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Walking a fine line – The legal system and sign language interpreters: Roles and responsibilities

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Walking a fine line:

The legal system, sign language interpreters, roles and responsibilities

RUNNING HEAD: Legal sign language interpreters' roles and responsibilities

Bionotes

Jemina Napier gained her PhD in Linguistics from Macquarie University in Sydney, where she was mentored by Christopher Candlin in her early research career. After 15 years at Macquarie, where she established the PG Diploma/MA in Auslan/English Interpreting and then became Head of the Translation and Interpreting program, she took up the position of Chair of Intercultural Communication in the Department of Languages & Intercultural Studies at Heriot-Watt University in Edinburgh. She has almost 30 years experience as a sign language interpreter practitioner. Her major research interest is in applied sign linguistics, and specifically sign language interpreting and translation. Address for correspondence: Department of Languages & Intercultural Studies, Heriot-Watt University, Edinburgh, EN14 4AS, UK. Email: j.napier@hw.ac.uk

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Abstract

Legal interpreting as an applied linguistic activity has been explored in extant literature, with various explorations of the role of legal interpreters from a discourse perspective. Current thinking in interpreting studies classifies the role of the interpreter as a participant in interaction and co-constructor of meaning. Sign language interpreting as a professional practice typically occurs in legal contexts where the deaf person is the complainant, defendant or witness. But recent research has begun to explore the provision of sign language interpreting for deaf jurors. Drawing on a corpus of 12 qualitative interviews, and with reference to frameworks of discourse and responsibility, this paper presents analyses of perceptions from two key stakeholder groups – sign language interpreters and lawyers – on the level of professional responsibility that each stakeholder feels that sign language interpreters need to adopt in the legal setting, and their perceptions of the role and responsibilities of sign language interpreters in this context. This study reveals that the legal and moral boundaries of meaning attributed to interpreters' responsibilities are blurred, yet both stakeholder groups have their own clear perceptions of the duties attached to the interpreter's position in court. Thus interpreters need to walk a fine line in how they manage their role and responsibilities according to the theoretical position in interpreting studies, meet the linguistic needs of their deaf clients in court, as well as adhering to their responsibilities as perceived by the justice system.

KEYWORDS

Applied sign linguistics, sign language, legal interpreting, interpreter role, discourse of responsibility

Walking a fine line: The legal system, sign language interpreters, roles and responsibilities

1. Introduction

Interpreting as an applied linguistic activity involves mediating between languages and cultures across a wide range of communicative settings. Most interpreters work between two or more spoken languages, that is, within the same language modality; however, some interpreters work between two different language modalities: between spoken and signed languages and between deaf and hearing people.

Essentially signed and spoken language interpreting are the same in terms of processes. There are two main differences, however: (1) sign language interpreters typically work simultaneously as they work bimodally (i.e., one of the languages is visual and silent); and (2) deaf people have a strong vested interest in informing the working practices of sign language interpreters (SLIs) – perhaps because deaf people’s usage of interpreters is more frequent, across more domains, and lasts for a lifetime (Napier 2015).

In applied sign linguistics terms, there are many interesting aspects for the investigation of sign language interpreting as *professional practice* (Napier & Leeson, 2016). In particular, a developed understanding of sign language interpreting as a *practice profession*¹ (Dean and Pollard 2005, 2013) has seen a shift in the discourses around interpreters, sign language and deaf people. Dean and Pollard (2011) criticise the use of the term *role* as the underlying justification of behaviors by interpreters and suggest that it is the responsibility of interpreters to respond to a constellation of demands in any given situation. They contend that the term used to convey ethical ideals in other professions is *responsibility*—the word often coupled with role. Sarangi (2012) argues that in owning actions and taking responsibility, we can consider the notion of ‘role’ in a more dynamic way, and thus take on a ‘role-relational perspective’. In an analysis of SLIs’ discourse on ethics,

Dean (2014) found that interpreters consider domains of responsibility as primarily those things pertaining to the task of message transfer, and being concerned with other elements outside of that task would be considered as an ethical infringement. In fact, Dean (2015) suggests that as many other professional groups do, SLIs should use the term *role* coupled with *responsibility* to explain and define their function and scope of practice. Thus an applied linguistic analysis of the way that interpreters and lawyers talk about the responsibility of SLIs is timely.

Referring to the work of Dean (2014, 2015) and discussions of discourse and responsibility, this paper presents analyses of perceptions from two key stakeholder groups – SLIs and lawyers – on the level of professional responsibility that each stakeholder feels that SLIs need to adopt in the legal setting, and their perceptions of the role of SLIs in this context.

