and situations where the use of multiple languages is a freedom of expression right in addition to being in the interests of a fair trial. However,

for this study, we have chosen to focus on the courts, as this is where issues relating to accuracy, fairness, and the need for comparison between two individuals' accounts has the greatest significance, and where the presence of the interpreter may also have a significant effect on how the a witness is evaluated by the court.

Context

The process of simultaneous interpretation is often regarded as mysterious (Torstensson and Sullivan, 2011), and is regarded with '*suspicion, distrust and a lack of respect for the skills which they bring to the job*' (Colin and Morris, 1996: 15). A situation where an interpreter is required often means that the speaker has no awareness of what the listener hears, and the listener hears the voice of the interpreter, without knowing what the speaker said. It is of course particularly true where the listeners are listening to simultaneous interpretation via headsets, but is also a factor where the speaker does not understand the language used by the interpreter, and the listeners cannot understand the language spoken by the speaker.

Often, the concerns expressed about interpretation relate to accuracy (Hatim & Mason 1997: 61), and whether the interpreter renders the words of the speaker correctly. This may be a very real concern, especially when the interpreter is not a professional interpreter (Bancroft, Bendana, Bruggeman, and Feuerle, 2013), and merely happens to be someone who is able to understand the source and target languages. However, allegations of inaccuracy show a disregard for the high professional standards of qualified interpreters, who are able to translate reliably and consistently between two languages (Hale, 2004). In such contexts, the accuracy of the interpretation should not be regarded as a problem. A second concern, and one that is more central to our investigations, is the variation in meaning between two languages that arises from the breadth or the narrowness of the words used, and the emotive impact of the words selected (Dunnigan and Downing, 1995). A pertinent example in the Welsh context is the word *trais*. In Welsh, it used to describe any type of battery or violence, but also specifically to describe the offence of rape. English however has a number of discrete words for battery, violence, and rape, which means that there is no possibility of understanding the general term when the specific term was intended, or vice versa. Similarly, words that have a greater emotional charge, such as *smash* or *ram* may convey more in interpretation than the more innocuous *hit*. The interpreter is therefore required to be mindful of the connotations that arise from the words they select and to be careful to translate the denotations and the connotations appropriately. One concern therefore is how the interpreter translates the words used in the source language.

However, the presence of an interpreter also changes the dynamic of communication in more subtle ways. Inghilleri, for example, explains that 'the very presence of an interpreter can be indicative of an imbalance of power between interlocutors, between an interlocutor and an institution, or both' (Inghilleri, 2012:50). Matters such as:

i. where in the room the interpreter is placed vis-à-vis the speaker and the listener (Aguilar Solano, 2012);

ii. the effect of hearing the interpreter through earphones rather than directly (Wenn, 2015); and

iii. the disjuncture between the interpreter's words and the speaker's gestures, body language, tone of voice, pitch, and accent (Cantone, Martinez, Wills-Esqueda and Miller, 2019);

have all been identified as factors that affect how a listener responds to a speaker. Listeners make judgments - consciously or unconsciously, based on factors such as sex, ethnicity, class, education, race, social status (Frumkin and Stone, 2019), and these may be distorted (positively or negatively) by the presence of a simultaneous interpreter. Accordingly, in legal proceedings, where, necessarily, the listeners (the judge(s) or a jury, are there to judge a person's conduct and truthfulness, the presence of an interpreter may have a significant impact.

The Welsh Bilingual Context

Wales provides an interesting context for the study of interpretation in that Welsh has official legal status within one part of the jurisdiction, i.e. the official status of Welsh is only recognised within Wales, and not within the wider legal jurisdiction that comprises England and Wales. Speakers of Welsh are also bilingual in Welsh and English, and Welsh has a high degree of social prestige and is spoken at all levels of the legal profession. Interpretation is highly professionalised. However, Welsh is a numerically minoritised language. The official status of Welsh (Welsh Language Wales Measure (2011) NAWM 12 s.1.) and the duties imposed by that Act (s.25), combined with the equal status of Welsh and English conferred by the Government of Wales Act 2006 s.78, means that bilingualism and the presence of an interpreter is standard in many formal contexts. Furthermore, a person has a right to speak Welsh in legal proceedings (Welsh Language Act 1993 s.22). However, it is only possible to empanel a jury on the basis of its ability to understand English (Juries Act 1974 s.10).

The Welsh situation also includes a combination of certain features in relation to court interpretation that are not encountered in many other contexts. Firstly, some participants in the process, including lawyers and judges, as well as jurors are able to understand both the source language and the interpreter. In many other contexts, particularly those where the speaker is not speaking a language that has official status, the other participants will not be able to understand the source language and

will rely solely on the interpreter. In situations where individuals do understand the speaker, but that language does not have official status, there continues to be a tendency, and in some cases a requirement, that the participants listen to the interpretation rather than to the direct speech. Indeed, in the American case of *Hernandez v New York* 500 US 352 (1991) Spanish-speaking jurors were disqualified because of their potential to understand the evidence directly rather than via the interpreter, thus creating the possibility that different participants would hear different versions of the evidence. This is problematic in monolingual jurisdictions where there may be concerns regarding the fairness of such an approach, and it is particularly problematic in bilingual jurisdictions, because the two languages are equally valid. In Wales, therefore, participants are able to listen to the source language if they are able to understand it, or to listen to the interpretation if they require. Secondly, interpretation is conducted simultaneously rather than consecutively, with the interpreter speaking quietly into a microphone, and those participants who require the interpreter listening via headsets. The use of technology-assisted simultaneous interpretation is comparatively rare in courtroom settings where there is a general tendency to favour *chuchotage* (for the individual participant who cannot speak the language of the court), or consecutive interpretation (as in the Republic of Ireland), where interpretation is provided for multiple participants. However, simultaneous interpretation is used very extensively and effectively in multilingual legislative settings, and in this sense, it is surprising that other jurisdictions do not adopt this approach in courts as well. Thirdly, interpretation is provided for all participants, rather than solely for the defendant. In other contexts where simultaneous interpretation is used, it is done through a process called *chuchotage*, where the interpreter provides a whispered interpretation for the person who does not speak the language of the court. A fourth consideration, explored below, is that it is becoming increasingly common for interpretation to operate on a two way basis – Welsh to English and English to Welsh. The official status conferred upon Welsh by the Welsh Language (Wales) Measure 2011 means that there is an increasing awareness of the fact that translating from Welsh in to English, but not vice versa does not treat the two languages equally – as it suggests that Welsh is the ‘problem’ to be corrected, rather than an equal official language.

