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LOST IN TRANSLATION? EXAMINING THE ROLE OF COURT INTERPRETERS IN CASES INVOLVING FOREIGN NATIONAL DEFENDANTS IN ENGLAND AND WALES

Ana Aliverti and Rachel Seoighe***

Court interpreters have seldom been featured in studies on the criminal courts. Until recently, cases requiring court interpreters were rare and marginal. The peculiarity and historical rarity of these cases may explain the lack of academic consideration of the work of court interpreters in the criminal justice literature. Rapid demographic changes brought about by mass migration, however, are changing the make-up of criminal justice proceedings, rendering court interpreters key participants and inexorable aides for the everyday running of the criminal justice system. This article examines the increased reliance on interpreters and the nature of their involvement in criminal justice proceedings. It will explore the relationship between interpreters and defendants, on the one hand, and between interpreters, counsels, and judges, on the other. Drawing on empirical data stemming from a research project on foreign national defendants conducted in

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Birmingham's criminal courts, we explore issues of trust and reliability underpinning the intervention of court interpreters and the implications of these interventions for the defendant's case. The use of interpreters aims first and foremost to ensure the defendant's right to defense. Yet, as we show, their intervention is often propelled or hindered by instrumental, procedural, or logistical reasons, intimately linked to the rapid transformation of the demography of defendants and the privatization of services related to the criminal justice system.

Keywords: *court interpreters, English criminal courts, English language, foreign nationals*

INTRODUCTION

Criminologists and criminal justice scholars doing court research have paid little attention to the presence of the interpreter in the everyday life of the courtroom. The need for foreign language interpretation services during court proceedings is the most obvious indicator of the diversity of the social world outside the courts, brought about by mass migration.[1] Interpreting has emerged as a public service necessity as successive waves of migration have vastly increased the amount of non-native English speakers in the United Kingdom. According to the last U.K. census, 2011, 4.2 million people (around 8 percent of usual residents) speak a main language other than English (ONS, 2013). Interpreters are increasingly required to attend court and tribunal proceedings. In 2014, a record number of requests for language services were registered; the greatest demand was in the criminal courts (MoJ, 2014, p. 4).[2] Foreign-language interpreters are routinely called to assist non-English-speaking arrestees in police custody, witnesses and defendants before the courts, and offenders during post-court proceedings.[3]

1. Interpreters are also needed to assist court participants who cannot understand spoken language, particularly deaf people. Yet, the demand for sign language interpreters is much lower than that for interpreters of foreign spoken languages. Fewer than a thousand registered sign language interpreters in the United Kingdom work with less than 100,000 deaf clients (Wilson, Turner, & Perez, 2012, p. 319).

2. In the first quarter of 2014, 45,100 requests for language services were registered, an increase of 19 percent from the same period in 2013. Over half of them were made by the criminal courts (MoJ, 2014, p. 4; 2015, p. 6).

3. Eligibility for noncustodial sentences is in part determined by the individual's ability to comply with probation conditions. Language can be an obstacle. The National Probation

Although the interpretation is often conducted face to face—generally in trials—in certain instances it is done by video conference or phone,[4] for example, in bail hearings.

Against expectations by some court participants that interpreters should operate as a "translation machine" (Lee, 2013, p. 85), a "mechanical mouthpiece" (Colley & Guéry, 2015, p. 120), or as one of our interviewees put it, the "speaking organ of the defendant," where interpreters limit themselves to literally translating what is being said from one language to another, research in applied linguistics and sociolinguistics has shown that in practice they are far from being passive and invisible participants (Hale, 2004; Berk-Seligson, 1990). Their presence significantly shapes court proceedings and impacts interactions inside the courtroom and beyond. Although these studies are primarily focused on linguistic interactions between interpreters and other court participants, we are interested in exploring the peculiar relations and interactions resulting from their presence in the court setting. We examine the social dynamics inside the courtroom, paying attention to how the presence of interpreters can affect court staff's perceptions of defendants, contribute to their marginalization, and alter the social interactions and dynamics inside the courtroom. This article draws on empirical material from interviews with court interpreters and staff,[5] and the observation of court proceedings in seventy cases where an interpreter assisted defendants. In some of these cases, other witnesses relied on interpreters as well. Cases were followed from the initial hearing to their termination, where possible. The research sites for this study were the Magistrates'

Service routinely requests interpreters to assist in interviews or during the execution of community orders, although some probation officers interviewed mentioned that certain programs are not open to non-English-speaking offenders due to difficulties in accommodating interpreters. However, in *R v Juned Ahmed* ([2011] EWCA Crim 775), the Court of Appeal ruled that the lack of interpreters by itself was not a valid reason for imposing a prison sentence and substituted a six-month prison term for a community order.

4. Phone interpretation is predominantly done at police stations through Language Line, an international interpreting company.

5. We conducted eighteen face-to-face interviews with judges, magistrates, solicitors and barristers, prosecutors, probation officers, and interpreters. Additionally, some magistrates responded to our questionnaire in writing. We also had a number of informal conversations with court staff. These are identified in text as "Magı" (etc.) for magistrates, "Judı" (etc.) for judges, "Interpı" (etc.) for interpreters, "Solı" (etc.) for solicitors, and "DVSWı" for domestic violence support officer; the numbers distinguish different respondents.

Court and Crown Court in Birmingham. Fieldwork was conducted between March and August 2015.