Drawing on two sets of data from studies with lawyers and SLIs,² we present a combined quantitative and qualitative thematic content analysis of the language used by the participants, which reveal that both groups acknowledge the inherent challenges involved in legal interpreting, but each group has different perspectives on the role and responsibilities of interpreters, vis-à-vis their role and responsibilities in relation to the court.

2. Framing the study

2.1 Discourse of responsibility

A special issue of JALPP 9(3) [2012] titled '*Discourse and responsibility*' focused on how responsibility is manifested, expressed, attributed, negotiated and contested in the discourses of professional practice. This issue served as the inspiration for the analyses of the data reported in this paper.

Given the work of Dean (2014, 2015) it is apparent that the analysis of how responsibility is manifested, expressed, attributed, negotiated and contested in the discourses concerning legal sign language interpreting practice could provide insights into the different

accountabilities that SLIs and lawyers perceive interpreters to have in relation to the court and also to deaf clients.

In applying Solin and Östman’s (2012) linguistic classifications of the term *responsible* to the professional practice of interpreting, we suggest that the responsibility of interpreters can be allocated as seen in Table 1.

Table 1: Interpreters’ responsibility according to linguistic classification

Linguistic classification	Meaning	Example of interpreters’ responsibility
Adjective (1)	Someone who is to blame	She is responsible for (not) accurately conveying the message
Adjective (2)	Someone who is trustworthy	She is a responsible (ethical) interpreter
Noun	Duties attached to a particular position	The responsibilities of an interpreter

Solin and Östman (2012) also suggest that in order to analyse the perceptions of *responsibility* in professional discourses, it is necessary to make a distinction between principally moral or principally legal meanings, as seen in Table 2.

Table 2: Moral and legal meanings and interpreting responsibility

Meaning		Applied to interpreting
Moral	The way in which human behaviour is constrained by moral rules	Responsibility to make interpreting decisions according to what feels right
Legal	Responsibilities attached to a social role or position	Responsibility for interpreting decisions grounded in contracted professional duties

(Adapted from Solin and Östman 2012: 288)

In the case of legal responsibility, the person is typically in charge of something, and may be prosecuted in cases of neglect. For SLIs, they are responsible for mediating communication, and although they may not be prosecuted if something goes wrong, there are other sanctions, such as being struck off the professional register (Napier 2004). Solin and Östman (2012) assert that although at times there could be overlap between moral

responsibility and legal responsibility, these two distinctions can be useful for analytic purposes.

A further distinction highlighted by Solin and Östman is that between individual/personal responsibility and collective responsibility. So responsible behaviour requires individuals who have the requisite agency and knowledge to adopt appropriate professional behaviour, which is typically institutionalised and codified in the form of codes of ethics. This is particularly true of interpreters who are required to adhere to the Code of Ethics of their professional interpreting association, which serves as an operational code (contract) to inform their professional practice (Tebble 2012).

Ozolins (2014) notes that regardless of the existence of Codes of Ethics, ethical responsibility should not be ascribed only to interpreters. He suggests that there are limits to the extent of responsibility that can realistically be ascribed to interpreters, given the descriptions and conditions under which they work. Solin and Östman (2012: 289) suggest that responsibility is actually construed and negotiated in discourse, and “can be taken on, denied, assigned to other participants and evaded”. It could be argued that in order to be judged to have taken responsibility, people must simply do what the system wants. Although people may not be able to take full responsibility for their behaviour, they can take responsibility for it by engaging with the system, and people in a position of power may have an expectation that they take responsibility as directed by those in power (Baker and Newnes 2005). One particular interest of this study, therefore, is how SLIs take on responsibility in court; how responsibility is assigned to SLIs by lawyers; and the perceptions of responsibility in relation to their respective roles in court. Solin and Östman (2012) noted a lack of explicit reference to the theme of responsibility in the study of professional discourse and language in the workplace. This same lack of explicit reference can also be applied to discussions of legal sign language interpreting.