Wales’s model of interpretation in legal proceedings draws, however, upon the practices of international organisations such as the European Union, where there is an expectation that proceedings will be multilingual, rather than operating monolingually but with adjustments being made for the person who requires an interpreter. The model of bilingual legal proceedings in Wales therefore offers a valuable opportunity for comparing the experiences of listening to direct speech and interpreted speech, and also for comparing the interpreted speech of one speaker and the

interpretation of a dialogue between two or more participants. This provides an opportunity to understand the perceptions of monolingual speakers, monolingual listeners, and bilingual speakers and listeners in relation to interpretation, in order to be able to evaluate the impact of interpretation on court proceedings more effectively.

Literature review

A number of studies into interpretation in courts have of course been undertaken previously. Berk-Seligson's work, *The Bilingual Courtroom: Interpreters in the Legal Process* (Berk-Seligson, 2002) on the role of the interpreter in the United States has provided a valuable catalyst for much of the subsequent research into interpretation in the courts in diverse jurisdictions such as South Africa, (Lebese, 2015), Australia (Hale, 2004), and Kenya (Odhihambo, Kavulani and Matu, 2013) as well as studies by Wadensjö (2008), Shlesinger & Pöchhacker (2010), and Angermeyer (2015). Berk-Seligson's ethnographic research into court proceedings highlighted many hitherto unconsidered issues, such as the assumptions made by monolinguals regarding the extent of what is capable of being rendered in another language, and the perceived status of the interpreter in the legal process. Her approach is discourse analytic, and she explores how interpreter, speaker, and listener communicate in American courts.

Since then, a number of studies have been undertaken into interpretation in legal and other situations. Studies in the United States, Hong Kong (Cao, 2017), and Spain (Vigier Moreno, 2017) have been particularly common. Canada is often cited as the ideal comparator in terms of official bilingualism, and New Brunswick was the model Wales looked to when bilingual legislation was first introduced, but the high levels of professional bilingualism in some Canadian jurisdictions, and the Constitutional status of English and French provides more scope for cases to be understood in the source language (Hudon 2017:7), without there being a need for an interpreter.

Nevertheless, there are a number of other bilingual systems, such as Ireland and Finland, where the patterns of legal bilingualism (a minority language having official equal status with a majority language) have more commonalities with those encountered in Wales. Fewer research studies have been published in these contexts, although significant issues have been raised in judicial commentary (*O Cadhla v Minister for Justice and Equality and Others* [2019]). Judicial comments have focused on attitudes towards non-speakers of the dominant language (*O Cadhla* [2019]); the need for high-quality interpretation (*Mohammed v Breish and others* [2020]); and attitudes towards those who use an interpreter, especially where it is felt that they are able to speak and understand the State language (*Republic of Djibouti and others v Boreh and Others* [2016]).

Hong Kong is another valuable comparator, because, like Wales, there is a right, predicated on linguistic equality in addition to a right, as a matter of fairness, to a trial in a language one understands. Also, unlike many jurisdictions where participants are often monolingual, trials in Wales and Hong Kong involve situations where some participants are bilingual, while others are monolingual creating a disparity in relation to what is required from an interpreter (one-way or two-way interpretation) and why interpretation is being provided. In Hong Kong and Wales, interpretation is not solely for the purpose of facilitating communication between parties, but also to enable a person who is bilingual to communicate in a language they have a right to speak. Ng's study (2018) 'Common Law in an Uncommon Courtroom' explores how different participants participate in interpreted trials, (2018: 5) in that some participants will understand what the interpreter is saying, and will therefore hear the evidence twice, while others will hear in only once.

Hong Kong, however, is not a precise comparator, as Ng explains that English is the language of the administration (Ng 2018:21), while lay participants will speak Cantonese. In Wales, users of Welsh are often bilingual, and those who use Welsh in court do so because it is a freedom of expression right, and interpretation is provided to enable them to speak their preferred language, and for monolinguals to understand that language. The model of interpretation used in Hong Kong – a combination of technology-assisted simultaneous interpretation and chuchotage – differs from that of Wales where simultaneous interpretation has been normalised.

Other valuable work in this field has been undertaken by Angermeyer (2015) and Wadensjö (2008). Both of these focus on the linguistic pragmatics of interpreter-mediated interaction, and the impact that an interpreter has on legal proceedings. Angermeyer's focus is on how a person speaking via an interpreter is perceived by the listeners, particularly when monolinguals are likely to evaluate a speaker negatively if he or she speaks a little of the language of the court, or codeswitches depending on context. Angermeyer explains (2015:10):

Against this expectation of monolingualism, any use of English, however minimal can be seen as deceitful, but so can not speaking English if other participants have evidence of the litigant's L2 proficiency.

