

Interpreting into the ether: interpreting for prison/court video link hearings

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Abstract

Over the past few years there has been a large increase in the prison population of the UK and a corresponding increase in the foreign prisoner population. Most Crown Courts and Magistrates courtrooms in England and Wales now have courts which are videolinked to one or more prisons or remand centres. In this study I lay out the legal basis and the government's business case for prison video link, and provide statistics of the foreign prisoner population to demonstrate the nature of the problems raised by the use of prison video link with an interpreter present. I present the results of brief interviews with court personnel including defence and crown prosecution advocates, court clerks and magistrates, and others involved in the process, including prisoners, prison officers, and interpreters, to obtain their experiences. I include direct observation of the process at the Magistrates and Crown Courts, as well as at the prison end of the system. I explore the logistics of this kind of interpreting together with any alteration in the dynamics of the prison video linked courtroom, as these two elements have an unforeseen but crucial impact on the task of the interpreter. Finally I attempt to find out whether it is possible or, indeed, desirable to use interpreters in such circumstances.

Résumé

Au cours de ces quelques dernières années il y a eu une augmentation importante de la population carcérale du Royaume Uni et un accroissement correspondant du nombre de

détenus étrangers. La plupart des salles d'audience des Cours d'Assises et des tribunaux de Première Instance d'Angleterre et du Pays de Galles sont maintenant reliées par liaison vidéo à une ou plusieurs prisons et à des centres de détention.

Dans cette étude j'expose systématiquement les bases juridiques et le cas du gouvernement pour la liaison vidéo en prison et je fournis des statistiques sur la population carcérale constituée par les prisonniers étrangers pour démontrer la nature des problèmes soulevés par l'utilisation d'une liaison vidéo en prison en présence d'un(e) interprète.

Je soumetts les résultats de courts entretiens avec du personnel des tribunaux, y compris des avocats pour la Défense et des avocats du Parquet, des greffiers des tribunaux, des juges de proximité et d'autres personnes impliquées dans cette procédure, y compris des détenus, des gardiens de prison et des interprètes pour recueillir leurs expériences.

J'inclus des observations directes de la procédure dans les tribunaux de Première Instance et les Cours d'Assises ainsi que dans les prisons. J'étudie sous tous ses aspects la logistique de cette sorte d'interprétation en même temps que toute modification dans la dynamique de la salle d'audience reliée à la prison par liaison vidéo car ces deux éléments ont des conséquences imprévues mais cruciales sur la tâche des interprètes.

Finalement j'essaie de découvrir s'il est possible ou même souhaitable d'employer des interprètes dans de telles circonstances.

Definitions

The different types of technologies available to interpreters are explored in the position statement of the Association Internationale des Interprètes de Conférence (AIIC) on video conferencing:

Tele-conference: any form of communication between two or several participants in two or several places and relying on the transmission of one or several audio signals between those places.

Video-conference: a teleconference comprising one or several video signals which convey the images of some or all the participants.

Multilingual video-conference: a video conference in two or several languages with interpretation (consecutive or simultaneous).

Tele-interpreting: interpretation of a multi-lingual video-conference by interpreters who have a direct view of neither the speaker nor their audience.

Mouzourakis includes a further category of remote interpretation and defines this as simultaneous interpretation where the interpreter is not in the same room as the speaker or his/her audience, or both (Mouzourakis 1996: 22-23). Since these categories have been devised by conference, rather than public service interpreters, it seemed important to investigate how and whether they could be applied to the courtroom interpreter using such devices. On the one hand, if the interpreter is located in the courtroom, the process by which s/he operates seems nearest to the multilingual video-conference category; however, if the interpreter were to be located in the prison or the Detention Centre, this application would be

closer to remote interpreting. Even so it would not be quite the same, since remote interpreting is generally understood to be in simultaneous mode, and, as I shall show, this is not possible in the court or prison environment. The courtroom has an unusual dynamic in that the person being discussed (the defendant) speaks little, if at all, and much of the speaking is done by those within the confines of the courtroom, and even then only according to the rules and hierarchies that apply within that environment.

The UK Government's business case for the use of prison video link

Two laws passed within a year of each other in the late nineties have given rise to the greatly increased use of live video link in court.