2.2 The role of legal interpreters

One of the challenges faced by participants in the courtroom is reconciling differences between lawyers' and interpreters' views of the role of the interpreter in the courtroom. Case law is the primary determiner of how the role of the interpreter is established in the courtroom: the court determines whether there is a need for an interpreter and what the role of that interpreter should be (Eades 2003). There are still grave concerns, however, that judges generally lack the expertise to assess language competence (Brennan and Brown 1997; Eades 2003), and that interpreters' cultural and language expertise should be recognised (Laster and Taylor 1994; Turner and Brown 2000)

More recent literature confirms the differing perceptions that officers of the law and interpreters have concerning the role of court interpreters. In a survey of 21 Australian lawyers, Hale (2007) found that only 28.6% of the respondents believed that accuracy means literal interpreting at the word level, suggesting a potential shift in attitude among legal practitioners. However, in her survey of 226 legal professionals and 36 non-European language interpreters' perceptions on the role of court interpreters, Lee (2009) found a statistically significant gap between the perceptions of each group. Furthermore, Hale (2011) conducted an online survey of 148 tribunal members, magistrates and judges in Australia and found that only 48.6% of judicial officers stated that they explain the role of the interpreter to the court, and 12.2% expect interpreters to explain their role. Hale found both adequate and inadequate understandings of the role of the court interpreter in definitions provided by judicial officers. Those who provided an adequate description of the role correctly used the word 'interpret' (rather than 'translate'); had an expectation that interpreters 'accurately' interpret and not summarise; and that interpreters be impartial and not give advice to, or advocate for, the non-English speaker, or offer personal opinions about the case. Those who had an *inadequate* understanding of the role did not make a distinction between interpreting and translation, frequently used modifiers such as 'just', 'only', 'simply' to preface the words

‘interpret’ or ‘translate’; and they frequently referenced the need to interpret or translate ‘words literally’.

In relation specifically to sign language interpreting, a survey of 97 legal professionals from 8 English-speaking countries was conducted as part of a wider study concerning whether deaf people should be able to serve as jurors (Napier 2013, Napier and McEwin 2015). In this survey the legal professionals were asked to define the role of the interpreter, and the majority of them referred to accuracy, faithfulness, the need to ‘interpret everything’; and there were some references to interpreters producing ‘word-for-word’ translations. Hale and Napier (2016) surveyed 194 spoken and signed language interpreters in Australia and found that these interpreters do not feel that their professional status is appreciated by other stakeholders in court or by the system as a whole, and that their working conditions are influenced by the perceptions of their professional status. That is, sign language interpreters feel that the less respected they are or the lower their professional status is, the poorer their working conditions are in court. This review of the literature on court interpreting reveals that legal professionals and interpreters have differing perceptions of the role of the court interpreters.

We are interested then in extending this discussion and examining the discourse of lawyers and SLIs with respect to the roles and responsibilities of SLIs in court, and evaluations of both moral responsibility and legal responsibility. Our main concern is to find out whether there are any tensions between the interpreter’s responsibility to ensure that communication in the court room is understood, as compared to the lawyer’s responsibility to see that due legal process is observed.

3. Method

This study was designed with the following research questions in mind, inspired by Jolanki’s (2012) analysis of the perceived responsibilities of family members and care workers:

- What roles are attributed to SLIs in court?
- How do lawyers and interpreters construct these positions and relations?
- What kind of conduct is linked to the different positions?
- What kinds of meanings (moral or legal) are given to the notion of interpreter responsibility?

We would not necessarily expect SLIs' responses to be any different from those of spoken language interpreters in this context, but the focus of analysis for the purpose of this paper is on SLIs as that is the basis of our expertise.

In order to answer these questions, two existing sets of semi-structured interview data with lawyers and SLIs were used from: (1) a Masters thesis project (Banna 2004); and (2) a study of deaf people and jury service (Napier 2013, Napier and McEwin 2015).

3.1 Participants

A total of 12 interviews were analysed involving: 6 SLIs with court interpreting experience (3 Australian and 3 American), 4 lawyers (all Australian), and 2 lawyers who had previously worked as SLIs (1 Australian and 1 American). Table 3 provides details of the interview participants and their pseudonyms.

Table 3: Interview participants

Participant pseudonym	Role	Country	Interview method	
1	Stacey	SLI	USA	Face-to-face
2	Ashley	SLI	USA	Face-to-face
3	Sam	SLI	USA	Face-to-face
4	Blair	SLI	Australia	Face-to-face
5	Lindsay	SLI	Australia	Face-to-face
6	Morgan	SLI	Australia	Face-to-face
7	Taylor	Lawyer/ SLI	Australia	Face-to-face
8	Alex	Lawyer/ SLI	USA	Skype
9	Courtney	Lawyer	Australia	Email
10	Jordan	Lawyer	Australia	Email
11	Casey	Lawyer	Australia	Face-to-face
12	Terry	Lawyer	Australia	Face-to-face

3.2 Process and procedure

The SLIs were recruited through network and convenience sampling methods as the sign language interpreting community is small and the population is easily identifiable (Hale and Napier 2013). In this case, the Australian interpreters were recruited through the networks of both the researchers and from those who had responded to an earlier survey indicating willingness to be interviewed. The American interpreters were conveniently recruited at a conference on legal interpreting that was attended by Napier. The lawyers were either identified through researcher networks or from respondents to the same survey mentioned above, who had expressed interest in being involved in further research.