Angermeyer also cautions about the fragmentation of interaction where there is an interpreter present (2015: 204) . Where consecutive interpretation is used, the fragmentation is apparent, in that the speaker and the interpreter will alternate their speaking. However, the fragmentation also occurs in

situations involving simultaneous interpretation, as the gestures and demeanour of the speaker are not matched by the words of the interpreter. Angermeyer therefore emphasises the subtractive character of the interpreter's presence – the interpreter takes away some of the non-verbal cues to meaning that two people who speak the same language will understand. By contrast Wadensjö explores the additive influence of the interpreter – their eloquence may conceal the speaker's lack of precision (2008: 74). Wadensjö also explores the interpreter's difficulty in conveying cultural differences between two languages, and that things that may be legitimately expressed in one language, may be more controversial in another. She therefore questions the interpreter's neutrality, and concedes that although the interpreter is neutral in the sense of not favouring one party over another (i.e. disinterested), he or she is not neutral because as an interpreter he or she does alter the dynamic of the conversation (2008: 285).

However, generally research on court interpreting has been based on observational studies where the author is able to comment on what they perceive, but, unlike in our study, participants have no opportunity to explore and to experiment with different models. Calsamiglia Madurga and Cubells Serra (2016) explain that qualitative research is essentially passive – the observer merely observes what the situation is. The advantage of our approach, using the forum theatre techniques of Augusto Boal is that the participants are asked to comment on their experiences and explain what alterations could improve an unsatisfactory situation.

Our study seeks to bring a new dimension to this process, by allowing participants to comment on what might be changed, and to experience how those changes may operate in practice. For this reason, we employed the forum theatre techniques developed by Boal (1998 and 2019), a technique variously referred to as theatre of the oppressed (because it gives a voice to those not normally heard) or legislative theatre (because it explores how the law may be changed). We do so in order to:

- demonstrate how interpretation operates in a courtroom context,
- allow the participants to comment on their experiences of interpreting, listening to interpretation, and being interpreted, and
- to suggest what might be changed, and to test these possible solutions for their workability.

It is also particularly attractive in the context of research into courts in the United Kingdom, as recordings of trials are not readily accessible for the purposes of research, and it is not therefore possible for research participants to listen to recordings of existing trials and comment upon them.

The research is led to a far greater extent by the participants' perspectives on what is problematic, and their suggestions on what could be changed.

Boal's forum theatre techniques have been used in a wide variety of contexts from geography and urban planning (Parker, 2018) to bystander intervention training in order to prevent gender-based violence (Mitchell and Freitag, 2011), as a way of going beyond what is, to exploring what could be. It has been used successfully in a number of contexts, including training communication skills for trainee medical practitioners (Himida, Nanjappa, Yuan and Freeman, 2019), tackling workplace bullying (Edwards and Blackwood, 2017) and peacebuilding in conflicted locations (Ganguly, 2010). Its particular forte is that it gives a voice to those who are seldom asked about their experiences, and those who are recipients of a service, rather than agents. However, by playing through the scenes, people are also better placed to understand why particular processes operate as they do, even though they may be imperfect, as they may be the best available, given the existence of other considerations or constraints.

As a consequence of not being constrained by existing rules and practices (and assuming that these are the only solutions to a legal problem) it allows all the participants in the experimental legal process to have agency in considering how the process operates from their perspective, and to articulate their experiences and how these may be ameliorated. The theatrical setting means that they have permission to give voice to their concerns and to identify inconveniences (which would be suppressed in a real court) and to suggest different ways of operating (which would not even be countenanced in a real court).

Boal's approach involves performing a scene – in this case the cross-examination and re-examination of witnesses in a criminal trial – and allowing the participants to identify problems and to suggest solutions that are then implemented. The scene is then re-played incorporating the changes and with further opportunities to suggest alterations. No suggestion is dismissed. Every suggestion is played through in order to explore its impact on the different participants. Everyone is permitted to interject by explaining how the situation may be better from one person's perspective but worse from that of another. In our study for example, one suggestion was to put the interpreter adjacent to the speaker, but this proved to be very distracting for the speaker who could hear their own voice, but also their evidence rendered in the voice of the interpreter.

Study

In order to explore the issues surrounding the role of an interpreter, and the impact that the presence of an interpreter has on communication between a speaker and a listener, the following study was devised. One of the features of forum theatre as a research technique is that the issues that emerge are

led by the participants rather than by the researchers, and therefore our principal research question with this study is how do participants in a bilingual mock-trial involving simultaneous interpretation interact with each other? It was then a matter for the participants (the witnesses, the lawyers, and the mock-jurors) to identify areas of concern, and to suggest possible alternatives. However, we identified possible areas where discussion could arise, namely:

- The extent to which the jurors conflate the source speaker with the interpreter, and therefore evaluate the behaviour of the interpreter rather than the speaker;
- The extent to which jurors' comprehension is affected where one interpreter interprets the speech of both questioner and respondent who are speaking the same language;
- The witness's sense of participating effectively in situations where the jurors and the lawyers are listening to the interpreter rather than them;
- Jurors' evaluations of evidence heard via headphones compared with evidence that is heard directly i.e. with one's own unaided senses.

The central focus of our study was a staged court involving the cross-examination of two witnesses, one speaking Welsh and the other speaking English, and thus necessitating the involvement of a simultaneous interpreter. We wished to avoid asking the jurors to evaluate whether or not a witness was telling the truth, and therefore we devised scenarios where both witnesses were presenting conflicting accounts of the same event, where the issue was concerned with which one was more credible, as opposed to which one was more honest.

Scenario A concerned the evidence of a witness who had been injured in a road traffic accident. The victim's evidence was that she had been injured because the defendant was driving too quickly, given the weather conditions and the time of year. She argued that he did not have his headlights switched on. The defendant's evidence was that he was driving at a speed that was consistent with other road users. His evidence was that he had turned from an urban main road into a narrow side-street with overhanging branches, where there was no pavement. As the victim was wearing dark clothing and was not therefore easily visible, her failure to look for oncoming traffic before crossing the road was the cause of the accident.