Firstly, Section 57 of the Crime and Disorder Act 1998 provides for

pre-trial hearings involving a defendant in custody to be conducted over a live television link between the court and the prison, where approved facilities exist. The court has discretion over whether the hearing shall be conducted using the link, and both defence and prosecution may make representations. If a magistrates court decides not to use a TV link, where this is an option, the court must give its reasons.

The UK government sets out its business case for the adoption of prison video link on the Department of Constitutional Affairs website. It maintains that the system contributes to three of the Home Office's Public Service Agreements for criminal justice, namely:

PSA Target 1

Improve the delivery of justice by increasing the number of crimes for which an offender is brought to justice to 1.2 million by 2005/2006, with an improvement in all

Criminal Justice Areas, a greater increase in the worst performing areas and a reduction in the proportion of ineffective trials.

The document claims that this system reduces wasted judicial and court room time waiting for prisoners to arrive at court.

PSA Target 2

Improve the level of public confidence in the Criminal Justice System, including increasing that of ethnic minority communities, increasing year on year the satisfaction of victims and witnesses, whilst respecting the rights of defendants.

This, it claims, will reduce the need to transport prisoners, with associated costs and safety risks. Defendants benefit from easier process, the reduced need to travel and transfer between prison cells.

PSA Target 7

To increase value for money from the Criminal Justice System by 3% each year, increasing efficiency by 2% a year, including the delivery of Legal Aid.

It is deemed that Prison Video Link would be likely to contribute to this target because of savings made by Police and Prison Service in the transportation of prisoners to and from court.

Secondly, greater use of video conferencing has come about because of the implementation of the Youth Justice and Criminal Evidence Act 1999, which makes provision for certain categories of witnesses to give evidence at criminal trials through live video link. I

specifically exclude witness testimony by video link from this study, as the logistics and mode of operation are different.

The government's business case for prison video link can therefore be summed up as follows:

- Advantages of electronic delivery of services
- Enhanced security to the public
- Elimination of delay
- Prisoners prefer it
- It cuts costs

The numbers of foreign prisoners in UK prisons

In June 2007, the prison population in the UK reached 81,000, the highest in Europe. In March 2007, there were 11,083 foreign nationals from 168 countries, representing 13.85% of the prison population as a whole. 2 prisons in the UK have 50% foreign nationals, and 16 prisons have 25% foreign nationals. This is not to suggest that foreign nationals do not speak English, but it gives some indication of the non-English speaking prison population, since there are apparently no statistics to show how many prisoners apart from foreign nationals do not speak English well enough to require an interpreter in prison. Given the multilingual nature of the UK, this is likely to be substantial.

Immigration Detention Centres

There seems to be no official statistical breakdown by language of detainees in Immigration Detention Centres. By their very nature they have come from foreign countries, and it is highly likely that of the 1,435 detainees (figures available for the period up to 31st March 2007) most of them will require interpreting services if they are applying for bail, as they are

entitled to do. Anecdotal evidence suggests that this will be a requirement for something approaching 70% of them. At the time of writing, the UK government intends to install videoconferencing equipment in all 10 Immigration Detention Centres in the UK, and it further proposes to locate interpreters at the Detention Centre itself rather than in the courtroom.

Procedures for which prison video link may be used

There are only two types of hearing for which video link can be used, remand hearings and sentencing by consent. Although many of these hearings are brief, this is by no means to suggest that they are simple or straightforward in nature.

Typical layout of the prison video linked courtroom (Crown Court)