We explore these social dynamics, and the standing and role of court interpreters as they relate to the politics of migration and belonging in a period of austerity in contemporary Britain. Indeed, in the last few years, the provision of interpreting services in England and Wales has undergone important changes—most significantly, the outsourcing and centralization of the service in one provider. These changes have been primarily geared to cut costs and increase the efficiency of the service, and are in line with austerity measures introduced across the criminal justice system (Ward, 2015), particularly the reduction of legal aid budget (Cape, 2016), the partial privatization of the probation service (Robinson, Burke, & Millings, 2016), and the introduction of criminal court charges for convicted defendants.[6] We analyze recent reforms to the language service provision against the backdrop of increased public concerns about the impact of migration on public services and the welfare system, and on social cohesion.

I. ''THEY ARE OBVIOUSLY NOT ENGLISH'': FOREIGNNESS, NATIONAL IDENTITY, AND THE POLITICS OF LANGUAGE IN THE COURTROOM AND BEYOND

The significance of English language proficiency in Britain goes beyond a mere matter of communication. It links to nationalism, ethnicity, and perceptions of belonging, and it acquires specific connotations in the context of globalization and migration.[7] Language is increasingly part of English and British national identity. In a 2007 MORI opinion poll, 60 percent of respondents considered language as the main attribute of

6. Introduced in April 2015, this charge was levied on convicted defendants. Those convicted at trial bore a significantly higher charge compared to defendants who pleaded guilty. This charge was abolished in December 2015, following concerns that it encouraged people to plea guilty and was unfair on poor defendants (Gove 2015).

7. Although, historically, language has been a recurrent feature in and closely tied to the formation of the British state and the expansion of the British Empire. The struggles for official recognition and survival of Welsh, Irish, and Scottish Gaelic have remained an important part in nationalist political movements to express and claim political and cultural independence from England (Cohen, 1994).

"being English" (Commission on Integration and Cohesion, 2007, p. 165), and 95 percent of respondents in a 2013 poll thought that being able to speak English is important for being "truly British" (Kiss & Park, 2014, p. 61). Mastering the majority language has become a central requirement for naturalization (HM Government, 2016),[8] for eligibility to certain migration routes,[9] for accessing unemployment benefits (HM Government, 2014), and for certain public sector employments.[10] In public discourse, speaking English is often conceived as essential for integration and social cohesion, and an expression of prospective citizens' commitment to become full members of the British society, and to British values (Zedner, 2010). In the Green Paper "The Path to Citizenship" (Home Office, 2008), the British government proposed a major overhaul of citizenship rules, including the extension of the English language requirement to those applying for permanent settlement. Learning English, together with obeying the law, paying taxes, and integrating into the "British way of life," are cast as basic preconditions for "earning" British citizenship (Home Office, 2002).

A vestige of linguistic nationalism, the revival of the majority language as a crucial aspect of national identity and belonging in the past two decades has been bolstered by concerns about social fragmentation along ethnic and cultural lines as a consequence of recent migration flows (Julios, 2008, p. 116). In this context, monolingualism is portrayed as a unifying force in forging a collective identity. Yet, attaching such status to the majority language reinforces hierarchies between spoken languages in a particular society and among their speakers, and rationalizes language discrimination (Karst, 1985, p. 351). As May (2001) explained, the status and value attributed to majority and minority languages are the product of "the differential power relations that underlie the representation of the language and culture

8. For a comparative analysis of language test requirements in citizenship proceedings, see Škifić (2013) and de Groot, Kuipers, and Weber (2009).

9. Including for entrepreneurs, skilled workers, students, and spouses and partners. In a recent decision, the Supreme Court ruled lawful the pre-entry English language test requirement for spouses of British citizens or permanent residents: *R (on the applications of Ali and Bibi) v Secretary of State for the Home Department* [2015] UKSC 68.

10. See Immigration Act 2016, Part 7. Prime Minister David Cameron recently announced the commitment of funds for English lessons to be specifically targeted to Muslim women, a group that he singled out as having a poor grasp of English, to help their integration in British society and prevent their radicalization (BBC News, 2016).

of the dominant ethnie, or majority ethnic group, *as that* of the *civic* culture of the nation-state" (p. 11). The symbolic status attached to English globally and within particular societies such as the United Kingdom or the United States is linked to historical factors—most importantly, colonialism and imperialism—and reflects the geopolitical dominance of English speaking nation-states and the sociopolitical dominance of English speakers *vis-à-vis* linguistic minorities within those societies (May, 2001, pp. 134, 200; Škigić, 2013, p. 7). The hegemony of the English language in political, economic, and educational structures—termed "linguistic imperialism" (Phillipson, 1997, p. 238)—in turn, perpetuates inequalities in the access to power between English and non-English speakers within societies and at the global scale.

In Britain, the most reported spoken languages other than English are Polish, Panjabi, Urdu, Bengali, and Gujarati (ONS, 2013, p. 9). As non-English speakers are commonly identified as migrants, either foreign nationals or foreign-born citizens, language proficiency is a proxy for race and national origin (Dery, 1996, p. 851; May, 2001, p. 129). Language difference, together with class, race, gender, and national origin, is an important dimension of current social hierarchies and inequalities. In this context, the inability to speak the dominant language becomes blameworthy and a tangible marker of difference (Bosworth & Kellezi, 2013, p. 84; Bosworth, 2014, ch. 3), a stigma attached to the minority language speaker. For court staff and practitioners, language proficiency is a proxy for national origin. During fieldwork, judges, probation officers, defense lawyers, and prosecutors pointed to the presence of interpreters as one of the strongest indications that a case involves a foreign national. One magistrate put it bluntly: "Very often it's pretty obvious when the person comes before us and they are asked to identify themselves that they are obviously not English" (Mag1). Another magistrate, however, recognized that such assumptions may be misleading: "[W]e've got expanding communities, one-language communities, and because they've got that natural . . . their own language within that community, they perhaps don't bother to learn the English language and that can create a false impression in some ways that you've got more foreign nationals than you actually have" (Mag2). Indeed, not all the court participants who require an interpreter are foreign nationals. Thus, paying attention to language difference and the experience of non-English native speakers in the courts and beyond can shed light on the continuities in the treatment of racialized groups—both recent arrivals

and more established, minority groups—and remind us about the socially constructed nature of citizenship status (Romero, 2008, p. 27).