The interviews were held either face-to-face, by Skype or via email,³ and were conducted in English. Face-to-face and Skype interviews were audio or video recorded; and email interviews captured the written responses to questions. All data was transcribed for later analysis. The interviews were semi-structured, so prompt questions were used to guide the discussion in each interview, but allowed flexibility for the interviewees to express their thoughts and ideas, and for the researchers to build upon and explore the participant's responses to the prompt questions (Hale and Napier 2013). The semi-structured interview is popular in applied linguistics research as it enables the researcher to strike a balance between having some level of control, as well as having flexibility (Nunan 1992).

The prompt questions were open-ended, and sought responses on specific aspects of participants' experience in court. For the interpreters this included questions about their role as interpreters, their own expectations and those of their clients, opportunities for briefing and preparation, and their perceptions of deaf people serving as jurors. For the lawyers the questions focused on the role of the interpreter, the impact of the interpreter on proceedings, effectiveness of interpreted proceedings and their perceptions of deaf people serving as jurors. For the purposes of this paper, we focus on aspects of the talk that represented their views on the role and responsibilities of SLIs in court.

3.3 Analysis

A thematic content analysis (Krippendorff 2004) was conducted on the data to allow for a quantitative and qualitative examination of the interview discourse. Drawing on categories from the literature, and in particular themes highlighted in Tables 1 and 2 in this paper, the transcriptions were coded for terms that highlighted how lawyers and SLIs talk about role and responsibility. A list of key lexical items was put together to assist with an initial quantitative thematic analysis of the data. The list comprised seven content themes: (1) *role*, (2) *responsibility*, (3) *trust*, (4) *ethics*, (5) *duty*, (6) *position*, and (7) *professional*. Frequency counts of the lexical items within each of these themes gave indications of areas requiring further qualitative content analysis. The content identified within each of these themes was also analysed more broadly in relation to moral or legal responsibility. The coding was completed first by Napier, and then checked and validated by Banna.

4. Results and discussion

In order to guide a more in-depth content analysis, a basic frequency count was conducted of the occurrence of lexical items that fit with the seven themes identified. Quantification of the data revealed that the terms *role*, *responsibility/responsible*, *duty*, *professional* and *position* were referred to by participants more frequently than the terms *trust*, *ethics/ethical*. Table 4 illustrates the breakdown of the frequency counts.

Table 4: Frequency counts

	<i>Theme</i>	<i>Sub-total</i>	<i>SLIs</i>	<i>Lawyer/ SLIs</i>	<i>Lawyers</i>
1.	role	43	27	6	10
2.	responsibility/ responsible	10	7	1	2
3.	trust	5	3	1	1
4.	ethics/ ethical	9	7	0	2
5.	duty	18	9	5	4
6.	position	10	5	4	1

7.	professional	14	8	3	3
	TOTAL	107	62	22	23

It is interesting to note that participants did not make as many references to the specific term *responsibility* or to someone being *responsible* as expected. However, when a more detailed content analysis is carried out using the themes and definitions identified in Tables 1 and 2, it is evident that, although the terms may not have been specifically used, there is in fact an identifiable discourse concerning the responsibility of SLIs and their role. This is especially the case when we examine the moral and legal meanings attributed to responsibility. Here we present the analysis from the themes with ten counts and above, focusing on *role*, *responsibility*, *duty*, *position*, and *professional*, followed by discussion of how the discourse represents the views of SLIs and lawyers about how responsibility is allocated in the courtroom.

4.1 Role

In total there were 43 specific references to the term *role* across all participants groups, so there is not scope in this paper to provide every quote here. Instead, we provide a selection of extracts from the interviews that elucidate the typical comments from SLIs, lawyers who were previously sign language interpreters (L-SLI), and lawyers (L).

Some of the comments were made (predominantly by SLIs) in relation to the role of deaf people in the courtroom, as opposed to the role of the interpreter. This is likely to be due to the fact that one interview data set was part of a project about deaf jurors. These instances have therefore been excluded from this discussion.