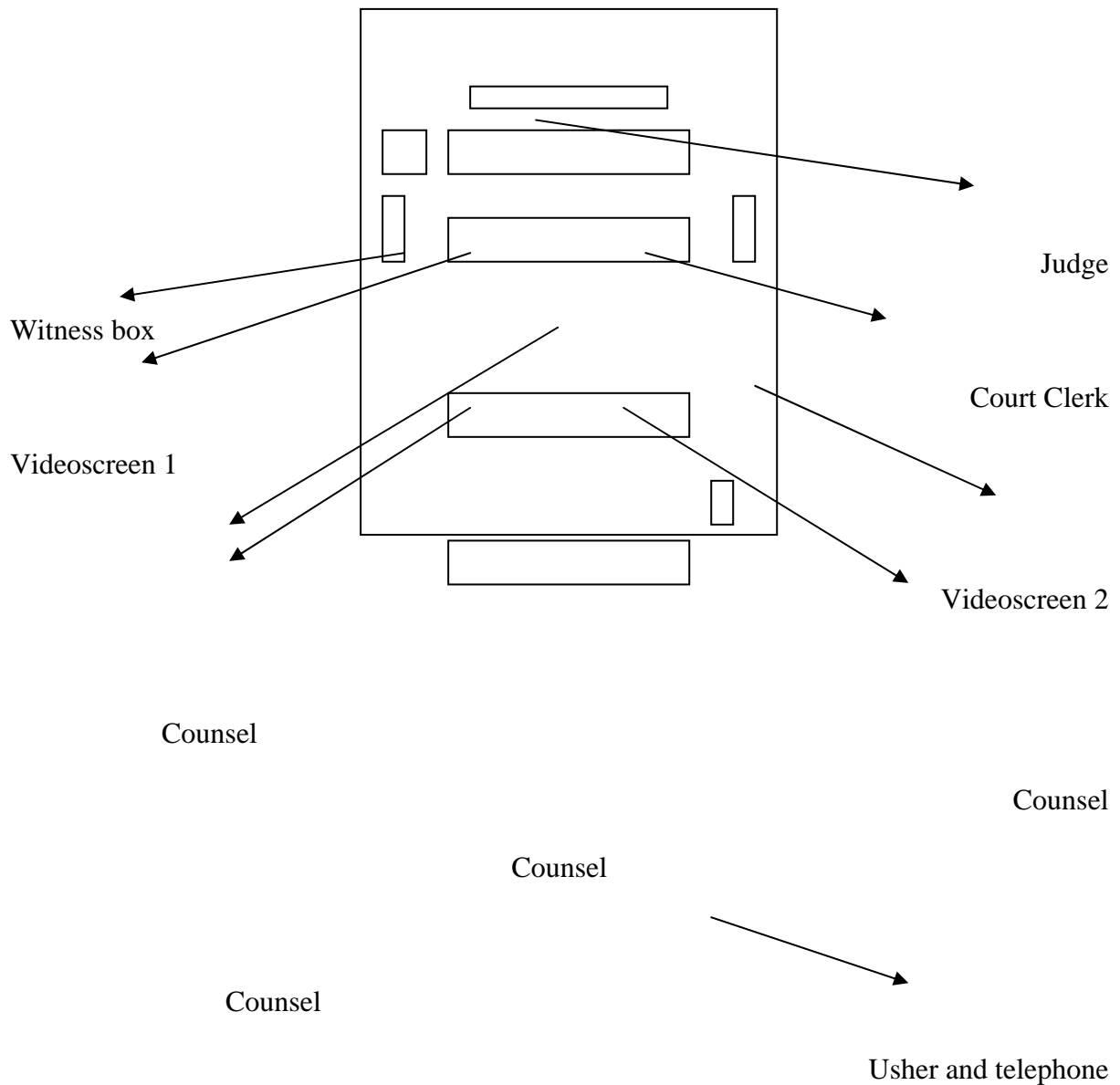


Fig.1

All courtrooms vary to some degree in their layout, and this often depends on whether they are in old or new buildings. All the desks have microphones connected to the video link system, including one for the judge or the magistrate if in a Magistrates court, one for the advocates both prosecuting and defending, and one for the court clerk, who operates the system. It is important to note the telephone at the back of the court which is connected to the

prison. This is designed for “private” consultations between prisoner and advocate once the hearing has started. There is no microphone assigned to interpreters for their exclusive use.

Private consultations

All defence advocates and remand prisoners, whether they require an interpreter or not, have special facilities assigned to them for private consultations before, during and after the hearing. Before the hearing use is made of supposedly sound-proof booths, one at the prison, and one at the court. The remand prisoner goes into the booth at the prison, where there is a telephone handset. The advocate goes into the booth at the court, which is equipped with either a similar telephone handset, or a desk microphone (the latter is more unusual). Each can see and hear the other in privacy. However, this arrangement takes no account of the presence of an interpreter, as there is usually no room for more than one person in each booth. More problems arise if prisoner and advocate need to communicate with one another during the hearing itself. As already indicated, the only way this can be done is via a simple telephone link without the privacy that was afforded in the booth. This naturally poses problems for interpreters, as their needs have not been taken into consideration at the planning stage.