Attesting to the oppressive nature of hierarchies and the perceived subordinated status of nonnative defendants, some defendants try to hide their accent or linguistic difficulties. In their studies on police custody in various European countries, Blackstock and colleagues (2013, p. 180) noted that some suspects were adamant to assert their knowledge of the local language. In Scotland, for example, a lawyer mentioned that sometimes detainees "may be indignant at the suggestion that they cannot converse or understand English," and they refuse to be assisted by an interpreter (Blackstock, Lloyd-Cape, Hodgson, Ogorodova, & Spronken, 2013, p. 180). In one of the cases observed, the defendant—a man accused of assaulting a police officer—claimed that he was offended by the complainant's reference to his "strong foreign" accent. "It was very annoying," he protested. "The court could notice my accent but it is annoying to be said that" (p. 180). Even though the appointment of an interpreter to assist defendants in court proceedings is primarily conceived of as an individual right of defendants,[11] some of them perceive it a grievance, a reminder of their outsider status.

II. INTERPRETATION UNDER CONDITIONS OF AUSTERITY

In Britain, the provision of language services in the criminal justice system is intimately bound up with the highly politicized environment surrounding crime and immigration (Bhui, 2007; Bosworth & Guild, 2008; Canton & Hammond, 2012; Aas & Bosworth, 2013, Aliverti, 2015; Bosworth, 2016) and the widespread concern across Europe that "immigration may put further pressure on the public purse" (OECD, 2013, p. 11). In this political environment, the demand for interpreting services in criminal justice proceedings—and the costs associated with this service—are not free from discourses that frame foreign nationals and ethnic and linguistic minorities as unwelcome and a burden on the system. In response to a parliamentary

11. Art. 6(2) of the European Convention on Human Rights guarantees the right to free interpretation to those who face a criminal charge if they "cannot understand or speak the language used in court." At the European level, the right to interpretation is further regulated by the Directive 2010/64EU of the European Parliament and of the Council on the right to interpretation and translation in criminal proceedings.

question by Conservative Member of Parliament David Davies, the Ministry of Justice (MoJ) reported spending £12 million on interpretation services between 2012 and 2013, £16 million the year after, and £17.3 million between 2014 and 2015 (House of Commons, 2015). Complaining about these costs, Davies claimed: "We are constantly being told that the large-scale immigration that is going on has economic benefits. But it also has economic costs. These court interpreting figures are one more example" (Dawar, 2015). This contemporary political backdrop of cost-saving imperatives combined with rising concerns about immigration is behind the recent restructuring of language interpretation services in England and Wales.

Prior to January 2012, courts and tribunals booked interpretation services with individual language service professionals, most of whom were contacted directly from the National Register of Public Service Interpreters (NRPSI), as stipulated by the nonbinding and regularly revised "National Agreement on arrangements for the use of interpreters, translators and language service professionals in investigations and proceedings within the criminal justice system" (OCJR, 2008). Under the National Agreement, spoken language interpreters were required to register with the NRPSI, though specified alternative arrangements could be made if a "determined effort" to obtain a registered interpreter failed and delay or rescheduling was not possible (OCJR, 2008, p. 4). The NRPSI was established in 1994, along with the Diploma in Public Service Interpreting, following a recommendation by the Runciman Royal Commission on Criminal Justice, to ensure that "only interpreters with proven competence and skills, who are governed by a nationally recognized code of conduct" would work in public services (NRPSI, 2015, p. 3). NRPSI registrants are required to hold a Diploma in Public Service Interpreting in law, health, or local government, and are subject to a code of professional conduct and to criminal record checks. However, registration with the NRPSI is not compulsory for interpreters, and nonregistered interpreters can still act as court interpreters (HC Justice Committee, 2013, p. 12). The status of the National Agreement as a guidance document meant that interpreters could be commissioned through informal, local arrangements. Problems relating to quality assurance arose when interpreters were not sourced from the NPRSI, which guaranteed qualifications and experience (HC Justice Committee, 2013, p. 12).

Following an internal audit of the system in January 2010, the MoJ concluded that the system was expensive and administratively inefficient.