Scenario B concerned an automatic checkout operator who had seen a witness place goods into her bag without scanning them on the automatic checkout. The incident occurred in a reasonably busy area of a supermarket, and therefore there was a possibility that the witness's view may have been obstructed. The defendant's argument was that they had scanned the goods, and had failed to realise

that the machine had not registered the purchase. In both cases therefore, both parties could be regarded as giving honest, but potentially mistaken evidence.

The witnesses were performed by two professional actors. The advantage of this is that actors, by virtue of their training, would be comfortable to replay a scene several times, and to do so in a consistent manner. They could also be asked to perform the scene in a different way, for example by heightening the emotion.

We wished to emphasise the experimental nature of the process and therefore decided to use a theatre space rather than mock, or real court facilities. Therefore, a theatre studio was used, but arranged as far as possible to resemble a court. The witnesses were cross-examined and re-examined on their statement of evidence by professional lawyers. In both scenarios, one witness gave evidence in Welsh via an interpreter, while the other spoke in a language that the participants understood i.e. English. We feel that exploring how participants respond to interpreted evidence in a playful setting may reveal problems, and possibly prejudices that may not otherwise be discussed or disclosed.

For Scenario A, interpretation was undertaken on a one-way basis i.e. what was said in Welsh was translated into English. This has been the standard practice in Welsh courts since 1967 (Welsh Language Act 1967 s.1) on the basis that Welsh-speakers are regarded as being bilingual, and are not regarded therefore as requiring interpretation of what is said in English into Welsh – although the actor participants in our study commented that they found it difficult to listen to a question posed in English and answer it in Welsh. This creates three possible variables for the jury to consider. Witness 1 would be questioned in English but would give her reply in Welsh, thus creating the situation where the English-speaking jurors would listen to the question in the source language, and answer via the interpreter, while the Welsh-speaking jurors would listen to both the question and answer in the source language. Witness 2 would be questioned in English and reply in English, and thus be heard in the source language by all the jurors. Witness 1 would be re-examined in Welsh and would respond in Welsh. This created the situation where the Welsh-speaking jurors would hear the speakers in the source language, but the English-speaking jurors would hear both the questioner and the witness being interpreted into English by the same interpreter.

Scenario B replicates the emerging practice in court proceedings in Wales (Welsh Language Tribunal (2019) Practice Direction No, 2) namely two-way interpretation. What is said in Welsh is translated into English, and what is said in English is translated into Welsh. This gives new variables to explore. Firstly, those who understand Welsh are given the experience of listening to evidence via an interpreter, and more specifically the experience of having to switch between source and interpreted speech. This means that whereas with scenario A they were able to hear all the evidence directly, two-

way interpretation enabled them to experience the monolingual listeners' understanding of the process. Secondly, it is possible to compare the evidence given in the source language, and the evidence given by the interpreter. Thirdly, it is possible to explore how a jury distinguishes between the questioner and the witness when both are interpreted by the same interpreter, and what is required in order to make this meaningful. In scenario B, therefore, witness 1 spoke English. He was cross-examined in Welsh and re-examined in English. Witness 2 spoke Welsh, was cross-examined in English, and then re-examined in Welsh.

A call was made for volunteers to act as jurors. In order to select a pool of participants from a variety of age-groups and backgrounds, invitations to participate were sent out to public sector organisations in the locality. Those who work for these organisations would be familiar with proceedings being conducted via an interpreter because of the organisation's obligations under the Welsh Language (Wales) Measure 2011. 12 participants volunteered to take part in our study, and as this approximates the number of people selected for a jury, we did not consider it necessary to select from this pool of applicants.

Forum theatre involves a joker (a theatre director), who facilitates the discussions and encourages the participants to explore their responses to a situation. The director we appointed has worked extensively with theatre-in-education projects, but has also worked on bilingual projects involving the use of English and British Sign Language. One recent project involved English-speaking hearing performers and deaf British Sign Language-speaking performers playing counterpart characters. The project therefore necessitated the use of interpreters to facilitate communication between the performers in rehearsal. The equality of status and opportunity to participate was crucial to the rehearsal process, especially as both pairs of characters had to resonate and communicate with each other because they were playing the same character in the performance. We invited professional interpreters to interpret the proceedings. These were selected from Cymdeithas Cyfieithwyr Cymru's (Wales's training and accreditation organisation for translators and interpreters) directory of accredited court interpreters. We could be confident therefore of the quality of the interpretation they produced.

The findings

A number of findings emerged from the process, and we feel that this process of experimentation with real events reveals insights that are unlikely to have been foreseen from undertaking purely theoretical explorations.

a. There is a need to prepare witnesses for the experience of courtroom interpretation

One of the most startling and significant findings of the study was the understanding that there is a need to prepare participants more effectively for the experience of giving and hearing evidence via an interpreter. Jurors in court proceedings in England and Wales are shown a video explaining to them what to expect in legal proceedings, but this video makes no reference to proceedings conducted via an interpreter and no explanation is provided regarding how hearing an interpretation via headphones differs from hearing something in an unmediated way. We argue that this is based on the assumptions that are made by speakers and listeners regarding the nature of interpretation, namely that bilinguals assume that those who rely on the interpreter are also able to understand the speaker, as they themselves do, and that monolinguals are unlikely to be aware of the mental processes involved in switching between two languages used within one social context.

Research into bilingual codeswitching (Antonio Martinez, 2014:207) indicates that fluent speakers of two languages are not necessarily aware that a switch in the language being used has occurred. However, for the person who is monolingual the change of language is far more evident in the situations where the questioner asks a question in one language, and the respondent replies in another - quite simply, they understand the one but not the other. There is also of course a change in the medium of communication - the questioner is heard in the source language, while the witness is heard via the interpreter. This has a number of consequences, the significance of which the listener must be prepared for by the court personnel. These include for example the need to explain the differences between hearing unmediated speech and listening via headsets.