During the hearing itself, the prisoner sits in a specially adapted video conferencing room at the prison which is treated, to all intents and purposes, as an extension of the courtroom. A specially trained prison officer sits in the room and operates the equipment. When prisoners want to speak during a hearing, they simply raise their hand, and this communication is facilitated by the court clerk.

Operation of the equipment

There are no technicians in the court; trained court clerks, who sit near or next to the magistrates or judges, are entirely responsible for the maintenance of the live link. It should be noted that they operate these controls in addition to their other, not inconsiderable, duties, to do with the smooth running of the court. Thus they initiate the link, maintain it, and are expected to track each speaker throughout the hearing. If there is more than one defendant and they are in different prisons, the screen can be split into two, three or more frames. I noted how the court clerks varied in their ability to track the speakers, which resulted in the camera focusing on the previous, rather than the actual speaker. I also noted how frequently the Prison Officer, whose job it is to place the picture tracking the prisoner in the right place on the main screen so that it did not obscure the speaker in the courtroom, failed to do this speedily enough, with the result that the prisoner could not see what was happening.

Acoustics and logistics in the courtroom

I made a personal assessment of the sound quality of the courtroom to find out how easily interpreters could function if they were required to interpret in such an environment. This assessment was carried out both in the courtroom and at the prison. Bearing in mind that interpreters need to be able to hear every word spoken in order to interpret accurately, I found that the strength and quality of the auditory signal from an interpreter's point of view was diminished for the following reasons:

- Advocates rifling through papers placed close to the microphone
- Little attempt made by judges, advocates and court clerks to project their voices
- Speaking at high speed because of time restrictions
- Extraneous noise from people constantly entering and leaving the courtroom
- Occasional electronic feedback on the video link system
- No sound amplification in the courtroom

- The difficulty presented by the telephone consultation during the hearing, since there is only one handset to be shared by interpreter and advocate
- The difficulty presented by the size of some private consultation booths, which are too small to accommodate advocate and interpreter

The impact on the interpreter

When interpreters are used for prison video link, they are usually located in the courtroom and not at the prison. When consulted about this issue, interpreters varied in their opinions about their ability to manage their interpreting when using prison video link. Some were positive, saying that it seemed to work, and the prisoner said he understood everything.

Others reported negative experiences, saying that they could not be sure that they could be heard and understood by the prisoner. The experience of one interpreter was illustrative of the potential hazards:

It was a nightmare. I didn't know where to sit, so I was put next to the defence solicitor. I soon realised that I couldn't interpret simultaneously. I coped, but I had to rely far more on my memory than I'm used to. The solicitor was sitting right next to me, and I had to raise my voice so that I could be heard. This resulted in my speaking loudly right in his ear, and I was concerned that he would find this distracting. The prisoner intervened several times, and I didn't know whether that was because he hadn't heard or he hadn't understood. Although I was speaking into the solicitor's microphone, I wanted to be sure that the court had heard me as well as the prisoner. It took a lot longer because of the consecutive interpreting. I was only able to focus on the video screen, so I was not able to look at any of the speakers as I interpreted to the prisoner. The dynamics of this sort of interpreting are different because I'm used to sitting next to the prisoner in the dock and whispering into his ear.

Working in the video link courtroom, then, requires considerable adjustment to accommodate the interpreter, and I have already shown that it is a difficult working environment for them, and especially the interpreters themselves may not be fully aware how it can operate to their, and to the prisoner's, disadvantage.

Most interpreted court hearings without video link require the interpreter to perform simultaneous interpreting into the ear of the prisoner in the dock, unless the defendant is giving evidence, or is being addressed directly by the court. In a prison video linked courtroom with an interpreter and a foreign language speaking prisoner/defendant this is no longer possible, as only one person may speak at a time. If simultaneous interpreting were to be used, the prisoner/defendant would receive an undifferentiated stream of sound, which would be unintelligible. Consecutive interpreting mode only must be used, and this might slow down proceedings to the level of frustration. Since there are normally limited time slots for each prisoner, the time slots might have to be greatly increased.