Some courts and tribunals used inexperienced and unqualified interpreters from sources other than the NRPSI, and arranging interpreters was time-consuming and lacking in oversight due to "shortcomings, inconsistency and inefficiency" in the system (HC Justice Committee, 2013, p. 11). To improve efficiency and quality, and reduce administrative costs, in 2011, the MoJ signed a contract with a single language service provider, Applied Language Solutions (ALS), for a five-year period under a Framework Agreement that established a new centralized system for procuring language services (Optimity Matrix, 2014, p. 6). Other bodies—such as police forces, the Legal Aid Agency, the National Probation Service, and the Crown Prosecution Service—signed similar, independent contracts soon after (Optimity Matrix, 2014, p. 14). Just before the MoJ contract became operational in January 2012, ALS was sold to Capita Translating and Interpreting (Capita TI) for £7.5 million (HC Justice Committee, 2013, p. 20). Capita TI's parent company, Capita Plc, is a £7 billion corporation involved in the provision of a vast range of public services across the United Kingdom and internationally, but had no prior experience in the languages sector (Maniar, 2015).[12]

From the outset, the new system was fraught with problems and was strongly opposed by organizations representing professional interpreters.[13] Although the new contract was worth £42 million a year, a credit rating report commissioned by the MoJ found that ALS was only suitable for contracts up to £1 million. Yet "none of the senior people in the Ministry responsible for the contract read the report" (HC Committee of Public Accounts, 2012, p. 8). Since the contract began, Capita TI-ALS achieved poor results against key performance indicators (NAO, 2014, p. 6), largely due to the lack of registered interpreters, and was criticized for delays in certifying interpreters (Optimity Matrix, 2014, p. 14). According to the National Audit Office (NAO), the MoJ "did not give sufficient weight to the concerns and dissatisfaction that many interpreters expressed, even though having sufficient numbers of skilled interpreters was essential to

12. Capita Plc was responsible for contentious immigration-related projects outsourced by the Home Office in 2012 and 2013, including sending nearly 39,100 text messages to immigrants informing them that they are "required to leave the UK" and piloting a project where vans on the road in London boroughs encouraged illegal immigrants to "go home or face arrest" (Wintour, 2013).

13. Including Professional Interpreters for Justice and the Professional Interpreters' Alliance.

the new arrangements' success" (NAO, 2012, p. 5). A significant number of NRPSI-registered interpreters refused to register with ALS. In a 2012 survey conducted among 818 professional interpreters, 95.7 percent of them declared that they did not register with ALS. The main reasons quoted were the low hourly rate of pay, the failure by ALS to fully cover travel costs, the lack of quality assurance, and poor assessment processes (Involvis, 2012, pp. 2, 6). The advocacy group Professional Interpreters for Justice (PIJ), which represents 2,300 professional and qualified interpreters, boycotted the MoJ contract in protest at the new arrangements. As a result, Capita TI-ALS was unable to recruit qualified and experienced interpreters in sufficient numbers to ensure capacity and quality of interpreting services available to courts and tribunals. Both the NAO and the House of Commons Justice Committee concluded that the procurement process was poor since the MoJ ought to have attained sufficient information about whether the company could offer a reasonable and sustainable service (NAO, 2012, p. 12; HC Justice Committee, 2013, p. 20).

The most important problems under the new system remain nonattendance of interpreters at court and poor quality of interpreting. In relation to nonattendance, the contract stipulation of 98 percent fulfilled assignments has never been met. According to the most recent MoJ statistics, Capita TI's "success rate" is less than 95 percent (MoJ, 2015, p. 10). On average, Capita TI fails to send interpreters to court in over thirty cases a day (Maniar, 2015). The very inclusion of a corporate performance indicator of 98 percent was problematized by the judges in the *ALS* case[14]:

> It seems to us inconceivable that the Ministry of Justice would have entered into a contract where the obligation . . . was framed in any terms other than an absolute obligation. It is simply no use to a court having an interpreter there on 98% of occasions when interpreters are required, because if an interpreter is required justice cannot be done without one and a case cannot proceed. An interpreter is required on 100% of such occasions.

As Maniar (2015) described, nonattendance is a systemic problem that renders non-English speakers vulnerable to mistrials, miscarriages of justice, and needless delays. According to the Chair of the Criminal

14. In re Applied Language Solutions Ltd. [2013] EWCA (Crim) 326, para. 28. In this case, the Court of Appeal allowed an appeal by the company against an order to pay costs for not discharging its obligation to send interpreters to court. The Court ruled that there was not evidence of serious misconduct by ALS.

Committee of the Law Society, "Perhaps the greatest indictment of the present failures is that people are spending time in custody for no reason other than the lack of an interpreter" (HC Justice Committee, 2013, p. 26).

Judges, magistrates, defense lawyers, and prosecutors mentioned non- or late attendance of interpreters as one of the most serious problems in dealing with cases involving non-English speakers. In a case we observed at the Magistrates' Court, one magistrate apologized to the defendant for having to adjourn the hearing due to the absence of an Urdu interpreter in court: "Hopefully we will have an interpreter . . . next time." He asked the defense lawyer if he could communicate with his client to progress the case in the meantime: "you must have someone at the firm who speaks the language." In another case involving a man who required a Hindi interpreter, the bench decided to rely on a Panjabi interpreter who happened to be in the building. The hearing in this case was adjourned three times because no Hindi interpreter showed up. The presiding magistrate was eager to progress the case and suggested that the court should "go as far as we can," relying on the interpreter to inform the court if she was concerned about the defendant's ability to comprehend the proceedings.