There were several instances of participants using the term *role* in relation to whether it is necessary to explain the responsibilities of SLIs in court (legal meaning), as seen in (1) and (2). Each of these extracts highlights the fact that familiarity with SLIs leads to an understanding by court personnel of why they are there and what they do, which generates trust in understanding their role and responsibilities.

(1): Lindsay (SLI)

So, and pretty much I have to say that the solicitors are usually pleased to see you. I mean they may not understand your *role* but they are certainly are very pleased to see you because without you there can't really communicate with their clients. So umm yep and often they have been waiting for a while to get their matter scheduled because of the inadequate supply of interpreters.

(2): Taylor (L-SLI)

If people are properly educated as to the *role* of the interpreter, it should not, it should not be, it should not even be an issue.

(3) and (4) show how the role of a SLI is to take responsibility to ensure that something is understood. This could be interpreted in several ways: the interpreter will be blamed if the person does not understand, they have to be trusted to interpret accurately, or they have duty to their position.

(3): Morgan (SLI)

So you might have a go in the court and the court might say, "You have a two year good behaviour bond and you can't do this, you can't do that." I will sign it in the court and then we will go out separately into another room where the advocate will explain to the child in more detail what that means, and my *role* will be to make certain that the child understood so I am doing very often a free translation of what the advocate is saying because I am aware more than anyone else usually of the child's language level and comprehension.

(4): Morgan (SLI)

This is a bit controversial because I see my *role* as more than simply accurately communicating the information both ways. I think there is also *role* for a sign language interpreter to try to equalise to create a more equalised playing field. And I think that the Deaf client is almost always at a disadvantage so that the, I think that the interpreter has some *role* in trying to allow the Deaf person to access the legal system on the same sort of basis as a hearing person...

These extracts could also be seen to potentially imply both legal and moral meaning, as there is an ethical responsibility to interpret accurately (grounded in contracted professional duties - legal) as well as an obligation to uphold the moral values in our society that children are protected, and a moral responsibility to social justice and equality. Interestingly, the

particular point in (4) about the role of the interpreter being to enable the equivalent experience for Deaf people as hearing people was not raised by any of the legal participants.

An example of the complex duty attached to the interpreter position can be seen in (5), where it is suggested that although an SLI's role is to ensure that something is understood, they may be willing to take the blame for doing something that is not part of their responsibility. In this case, the interpreter knows the duties ascribed to their position (legal) but also morally feels that they cannot leave the deaf person not knowing what to do when they arrive at court.

(5): Morgan (SLI)

So it depends very much. There isn't just one court interpreter, I don't think. Like there is the *role* of interpreter in a court hearing but there are a lot of other things happening in the courtroom. I will give an example where I stepped out of the *role* but I felt it was appropriate. I arrived at a local court and there was a Deaf couple. The man had been charged for speeding and he said to me "Well this is the circumstance under which I was speeding there were special circumstances what do I do? So I said "Do you have a solicitor here?" He said "No. "Have you seen a solicitor?" "He said "No." "What do I do? What do I say in the court?" "Well I can't tell you I am not a lawyer but if you want to come over and talk to this court officer perhaps he can arrange to see a solicitor before going into court?"

(6) illustrates a clear example of reference to the role of a SLI by referring to the Code of Ethics and the legal obligation for SLIs to enact their responsibilities appropriately.

Implicit within this message is that if the directions are given by a judge (in their authoritative position) then the role of the SLI would be accepted and trusted.

(6): Jordan (L)

I think if clear directions are given to the jury about the *role* of the interpreter as a 'non participant but only there as a facilitator for the full and active participation of juror X', then it should not impact negatively. A code of ethics applies to the interpreter (not) 'getting involved' in discussions but merely faithfully interpreting what is said, and also what is signed for the benefit of others who do not sign.⁴

(7) features a statement from another lawyer participant that could be regarded as potentially contradictory as the boundaries between legal responsibility and moral responsibility are blurred: the interpreter is duty bound to behave responsibly (i.e., interpret

accurately) according to their position (legal), as well as ensure that a person's needs are met if they are additionally disadvantaged in any way (moral).

(7): Kennedy (L)

The interpreter is a conduit for my client, and their *role* is to say exactly what my client is saying to the court and ensure that they hear everything that is said in court. There is another *role*... This relates to meaning. For example, a client with a mental illness. I have worked with a similar client twice and the interpreter should say when the client is not making sense.