A particular factor that arises in jurisdictions where simultaneous interpretation is provided electronically rather than via chuchotage is that there is a variation in the nature of the sound heard directly and that heard via headphones. Direct speech i.e. speech heard without technical mediation, rather than through headphones, is richer and stronger, whereas the quality of material heard through electronic transmission will sound more muffled and tinny. The interpreters in this study conceded that the quality of the sound heard through the headsets used was adequate, but by no means excellent. This is because, in addition to the interpretation being audible, the headphones must be wireless in order to be capable of being used in a large space without obstructing access. They must also be robust, and sufficiently transportable to be capable of being transported to courts, tribunal venues, police stations and other contexts where interpretation facilities are required. Therefore, the equipment, which is similar to that used for audio tours in museums and galleries, provides the best possible sound quality given these additional requirements and constraints.

- It is also to be remembered that during courtroom cross-examination, the listener will have to switch between listening to the questioner in the source language, and to the witness via the

headphones, on a frequent basis. This is something that is likely to require patience, as well as additional time being allowed to allow the transition between wearing and removing the headphones to take place.

The switch from direct to interpreted speech has a number of consequences. It must be remembered that the witness will NOT be able to hear the interpreter. It is possible therefore that the witness, when speaking, will overlap with the speech of the interpreter. Other participants in the process - the judge in particular, but also the witness's own legal representative will be able to hear and understand the witness directly. Where they interject with questions, therefore, this may overlap with the interpreter's interpretation of the witness. This will make it difficult for the listener to follow what is being said. This added complexity is something that must therefore be borne in mind by the bilingual participants, and explained to the listeners before the hearing commences.

Furthermore, the presence of an interpreter can also cause a slight delay in the transmission of the communication. Where two-way interpretation is used, as in Scenario B of our study, the delay occurs between the questioner asking the question and the witness providing the answer. This is particularly problematic with simultaneous interpretation, as with consecutive interpretation it will be more apparent that the delay between the question and the answer arises because the interpreter is having to interpret the communication. Again, this is something that will need to be explained.

Where interpretation occurs on a one-way basis, there will be a delay between the questioner asking the question, and the witness rendering the question into the language they will use to give their answer. For example, in Welsh, there are different forms of 'yes' depending on whether the speaker is indicating 'yes I was,' (*oeddwn*) 'yes I am' (*ydw*), 'yes it is' (*ydy*) etc. When responding to a question such as 'were you wearing dark-coloured clothing?' the witness would therefore have to think about which form of yes would be appropriate in Welsh as a response to that question.

In either context, the effect is that the witness will delay before answering the question. However, where a listener is not aware of the fact that the delay is attributable to the interpretation, they may construe the delay according to the cultural conventions of monolingual communication in English, and attribute it to evasiveness, untruthfulness or unreliability. This emerged from some of the monolingual participants' comments on the process relating to how the witness seemed uncertain of their facts when subjected to cross-examination, while the bilingual participants were able to identify that it was the interpreter who was pausing while the speaker was not.

All these factors mean that, even though the interpretation may be accurate, listening via an interpreter is a different experience from hearing evidence directly, and this must be explained to participants in court proceedings where an interpreter is used. There is a danger that, without an adequate

understanding of the process of interpretation, jurors may react negatively to the speaker and doubt the reliability of their evidence, simply because they are not sufficiently aware of how interpretation affects the proceedings. Our first recommendation is therefore to ensure that the process of interpretation is explained to jurors in order to make them aware of how this may affect their evaluation of the speaker.

b. Bilinguals benefit from listening to interpretation.

The second of our recommendations builds on the first. Most of the bilingual participants in this study had experienced situations where interpretation was used, but because they were bilingual, had not felt any need to listen to the evidence being translated by the interpreter. However, Scenario B of our study, which involved bilingual speakers listening to evidence given in English being translated into Welsh made bilingual speakers more acutely aware of the difficulties of communication when evidence is being given via interpretation. When our Welsh-speaking participants listened to the evidence translated into English, they became more aware of how different the evidence sounded compared with what they had perceived previously. They commented for example on how they felt more disconnected from the speaker, and on the difficulty of switching between unmediated listening and listening via headsets. Our second recommendation is that those who are able to understand the evidence directly, should also encounter the experience of listening to that evidence via an interpreter. Our study indicated that when a witness was giving evidence in language A, and the juror-participants were listening to the interpretation into language B, the bilingual participants were more aware of what the witness might be saying, compared with what was being communicated by the interpreter. In other words, the disjuncture between the speaker and the interpreter and the fact that when the juror-participants were listening to the interpreter they were not hearing the speaker made bilinguals aware of how absent the interpreted person is in the proceedings – no-one but the interpreter hears them. We recommend, therefore, that those listening via an interpreter also have the opportunity to hear evidence given via interpretation in a source language that they DO understand, but mediated by the interpreter. We feel that this will enable listeners to acquire a better understanding of the distinction between the interpreter and the speaker, in order to make listeners aware of the fact that although they imagine that they are listening to the source speaker, the voice they hear is that of the interpreter.

A further aspect that emerged from the situation where bilingual participants listened to the simultaneous interpretation of evidence they were able to understand in the source language was the cognitive dissonance that is encountered by being able to hear two languages one understands simultaneously, and therefore having the desire to hear both (Monsell, Lavric, Strivens and Paul,

2019). Where two languages are being spoken and one understands only one, it is plausible to tune out the other in order to focus on the information that is relevant to us. We therefore recommend that monolingual listeners should listen to an interpretation of evidence given originally in a language they already understand, and that bilinguals listen more frequently to evidence given via simultaneous interpretation in order to acquire a better understanding of the experience of interpreted proceedings from the viewpoint of the speaker.

c. The speaker and the interpreter in legal proceedings

Our study also indicated that listeners tend to conflate the speaker and the interpreter, and to conflate the speaker's voice with that of the interpreter. This occurs in part because conventionally the interpreter will speak in the first person, rather than interpret using the third person (Vranjes and Brône, 2021). This finding is something that has a number of important consequences, particularly in legal proceedings where the fairness of the process is of crucial importance. It is particularly important where simultaneous interpretation is used using the model operative in Wales because the listener will be able to see the speaker, but hear the interpreter. A male interpreter in our study commented for example:

'people often tell me that I was drawn to look at you not the actual speaker, because I knew it was you that was talking.'