In terms of the quality of the service, changes introduced to working rates and conditions under the new arrangement have forced many interpreters out of the sector (Colley & Guéry, 2015, p. 126). According to the House of Commons Justice Committee (2013, p. 45), most of the postreform savings appear to stem from a reduction in interpreters' pay, rather than the resolution of administrative inefficiencies. Despite allegations that previous rates of pay were too high, a 2011 survey found that the average annual income of an interpreter was £15,000, although it could reach £35,000 for some rarer languages (quoted in HC Justice Committee, 2013, p. 41). The NAO (2012, p. 13) estimated that interpreters' pay was initially reduced by 20 percent under the new arrangement, while interpreters' organizations placed the reduction in the range of 28 to 73 percent and argued that many interpreters ended up earning less than the minimum wage (quoted in HC Justice Committee, 2013, p. 41). Further, the very structure of the Framework Agreement ensured a reduction in the quality of interpreters working in the criminal justice system. Aiming to increase the number of interpreters available for work, the Framework Agreement introduced a three-tier system that would match interpreter competency with the complexity of the job. According to Madeline Lee

of the Professional Interpreters' Alliance, the "default setting"[15] for bookings is now tier two interpreters who, under the previous system, would not have qualified to work in criminal justice interpreting (quoted in HC Justice Committee, 2013, p. 34). Tier two interpreters may hold degrees or language-related diplomas that are not recognized as interpreting qualifications, and they may not have specific legal terminology training. Tier two interpreters may also not be qualified in written translation, which is often required in the course of this work. An independent report commissioned by the MoJ found that the current quality requirements (evaluated by qualifications and experience) do not ensure that the quality of interpreters is sufficient to safeguard the fairness of proceedings (Optimity Matrix, 2014, p. 37). It found that only 50 percent of Capita TI's registered interpreters hold relevant qualifications (Optimity Matrix, 2014, p. 7). The House of Commons Justice Committee (2013, p. 38) concluded that the quality concerns that prompted the reform were not remedied, but worsened.

The drop in quality of interpreting under the new contract was a concern consistently raised by magistrates, defense lawyers, and interpreters themselves. "Qualified interpreters will not work [for Capita TI] unless they really need money to support their families" (Interp1), one interpreter told us. Another interpreter complained: "there is no future [in interpreting]," adding, "What is the point of paying for a qualification? Professional interpreters are not appreciated." She went on to say that "new," unqualified interpreters entering the profession under the contract with Capita TI "are desperate for pay—they are students, people doing odd jobs, anyone. It is so easy to get registered with the agency" (Interp2).

Despite the important function that interpreters serve and the complex skills required, in the criminal justice system their professional expertise is largely undervalued. As Inghilleri (2005, p. 76) noted, "the interpreter's position, like all social agents', is contingent upon the particular social/interactional context." The position of interpreters working in legal contexts is weak and vulnerable. Interpreters work in the "home terrain" of other more established professions (Colley & Guéry, 2015, p. 115) and in the highly

15. See also the "Guidance for the Criminal, Civil and Family Courts for booking interpreters through Applied Language Solutions (ALS)," which states: "In most instances the courts should request a tier two interpreter and the ALS portal has been set to default to a tier two interpreter. However, in some cases it may still be appropriate because of the nature of the case to book a tier one interpreter." Cited in sect. 3.5 at http://www.publications.parliament.uk/pa/cm201213/cmselect/cmjust/645/645we20.htm

socially and culturally hierarchized space of the courtroom, where they remain disadvantaged. Their devalued professional standing stems in part from their own subordinate identity along racial and gender lines as most of them belong to ethnic minority groups[16] and are predominantly women (Pym, Sfreddo, Chan, & Grin, 2013, p. 75). The continuous demand for professionalization, training, and formal accreditation seeks to strengthen the standing of professional interpreters and to counter the dominance of other actors and institutions. Yet, the poor treatment of interpreters in terms of pay and conditions signals a failure by justice systems to "take seriously the issue of providing proper interpretation services" in courtrooms (Morris, 1999, p. 26). Those who work in legal settings, Colin and Morris (1996) argued, "treat interpreters with suspicion, distrust and a lack of respect for the skills which they bring to the job" (p. 15). This disregard and hostility toward interpreters, and those who rely on them, is also apparent in the courtroom, as explored in the next section.

III. WHO NEEDS AN INTERPRETER?

In England and Wales, the determination of whether a defendant requires an interpreter in criminal proceedings is generally made early on, at the police station. Police regulations state that chief officers should arrange "appropriately qualified independent persons to act as interpreters" to assist suspects during police interviews, when the interviewer is satisfied that they require an interpreter (Home Office, 2014, para. 13.1). They also establish that suspects should not be interviewed without an interpreter if "they do not appear to speak or understand English" (para. 13.2). However, these rules do not clearly specify when an interpreter is legally required.[17]

Courts are not bound by any rule in this respect, and the appointment of interpreters is left to the discretion of the presiding judge or magistrate. The judges and magistrates we interviewed did not raise concerns about the lack of legal guidelines on the appointment of interpreters. Some of them

16. PIJ estimates that between 80 and 90 percent of foreign language interpreters are "ethnic minorities" (n.d., p. 14).

17. The U.S. Federal Courts Interpreter Act, for example, mandates a foreign language interpreter when the defendant or witness "speaks only or primarily a language other than the English language" and so would be impaired in his/her comprehension of the proceedings and communication (28 USC 1827(d)).

said that they would favor the appointment of an interpreter if the defendant or her legal counsel[18] asks for one, or if she seems to "struggle" to understand what is being said. One Crown Court judge asserted, more definitively, that if "English is not their first language, they have an interpreter" (Jud1). Concerns about due process violations and potential appeals surfaced in interviews as two of the most important reasons for adopting this "default" position. As one magistrate put it, "What we don't want is somebody at the very end saying 'I didn't understand what was happening' and that then creates an appeal situation. That would be the worst scenario really for the court" (Mag2).