A decision would also have to be made about where the interpreter would sit, since s/he does not have a dedicated microphone. S/he must be able to see and hear all the speakers clearly, and as I have already shown, this is difficult. In addition, s/he must be seen and heard by the prisoner. In some cases, interpreters have sat beside advocates, but these desks are often crowded. It is rare for interpreters to sit next to the prisoner in the prison, in contrast to the current proposal by the UK Government to locate interpreters next to detainees in Detention Centres.

The time slots have a distinct effect on the pace and the audibility of the proceedings, as might be imagined. Observations showed that court personnel spoke faster, at a lower volume and more indistinctly than in courts where there was a defendant present in court, thus presenting more difficulties for the interpreter.

The nature of the language observed was related to the technicalities of remand procedures, and as such, it was particularly dense in legal terminology. This is a difficulty in itself, and it is important to note that although there is a generic qualification in legal Public Service Interpreting in the UK, there is no specialised court interpreting qualification as in the US or Canada.

Lessons from conference interpreting

Although the use of multilingual videoconferencing is not new for conference interpreters, it is only during the last six years or so that the prison video link system has been fully installed and functioning in Magistrates, Crown Courts and prisons throughout the UK. The last six years have also seen an increase in the numbers of migrants and asylum seekers coming to the UK, thus increasing the frequency with which interpreters might come into contact with this technology. Some preliminary research has been carried out by the European Parliament and the European Commission, particularly on the effects of remote interpreting, and I wanted to find out if there were any parallels between the tasks of the remote conference interpreter and the courtroom interpreter using this equipment, and whether any useful data could be obtained and applied to the courtroom interpreter. AIIC has drawn up minimum standards for audiovisual quality for videoconferencing, and this may be consulted by going to their website (AIIC.net). When the videoconference contract holders in the UK were asked for their sound quality specification, they responded that this information was protected by the law on intellectual property; however they did confirm that the audiovisual quality available in the private booths was of a lower standard than those available to the court. It was also confirmed that interpreters had not been directly consulted about their communication requirements.

Moser-Mercer (2005:729) analyses the features of successful face-to-face communication and demonstrates how audible and visible speech complement one another. According to Moser-Mercer, these are complementary, in that listeners rely more on one mode when the other is less readily available. She also argues that the senses are designed to work together to perceive input and stresses the importance of the integration of information from several different sources. She describes how the salient features of face-to-face communication, gaze, gesture, facial expression and posture are required for the effective transmission of information.

The ability to detect and orient toward a visual stimulus, for example, is markedly enhanced when it is paired with an auditory cue at the same position in space.

In prison video link interpreting, where the interpreter is located in the courtroom, the interpreter is deprived of many of these sensory cues which would normally be available to her if the prisoner were sitting beside her. This is confirmed by the account of the interpreter quoted in the previous section. She found herself focusing on the prisoner on the video screen instead of the speaker, and was not able to develop a sense of whether the prisoner had understood her or not.

Although at the time of writing the UK Government has not yet installed video link at its 10 Detention Centres, the proposal to do so, and to locate interpreters with the detainee at the Centre rather than at the Immigration Tribunal, raises other issues about the dynamics of interpreted communication which do not apply to prison video link interpreting in court, since the interpreter is usually located in the courtroom and not the prison. If interpreters were to be located at the prison or the Detention Centre, and if they were to be seated next to the defendant there, then they would be likely to experience some of the disadvantages of remote

interpreting, as well as the disadvantages I have already enumerated in terms of sound quality and other technical problems. The sensory cues highlighted as necessary for accurate interpreting by Moser-Mercer would be diminished by their very remoteness, and by the difficulty the interpreter would experience in working out who was speaking and what they were saying. According to Moser-Mercer (2005:731)

Research has shown that not even high quality audio and video replicate face to face processes.....current technology does not allow for presentational aspects of face to face interaction, nor does it allow for rich cross-sensory stimulation....