Research into communication (Giles and Powesland, 1975) indicates that people respond in different ways to different qualities of voice based on factors such as accent, timbre, and pitch, and crucially, also make judgments on a person's character based on such evaluations. De Jongh (1991:292) explains for example:

In court, the speaker's style and level of language must be maintained by the interpreter. An interpreter who "cleans up" and edits a witness's testimony ... is giving the jury an inaccurate verbal portrait of that person.... Likewise, if the speech of an articulate, erudite individual is rendered with grammatical errors and slang terms, the interpreter is not interpreting accurately, and such situations could eventually result in a mistrial.

This may be positive (the interpreter may sound educated, calm, and by virtue of the fact that they are whispering, soothing) or negative (the interpreter's neutrality may reduce the emotive impact of what is being said) in its effect on the listener. Where simultaneous interpretation is used, listeners

must be made aware of the fact that the voice they are hearing is that of the interpreter, and not the speaker, and that they must be aware of the evaluations they may make on that basis. This has significant implications for the fairness of the process because there is a danger that the speaker may be judged according to the court's evaluations of the interpreter. Further research is therefore required in the Welsh context into whether the interpreter should therefore match the speech patterns of the speaker, and whether characteristic identifiers such as age, sex, and accent should be matched between the speaker and the interpreter.

Evaluations of truthfulness may also arise from how listeners perceive pauses, hedges and hesitations (Jones and Strange, 2019), and may also be based on evaluations of diction, grammar and vocabulary – even though many may be unaware of such biases in themselves (Frumkin and Stone, 2019: 127). A discussion between the participants and one of the interpreters explains the following (1):

- (1) PARTICIPANT: In the end you're relying on how good the translator is
INTERPRETER: And how the translator puts it over.

Frumkin and Stone (2019:136) discovered for example that *'high status accents were regarded more favourably than low status accents'* and identified that a speaker having an 'adult' voice (as opposed to a childish or elderly voice) increased listeners' perceptions of competence as witnesses. The education and training of professional interpreters, and the oral fluency that is a defining characteristic of their work, means that interpreters are likely to be from the *'respected formal speech groups'* described by Frumkin and Stone (2019: 137), in a way that cannot as readily be assumed in relation to other participants in the court process. An unreliable witness may therefore be regarded as being more truthful simply because they are interpreted by a softly-spoken and articulate interpreter.

The fact that the listeners were evaluating the interpreter rather than the speaker became apparent in our study when we varied the cross-examination of the female witness in scenario A. In the first performance of the scene, she was interpreted by a male interpreter. The participants accepted this, and noticed nothing unusual in the fact that they were seeing a woman, but hearing a man. However, one of the suggestions for variation of the scene was for the female witness to be interpreted by a female interpreter. At that point, it became apparent that in the previous iteration of the scene, they had conflated the speaker and the interpreter. The participants evaluate the evidence of the female witness, but their evaluation is based on their judgment of the male interpreter's voice and demeanour. In cases involving offences against the person, and in particular sexual offences, the difference in the speaker's identity and that of the interpreter may be highly significant. The child witness being

interpreted by an adult interpreter is perhaps the clearest example of this dichotomy. However, the slight witness being interpreted by a deep-voiced interpreter, or a burly witness being interpreted by an interpreter with a light and delicate voice may lead to very different evaluations of their culpability or their victimhood. Further research into this aspect is needed, and explorations into undisclosed evaluations of sex, age, and background will require sensitive handling. In our study, one of the lawyers indicated (2):

(2) 'hearing the evidence translated by person of the same sex was a slight game-changer for me, and in future I would advocate that we match up the sex of the actual players.'

However, this aspect of our experiment also demonstrates another crucial point - unless it is made clear to listeners, and that they are reminded of that fact, they will conflate the speaker and the interpreter, and exacerbate the speaker's feeling that their story is not being listened to. Further experimentation is required, however, in order to explore how to overcome this problem of speaker-interpreter conflation. Our study experimented very briefly with the possibility of placing the interpreter near the speaker in order to emphasise to the listener that they are different people. This was problematic for the speakers because they were distracted by the interpreter's voice interpreting what they themselves were saying. It was also problematic for the listeners who could see two different speakers simultaneously.

In our study, the interpreters themselves also indicated a preference for being in a separate interpretation booth, to minimise distractions and extraneous noise. They also regarded themselves as being external to the process - neutral facilitators rather than participants, and they felt therefore that being positioned close to the speaker would cause them to be perceived as being on the speaker's 'side' rather than merely interpreting what the speaker is saying. However, as this study demonstrates, the interpreter IS a significant part of the process who alters the process in ways that are neither readily apparent nor measurable. Our study demonstrates that these issues need to be addressed and explored in order to ensure that a satisfactory solution that provides fairness for the parties is developed.

d. the role of the interpreter

A further observation concerning the process of interpretation related to the number of interpreters. Commonly, according to the interpreter-participants in our study, only one interpreter is used in bilingual court proceedings, even though Gile (1997) indicates interpreters should only be asked to interpret for 20 minutes at a time, and that it is very difficult for an interpreter to switch both source

and target languages within one session of interpretation. Our participants indicated, however, that, where they translate for court proceedings, it is routine for them to be asked to interpret for as long as is required. It is also common, they said, for interpreters in bilingual legal proceedings to be asked to interpret both ways - from language A into language B and from language B into language A. This is something that they reported being asked to do more frequently as Wales moves more towards a two-way model of interpretation.

e. *Two-way interpretation*

The number of interpreters retained for the purposes of a bilingual court process reveals a number of further considerations, particularly where two-way interpretation is used. Part of our study involved the legal representatives asking questions in language A, and the witness responding in the same language. Where this occurs, the fact that both questioner and respondent are being interpreted by the same interpreter means that it is difficult for the listeners to distinguish between the two speakers. In our study, the interpreter resorted to varying the speech style, and inserting longer pauses between the questions and the answers.