Yet, in some of the cases observed, court staff and defense counsel tried to avert the use of interpreters to avoid delays, speed up proceedings, and save costs. A magistrate mentioned that sometimes the court clerk and chair of the bench take "the 'well let's see how we get on' approach to stumbling along without interpreter" (Mag3). During a plea and case management hearing conducted by video-conference, the defense counsel assured the judge that his client's English was good and he did not need an Albanian interpreter. Yet, the defendant subsequently intervened to request one. The hearing was not adjourned, but the judge promised him that an interpreter would be arranged for the next hearing. In another case, the solicitor offered to serve as an interpreter for his client, after the hearing was adjourned three times due to the lack of an Urdu interpreter. The bench turned down his offer. Research at police stations found that the police are sometimes reluctant to use interpreters, and police officers or lawyers would arrange informal interpreting (Blackstock et al., 2013, p. 147; Wakefield, Kebbell, Moston, & Westera, 2015, p. 55). Although we did not observe any cases of bilingual lawyers acting as interpreters for their clients, this dual role presents a clear conflict of interest and may jeopardize the defendant's due process rights (Piatt, 1990; Davis & Hewitt, 1994, p. 137).

Other interviewees voiced their concerns about the costs involved: "Interpreters soak up money which we might prefer to spend on other things. I would prefer it that the Defendant pay for an interpreter so that it doesn't come out of the public purse" (Mag4). In a hearing at a Crown Court in London observed by one of us in the context of a different project, upon the request of the defense counsel to appoint an interpreter on behalf

18. The Law Society (2015) published guidelines for solicitors and their representatives on when and how to appoint an interpreter on behalf of their clients during criminal proceedings.

of his client, the judge asked whether the defendant *really* needed one, adding that "using interpreters when [it] is not necessary gives the impression that people are hiding behind them and is a bad use of public money."

A perception exists that speaking through an interpreter can give the respondent more time to answer questions and may make it easier for her to deceive the court (Wakefield et al., 2015). As the last quote above suggests, reliance on an interpreter is sometimes seen as suspicious, particularly when the person assisted has some command of English, which in turn can cast doubts on her credibility as a witness. A number of judges mentioned that they explain to the jury, when someone is speaking through an interpreter, that even fluent English speakers can find it difficult to understand the legal jargon,[19] because the jury might think that the person is "trying to hide something" if they notice that she can understand some of the proceedings. One of them explained: "Sometimes it's clear that they're pretending not to understand English. But . . . the jury will decide what to make of them" (Jud2). Another judge was bolder: "my personal view is [that] it's frequently used as a ruse by defendants, in particular to seek to gain sympathy and also to gain time because it gives them time . . . to consider their answer to the question which they have often understood perfectly well" (Jud3).

The judicial suspicion toward those who claim not to speak English, and seek to rely on an interpreter, may reflect—as Morris suggested (1995, p. 268)—more general prejudices in dealing with non-English speakers, stemming from their perceived "otherness" on account of their language, national origin, and ethnicity. This distrust is extended to the interpreter and bolstered by the view of court participants that interpreters exercise a certain level of control over the person assisted and that they can substantially influence the outcome of a case.

IV. SPEAKING THROUGH ANOTHER: CONTROL, DISTRUST, AND SOLIDARITY

Rules governing the profession mandate that interpreters remain passive actors and unobtrusive figures, limiting themselves to translate word-by-

19. As Valdez (1990) explained, even fluent English speakers may struggle to follow the dynamics of courtroom interaction—particularly in cross examination—and may find their performance tarnished by linguistic subtleties.

word from one language to another. The Code of Professional Conduct for Public Service Interpreters establishes, "Practitioners shall interpret truly and faithfully what is uttered, without adding, omitting or changing anything; in exceptional circumstances a summary may be given if requested" (NRPSI, 2016, para. 5.4). Public expectations about interpreters are in line with this prescribed role. In her study on bilingual interpretation in U.S. criminal courts, Berk-Seligson (1990) explained that "in an ideal world, the American legal system would choose to have the court interpreter physically invisible and vocally silent . . . ideally she should not exist as a distinct verbal participant in her own right" (p. 54; also Morris, 1999, p. 8). Yet, this image of the interpreter as a non-social participant neglects the complexity and the deeply social nature of the interpreting process (Colley & Guéry, 2015, p. 122), and is constantly challenged in practice.

As scholars have noted (Russell, 2002; Morris, 2010; Berk-Seligson, 1990), court interpreters wield far greater control on the interactions inside the courtroom, exercising a degree of "linguistic coercion" on the parties (Berk-Seligson, 2002). Interpreters can control the flow of speech by prompting witnesses to answer a question or by not translating one that has been objected (Berk-Seligson, 1990, p. 86). They can aid witnesses in presenting their case by transforming a hesitant utterance into a confident and powerful one (Hale, 2004, p. 105). By failing to translate verbatim, they can significantly impair the non-English speaker's command over her self-presentation (Elsrud, 2014). As Gibb and Good (2014, p. 392) observed, the mediation of an interpreter creates barriers for communication. People communicating through interpreters are often required by court staff to give short answers to questions and are discouraged from speaking. This constraint impairs their ability to communicate fluently and spontaneously.

Interpreters can control the flow of information produced during legal proceedings and have a radical effect on the "manufacture" of a case. An interpreter assisting a man accused of domestic abuse asked the court clerk during a hearing, "Do you want everything translated or only what is relevant for him [the defendant]?" In around 40 percent of the cases observed, interpreters remained silent for long periods of time without conveying any of what was said to the defendant or witness. On occasions, clerks or judges had to prompt them to interpret. Equally, court participants such as lawyers and probation staff frequently seemed to forget the presence of the interpreter in the courtroom and failed to allow sufficient

pause in their contributions to allow for interpretation. While on various occasions court staff or the interpreters themselves intervened to ask them to slow down, in others nobody raised objections. In none of the cases observed did the defendants protest.