The viewpoint of each of the following participants in the process will now be considered.

The court clerk's view

Court clerks varied in their awareness of the issue. There appeared to be no formal written court policy about the use of interpreters with prison video link, although one court had produced a document which gave a list of five exceptions to the use of prison video link, one of them being interpreted cases. Some felt that there were too many complexities and that it was inviting trouble to use an interpreter in such circumstances. Yet others said that it was unfair that prisoners and members of their families who attended such hearings could sometimes not see each other because the public seating area was situated behind the video screen.

The defence advocate's view

There were grave concerns on the part of one defence advocate about forms requiring signatures, the fact that it was impossible to have a lengthy or complex discussion with the client due to time constraints, the undesirability of relinquishing the telephone handset to the interpreter, thus preventing the advocate from direct contact with the client, as well as the deep suspicion that prison video link was part of a creeping tendency to distance the defendant from the courtroom, and that it would only be a matter of time before “trial by video” was introduced. Only one of the defence advocates I interviewed had thought about himself in relation to the interpreter; others simply had no awareness of the communication issues involved.

The prisoner’s view

Perhaps one might imagine that the prisoner would look forward to his/her “day in court”, but this is far from the case. Research has shown that (at least for English-speaking prisoners) being ferried to and from court in a prison van is a far from pleasant experience. The prisoners’ day begins at 5 or 6 am; their rehabilitation and job training programmes are disrupted; they are incarcerated all day even though their hearing may only last five minutes; because of overcrowding they risk losing their cell and their cell-mates and at worst they may end up in a prison many hundreds of miles from home and family, with only uncertain prospects of going back to their local prison. All this happens because UK prisons are so grossly overcrowded that empty cell spaces fill up with other prisoners in their absence.

Conclusion

There are many issues to be taken into consideration when making policy about the deployment of interpreters in PVL courts. There appears to be particularly dense legal language use as a result of time constraints; this is significant because interpreters in the UK

only receive generic legal interpreter training, with the language of the courtroom only forming a small part of it. They do not normally receive any training in interpreting with prison video link. The speed of hearings is greater, and this is also due to the limited time slots allocated for the hearings. The lack of voice projection and the low volume of speech amongst court personnel such as judges and advocates means that an interpreter often does not receive a strong enough auditory signal to be able to interpret accurately. The court clerks and prison officers often fail to track the speakers speedily, and this blocks any available visual signal cues available to the interpreter. Add to all this the fact that simultaneous interpreting cannot be used, thus necessitating the exclusive use of consecutive interpreting (which greatly lengthens the proceedings); the fact that advocates and interpreters often cannot occupy the same booth; that multiparty consultations (for example with interpreter, barrister, solicitor and family member) are often not possible; there are difficulties caused by extraneous noise in the courtroom, the occasional electronic feedback on the sound system, and there remains the unresolved problem of the private consultations between prisoner and defence advocate both in the booths and on the courtroom telephone. One must conclude that given the present state of technology, interpreters should not be used for prison video link hearings. If there were only one or two flaws in the system, the situation could perhaps be remedied, but the dynamics are too complex; there are too many opportunities for things to go wrong. The greatest risk of all is that the non-English speaking prisoner might be disadvantaged by not being in court with the interpreter sitting beside him/her.

It is of course, unacceptable that prisoners lose their cells, cell mates, their prison work and their rehabilitation programmes and that they risk being transported far from their families, and that this is the price they risk paying for their day in court. However, this should not be used as an argument when making decisions about whether or not to use interpreters for prison video link. It is the responsibility of the government to ensure that only those

offenders who are a danger to society are kept in prison, and to make proper arrangements for the custody and welfare of prisoners while they are serving their sentences. It is also crucial to the users of this technology that public service interpreters become involved in policy making.

Until the environment of the court and the state of video link technology can be improved, non-English-speaking remand prisoners and those on bail at Detention Centres should be brought to court so that they can come face to face with their interpreters, so that they can consult their advocates in person through the interpreter, and so that they may not be disadvantaged by the court process. If no-one bothers to find out whether the most basic of communication has taken place, then interpreters will be mere tokens, and instead of effecting true communicative interaction, they will be interpreting into the ether.

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