Our study involved a fairly simple scenario where conversational turn-taking was possible - the legal representative asked the question, and the witness gave their response without being interrupted by the legal representatives. Further experimentation is needed, however, into the situation where the cross-examination and re-examination are more sustained, and where the legal representatives and the witnesses interrupt each other, or where contradictions and interjections are added. We envisage that such an exchange, conducted via a sole interpreter, may make it very difficult for a jury to follow exactly who is saying what. One of the interpreters who participated in the project commented (3):

(3)

‘that’s not so much a matter of language as a matter of tone, trying to, especially perhaps with one language, of trying to give the impression of two people speaking, so I did make a conscious attempt to vary my tone there – making you [the questioner] very aggressive I think.’

The problem of using only one interpreter can also affect a jury's understanding of legal proceedings where the same interpreter interprets for several witnesses consecutively. The fact that different witnesses will have the same voice - that of the interpreter - will make it difficult for a jury to distinguish between the evidence given by different witnesses. The cost saving advantages of

engaging only one interpreter overlooks the difficulties this creates both for the interpreter and the listener, and further work is needed in order to identify what the optimum number of interpreters should be.

The findings of this research raise the question of whether a simultaneous interpretation model is to be preferred over a consecutive interpretation model. The issues of speaker-interpreter conflation, and the situation where some participants hear the evidence directly rather than via the interpreter are avoided with the consecutive model. However, this makes the trial process lengthier, and there is the possibility that damaging evidence may be heard twice by those participants who are bilingual. It also impedes the flow of the evidence; the structuring of the narrative is interrupted, and the quick interaction of cross-examination and response is impeded. We propose, therefore, to undertake further experimentation into comparing the two modes and explore how participants respond to the different models. The difficulty is that in real life situations, participants will only hear one version or the other, and presume that that is the most appropriate. However, we consider that exploring both will enable a better understanding of what the advantages and disadvantages are from all participants' perspectives.

Conclusion

Our study demonstrates that a theatrical process can reveal new insights into legal discourse. We also feel that the nature of court interpretation in Wales offers valuable insights that may be applied more generally, particularly if simultaneous interpretation is used. The fact that this was not a real scenario, and that the witnesses were performed by actors enabled the participants to explore their assumptions and their responses, but also to voice aspects of the process that they found interesting, curious, or problematic. One of the Welsh-speaking participants commented for example that she felt more of a pull towards listening to the original Welsh speech even when she was listening to the English interpretation. This is something that would not be discoverable in a real setting, where the processes of the legal system are presumed to be appropriate and unchangeable. The opportunity to explore what would happen if alterations were made to the scenario revealed some interesting new insights.

The cross-pollination between lawyers, the lay public, and theatre practitioners also enabled us to discover what one discipline may learn from the other - in theatre, the role of the interpreter is to facilitate a two-way dialogue between groups of people who cannot communicate with each other, and the interpreter is there to assist that. In courts, there is a danger that the interpreter speaks over, and for the speaker, and thus excludes the speaker from participating in the process. However, the

interpreter must be seen as a more integral part of the process, speaking with the speaker, being part of the communication process, rather than an adjunct to it.

Finally, it must always be remembered that the over-arching duty of the legal system is the principle, enshrined in Article 6 of the European Convention on Human Rights and Fundamental Freedoms 1950:

*In the determination of his civil rights and obligations or of any criminal charge against him, **everyone** is entitled to a fair and public hearing.*

Cases involving interpretation must not be exempted from this.

References

- Angermeyer, P.S. (2015) *Speak English or What? Codeswitching and Interpreter Use in New York City Courts*. Oxford; Oxford Studies in Language and Law.
- Antonio Martinez, R. (2014) "'Do they even know they're doing it? Exploring awareness of English-Spanish code-switching in a sixth-grade English-language arts classroom.'" *Bilingual Research Journal* 37(2): 195--210.
- Bancroft, M., Bendana, L. Bruggeman, J. and Feuerle, L. (2013) 'Interpreting in the gray zone: where community and legal interpreting intersect.' *Translating and Interpreting* 5(1): 94--113.
- Berk-Seligson, S. (2002) *The Bilingual Courtroom: Court Interpreters in the Judicial Process*. Chicago and London; University of Chicago Press.
- Boal, A. (1998) *Legislative Theatre: Using Performance to Make Politics*. Routledge, London.
- Boal A. (2019) *Theatre of the Oppressed* 3rd ed. London, Pluto Press.
- Calsamiglia Madurga, A. and Cubells Serra J. (2016) 'Forum theater's potential as a research tool.' *Athenea Digital* 16(1): 189--209.
- Cantone, J., Martinez, L.N., Wills-Esqueda C. and Miller, T. (2019) 'Sounding guilty: how accent bias affects juror judgments of culpability.' *Journal of Ethnicity in Criminal Justice* 17(3): 228--253.
- Cao, D. (2007) *Translating the Law*. Clevedon; Multilingual Matters.
- Colin, J and Morris, R. (1996) *Interpreters and the Legal Process*. Hook, Waterside Press.
- De Jongh E.M. (1991) Foreign language Interpreters in the courtroom: the case for linguistic and cultural proficiency,' *Modern Language Journal* 73(3) 292-295.
- Dunnigan, T. And Downing, B. T. (1995) 'Legal interpreting on trial: a case study', in M Morris (ed), *Translation and the Law* 93--114. Amsterdam: John Benjamins Publishing Company.
- M. Edwards and K.M. Blackwood, (2017). Artful interventions for workplace bullying: exploring forum theatre. *The Journal of Workplace Learning*, 29(1): 37--48.
- European Parliament (2020) Rules of Procedure of the European Parliament Rule 167. Retrieved on July 16, 2021 from https://www.europarl.europa.eu/doceo/document/lastrules/RULE-167_EN.html?redirect
- Frumkin, L.A. and Stone. A. (2019) 'Not all eyewitnesses are equal: accent status, race and age interact to influence evaluations of testimony.' *Journal of Ethnicity in Criminal Justice* 18(2): 123--145.
- Ganguly, S. (2010) *Jana Sanskriti*, Florence: Taylor and Francis.
- Gile, D. (1997), Conference interpreting as a cognitive management problem. In J.H. Danks, G.H. Shreve, S.B. Fountain and M.K. McBeath (eds) *Cognitive Processes in Translation and Interpreting* 196-214. Thousand Oaks, Sage Publishing.