The failure by court participants to accommodate the pace of interactions to the needs of non-English-speaking participants evidences the perceived status of defendants as bystanders, "dummy players" (Carlen, 1976a, p. 81) or "acquiescent observers" (Kirby, Jacobson, & Hunter, 2014, p. 6) among the former, and exacerbates their exclusion and marginalization from the hearing. As Carlen (1976b) aptly observed, "the major existential attribute of court proceedings is that they *do* proceed, regardless of the structural inability of many of those present to *hear* what is going on, and despite the structural inability of many of those present to *participate* in what is going on" (p. 54). Language—particularly the use of legal jargon and formal language—reinforces the stratified space of the courtroom and facilitates institutional control over "outsiders"[20] (Carlen, 1976a, p. 111; Wagner & Cheng, 2011; Jacobson, Hunter, & Kirby, 2015, p. 65). The resulting exclusion from proceedings is even more acute for non-English speakers (Ahmad, 2007, p. 1026).

The intervention of interpreters in court proceedings can have an empowering effect on defendants, but equally, it can be profoundly disempowering. The use of the second person register is another effective way to marginalize and disempower defendants. During a hearing in a case involving a man accused of assaulting his wife, the presiding magistrate addressed the interpreter, instead of the defendant, throughout the hearing until the clerk asked her to direct her questions to the defendant. The magistrate at one point, for instance, said to the interpreter, "If you can make it quite clear that if *he* contact *his* wife *he* will face serious consequences." In another case, with a defendant accused of cultivating cannabis, the judge asked the interpreter to question the defendant about apparent discrepancies in his deposition: "Could you explain to [the defendant] that he has been in the flat for six to seven months but he has been [in the United Kingdom] for eleven months? I want to know where was he in the remaining time." The interpreter acceded to the request. By requesting that she

20. The exclusion of lay people from understanding the language spoken in court, Latin, was the main reason for establishing, through the Proceedings in Courts of Justice Act 1730, that the law should be administered in English.

interrogate the defendant, the judge compelled the interpreter to act outside the remit of her role while displacing the defendant from the interaction.

These instances reveal how difficult it can be to interact through an interpreter and how easy it is for judges and lawyers to sideline the defendant in the interrogation process. By replacing the defendant with the interpreter as the main interlocutor, court participants rendered the former an object of knowledge. This is an example of "remote" discourse whereby court actors disaffiliate themselves from ethnic minority defendants through linguistic expressions by rendering them mute, indecipherable, and exotic (D'hondt, 2010; Riggins, 1997). In making visible the defendant's otherness, these discursive practices "mobilize a sense of 'we' that coaligns [court participants and the audience] against the defendant" (D'hondt, 2010, p. 92).

Communicating through an intermediary creates distance and makes it difficult to build trust, which is particularly important in the lawyer-client relationship. When examining the challenges "poverty lawyers" faced when they speak to their clients through an interpreter, Ahmad (2007) observed, "Language difference not only complicates the ability of the lawyer to understand and effectuate the client's goals and wishes, but threatens the client's autonomy as well" (p. 1024). As a solicitor explained, the intervention of an interpreter "depersonalizes the relationship . . . I use this phrase 'does she understand?' and immediately the person who I want to be talking to feels slightly separate from the proceedings and I don't like that" (Sol1). Another solicitor agreed: "I think it does have an impact because you can't talk as freely, you can't converse, you can't have even general comments or pleasantries, which is all part of building up a relationship with a client" (Sol2).

The diminished intimacy that creates the presence of an intermediary is accentuated by technology. As certain hearings at criminal courts are increasingly conducted remotely, defendants who rely on interpreters and appear through video-conference are seriously detached from the proceedings (Braun & Taylor, 2012, p. 113). As Eagly (2015) explained in relation to immigration proceedings in the United States, "With televideo, attorneys had no opportunity to offer their clients a confidential consultation before, during, or after the hearing" (p. 990). She found that the use of televideo in immigration adjudication significantly affected the outcome of the case, with televideo cases more likely to end in removal. She also found that the

adverse outcomes in these cases were associated with the less vigorous involvement of the defendant and assertions of her rights, rather than with judicial denials of relief from removal (Eagly, 2015). The distance and depersonalization resulting from communicating through an interpreter can have an adverse effect on the ability of defendants to participate in court proceedings, leading to their disengagement and disaffection, and potentially affecting the outcome of the case against them.

Yet, for some defendants, the presence of interpreters can be reassuring and even protective. Unfamiliar with the judicial environment and vernacular culture, and unable to communicate in English, they "cling to [interpreters] as potential saviours, providing not only a linguistic, but also a cultural and legal haven" (Morris, 2010, p. 9). Interpreters are often seen by defendants and court staff as "cultural brokers" or "cultural informants" (Niska, 1995, p. 300; Morris, 2010, p. 27; Hale, 2004, p. 102). Due to the shared national and cultural backgrounds, defendants and witnesses can perceive them as an approachable, familiar figure in the uneasy and hostile environment of the criminal court. Defendants often rely on interpreters to understand what happened in their case, particularly if they are not represented by a lawyer.[21] In one case, a man who faced driving offense charges looked puzzled throughout the hearing and interrupted regularly to ask questions to the Romanian interpreter about the charges and the legal consequences, which she then translated into English. When the hearing ended, the interpreter made telephone calls to the Driving Vehicle Licencing Agency so that the defendant could talk to them about the case and clarify whether his conviction will disqualify him from driving.

Rather than perceiving them as obstacles for communication and disruptive of the lawyer-client relationships, some scholars (Volpp, 1994; Inghilleri, 2005; Ahmad, 2007; Gibb & Good, 2014) argued that interpreters can play a crucial role in providing valuable linguistic, cultural, and legal expertise in the construction of the criminal case and a more human

21. In their study on the Sheffield Magistrates' Court, Bottoms and McClean (1976) found that defendants who speak limited English were more likely to be represented by legal counsel than English-speaking defendants. For defendants with limited English, lawyers played the role of "spokesmen" (p. 149). Legal representation, however, can equally have a disempowering effect on defendants, including non-English speakers. As Hodgson (2005) noticed, the professionalization of the criminal process has resulted in defendants being more reliant on their lawyers and more likely to be treated as objects, thus discouraging their participation as active agents (p. 21).

analysis of the defendant, which avoids portraying her as "other." As Ahmad (2007) noted, "the interpreter is not only rendering information to and from the lawyer and the client, but also bringing independent knowledge, opinion, and judgment to the enterprise" (p. 1059). In this vein, interpreters could be conceived of as linguistic and cultural experts, and their intervention encouraged and amplified, rather than avoided and devaluated.

Although informal interactions between defendants and interpreters contribute to building a sense of solidarity between interpreters and defendants or witnesses, and can appease the latter's anxiety, some court participants regard them as problematic. Interpreters can exert control on witnesses, thus affecting on their conduct and the fate of the case (Wakefield et al., 2015, p. 57; Colley & Guéry, 2015, p. 123). They are also largely unaccountable since only bilingual participants are able to identify improper interventions.[22] One judge was wary of the influence interpreters may exert on witnesses when they enter into conversations in another language within a hearing: "It is impossible to know whether [interpreters] are simply providing clarification . . . or that they are actually providing instruction" (Jud3). A domestic violence support worker recalled a male interpreter passing judgement on his female "clients" who testified against partners accused of domestic abuse. "We have had difficulties in the past in terms of, we have had a male interpreter say to a female 'you shouldn't be doing this to your husband, you should be dropping the case.' That's why we use females but we can't always use females" (DVSW1).

The intervention of interpreters into gendered relationships as described above reminds us of the social nature of the interpreting process. Gender, race, and class as relevant dimensions of power disparity are deeply implicated in the standing of the interpreter *vis-à-vis* other court participants, and the relationship between interpreters and the individuals they assist (Edwards, 1998; Ahmad, 2007, p. 1051). Gender inequality intersects with other forms of oppression and domination, including race and class injustice

22. In one of the cases observed, the defendant disputed the interpretation of his statement at the police station. During the hearing, a new Bengali interpreter and his solicitor, who was a Bengali speaker, heard the tape of the police interview and confirmed that the defendant did not confess to the charge of assault for beating his wife. The prosecutor dropped the charges against him. Yet, the chances that mistakes in interpreting during court proceedings are identified are remote given that these are not recorded and few checks are in place to ensure the quality of interpretation (Shulman, 1993).

(Sokoloff & Dupont, 2005). Research has found that lack of language proficiency, particularly when combined with migration and employment status, contributes to the incidence of abuse against migrant women and substantially impairs their ability to access services and seek protection, including through the criminal justice system (Erez, Adelman, & Gregory, 2009; Menjívar & Salcido, 2002; Reina, Lohman, & Maldonado, 2014). In the courtroom, the intervention of an interpreter may be another obstacle for these women to seek redress (Elsrud, 2014).

CONCLUSION

Language is an aspect that barely features in criminal justice literature. Despite its centrality to the legal process, the linguistic aspects of these interactions have been largely ignored. On the whole, criminal justice scholars have taken for granted the existence of the monolingual court. Yet, as this article shows, multilingualism is increasingly a salient feature of contemporary criminal courts and the criminal justice system more generally. In the context of a highly diverse court demography, language competency woven with race and national origin has become an important marker of difference inside the courtroom (Aliverti, 2016b). Language difference—and the need for an interpreter—is the most tangible indicator of the defendant's outsider status.

Relying on an interpreter is primarily conceived of as an individual right of non-English-speaking defendants and aims at placing them on an equal footing with their English-speaking counterparts. Yet, as we claimed, the reliance on an interpreter in the courtroom may sometimes exacerbate difference and reinforce the subordinate status of non-English speakers in court proceedings. Interpreters are reluctantly (and often poorly) accommodated in the courtroom. The perception of them as "necessary evils" mirrors broader institutional arrangements around language services and the politics outside the courtroom. An example of how the logic of austerity and managerialism work in concert with a lack of concern for unpopular minorities (Aliverti, 2016a), the new contractual arrangements in the provision of language services have exacerbated longstanding problems to the detriment of non-English speakers.

The presence of interpreters draws attention to the deficient realization of basic due process rights, specially concerning nonnative defendants. If

the criminal trial is to be conceived as a communicative process (Duff, Farmer, Marshall, & Tadros, 2007), through which people are called to answer for their alleged wrongdoing and are hence addressed as responsible agents rather than objects of investigation, such model is drastically contested when it comes to non-English-speaking participants. Instead of facilitating their effective participation, the presence of interpreters sometimes hinders it and frustrates the communicative endeavor.

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