- Giles, H, and Powesland, P.F. (1975) *Speech Style and Social Evaluation*. New York; Academic Press.
- Hale, S. (2002). How faithfully do court interpreters render the style of non-English speaking witnesses' testimonies? A data-based study of Spanish–English bilingual proceedings. *Discourse Studies*, 4(1): 25–47.
- Hale, S.B. (2004) *The Discourse of Court Interpreting: Discourse Practices of the Law, The Witness and the Court Interpreter*. Amsterdam, John Benjamins.
- Hatim, B. & Mason, I. (1997). *The Translator as Communicator*. London; New York: Routledge.
- Himida, T., Nanjappa, S. Yuan, S., and Freeman, R. (2019) Dental students' perceptions of learning communication skills in a forum theatre-style teaching session on breaking bad news. *European Journal of Dental Education*, 23(2), 95–100.
- Hudon, M.E. (2017) Bilingualism in Canada's Court System: The Role of the Federal Government. Retrieved on May 7th, 2022 from https://lop.parl.ca/sites/PublicWebsite/default/en_CA/ResearchPublications/201733E
- Inghilleri, M. (2012) *Interpreting Justice: Ethics Politics and Language*. Routledge; London.
- Juries Act 1974 s.10.(1974 c.10)
- Jones, K and Strange, D. (2019) The impact of hedged testimony on judgments of credibility. *Applied Cognitive Psychology* 35(5): 784--792.
- Kahaner, S. M. (2009). The administration of justice in multilingual society open to interpretation or lost in translation. *Judicature*, 92(5), 224-231.
- Lebese, S.L. (2015). Formulation of court interpreting models : a South African perspective. *Stellenbosch papers in linguistics*, 44(1): 61–80.
- Mitchell, K.S., and Freitag, J. L. (2011) Forum Theatre for bystanders. *Violence against Women* 17(8): 990-1013.
- Mohammed v Breish and others* [2020] EWHC 696.
- Monsell, S. Lavric, A. Strivens, A. and Paul, E. (2019) Can we prepare to attend to one of two simultaneous voices? *Journal of Experimental Psychology, Human Perception, and Performance* 45(7): 966-982.
- Ng, E.N.S. (2018) *Common Law in an Uncommon Courtroom*. Amsterdam; John Benjamins.
- O Cadhla v Minister for Justice and Equality and Others* [2019] IEHC 503.
- Odhiambo, K, Kavulani, C.K and Matu, P.M. (2013). Court interpreters' view of language use in subordinate courts in Nyanza Province, Kenya. *Theory and Practice in Language Studies*, 3(6); 910-918.
- Parker, C. (2018) Intergenerational dialogue: connecting youth and older adults in urban spaces through community-based forum theatre. *Applied Theatre Research* 6(1): 37-52,
- Republic of Djibouti and others v Boreh and others* [2016] EWHC 405.
- Shlesinger, M. & Pöchhacker, F (eds.), *Doing Justice to Court Interpreting*. Amsterdam; Philadelphia: John Benjamins.
- Stern L. and Liu X (2019) 'See you in court: How do Australian institutions train legal interpreters? *The Interpreter and Translator Trainer* (2019) 13(4): 361-389.
- Torstensson, N. and Sullivan, K.P.H. (2011) The court interpreter: creating an interpretation of the facts.' *International Journal of Law Language and Discourse*. 1(3): 64-86.
- Vigier-Moreno F.J. (2021) Creating research-based resources for court interpreters: an illustrative study on translation-oriented terminological records about Spanish criminal proceedings. *Perspectives, Studies in Translatology*, 29(2): 217-230.
- Vranjes, J and Brône G (2021) Interpreters as laminated speakers: gaze and gesture as interpersonal deixis in consecutive dialogue interpreting. *Journal of Pragmatics* 181: 83-99.
- Wadensjö, C (2008) *Interpretation as Interaction*. Harlow; Addison Wesley Longman.

Wells W.A.N (1991) *An Introduction to the Law of Evidence* 4th ed. Adelaide, Government Printer.

Welsh Language Act 1967 (1967 c.66)

Welsh Language Act 1993 (1993 c.38).

Welsh Language Standards (No 7) Regulations 2018 (2018 no 441 (w.77)).

Welsh Language Tribunal (2019) Practice Direction Number 2 Retrieved on 16 July 2021 from <https://tribiwnlysygymraeg.llyw.cymru/sites/welshlanguage/files/2019-06/wlt-practice-direction-2.pdf>.

Welsh Language (Wales) Measure 2011 (2011; NAWM 12).

Wenn, C. (2015) Headphone listening in live performance: a phenomenology of sound design. *Theatre and Performance Design* 3(1) 236-255.