4.2 Responsible/Responsibility

There were 10 instances across the data of specific reference to the terms *responsible* or *responsibility*. (8) implies blame, as well as duty: who is responsible for making sure that someone understands (and therefore could be blamed if not understood)? This is another example of legal and moral responsibilities blurring due to wanting to do what is right.

(8): Morgan (SLI)

It really depends very much I think on the particular client in the interview- the child or the parent – it could even be that the child has a deaf advocate... or a social worker. In the case when there is a deaf advocate, I let them do all the intermediary stuff - their job is to explain to the deaf person what is going on and speak up for them. But often the person, sometimes the deaf child doesn't have anybody but the interpreter and there is no parent or the parent doesn't sign and the solicitor isn't likely to sign... so there is I think, more *responsibility* on the interpreter to see that the child really understands what is going on. And the qualifications and the subtleties are sometimes lost in translation.

(9) and (10) reveal how the lawyers conveyed the importance of others (not SLIs) taking responsibility (legal meaning). The quotes show how the state and/or the court have a duty to take responsibility (take the blame) if interpreting provision is not adequate, or if deaf jurors do not understand court proceedings.

(9): Alex (L-SLI)

And that's why I've gone to asking the state to take *responsibility* for it and I've gotten the administrative office of the courts to take the *responsibility* for it, because I've said it's really not fair to expect the agencies to do it without oversight, you have

to know, because you are the ones who are *responsible* for making this you know done appropriately.

(10): Jordan (L)

Whether jurors understand everything that is said/signed in court is a completely separate issue, and is not the *responsibility* of the interpreter. Many people who are not deaf do not understand legal jargon used in court rooms.

4.3 Duty

The term *duty* was used 18 times across the data set. Several of the instances referred to the duty of jurors to perform their civic responsibility (which was obviously influenced by the questions being asked in one set of interviews). So once the 12 references to jury duty were removed from the analysis, 6 utterances remained that discuss duty in relation to the role of the interpreter or other legal personnel. Here we present examples that show legal responsibility, moral responsibility, or both legal and moral responsibility.

In (17), an interpreter talks about the role of the judge and at the same time mentions the legal duty/responsibility of the interpreter to give a literal translation and let the judge or lawyer explain the meaning.

(17): Stacey (SLI)

And so I see it as, I see it as a progressive interpreting process for everybody, the difference is you know for everybody they're, they're not going through a mediated version of it, and so we are and but I, I think that it's important to kind of pass along more precisely what the English is when it comes to special terms and all of that, because you know that it is the *duty* of the judge in some instances, and definitely of the attorneys, to begin to flesh that out with people.

(18), however, reveals the moral responsibility in relation to mentoring a new interpreter who has recently started working in the court system.

(18): Ashley (SLI)

You get better and better you know. We hired a new, like the second ASL interpreter is much younger than me in the profession and you know I sort of assign her with the *duty* although I'm her supervisor, to keep me young, so she comes in with new ideas and very often you know I'll say why don't you go to that training, you know because it's great training.

(17) and (18) are both presented by interpreters, but when lawyers talk about duty they refer to the duties of citizenship, which blurs the boundaries between moral responsibility and legal responsibility, as seen in (19) and (20).

(19): Alex (L-SLI)

Right, I think that you know here we're trying to include deaf people and people with all disabilities in every aspect of life, and so if there is a *duty* that everybody else is required to have then we rather keep it consistent, just to be fully respectful of their individuality and their humanity.

(20): Casey (L)

There's probably no clearer metaphor for full citizenship than jury service because you're performing a *duty* on behalf of the citizenry and yes people want to get out of it, but I wonder what would happen if they were deprived of it.

4.6 Position

The term *position* is used 10 times, equally by interpreters and lawyers; primarily in relation to legal responsibility and the interpreter's duty to abide by the code of ethics and remain impartial (21), or in relation to the physical position of the interpreter in the courtroom to ensure that deaf clients get full access to the proceedings (22 and 23). In order to be understood SLIs need to be seen, so reference to the physical position, rather than role position is not surprising, but both examples reveal that the position of the interpreter needs to be negotiated with (or directed by) the judge or other court personnel, so they lay down clear legal boundaries related to the different roles in court and who has the authority. This is important to note, because when compared with spoken language interpreters, SLIs will be more evident in court physically, but in terms of sound they have much less impact.

(21): Stacey (SLI)

And so we have been more conscientious about, but then years ago maybe in my particular situation where we take turns being the interpreter who on a break will go out and be the conversational interpreter, but that still means you have to be very strong in your, and, and polite and all of that, very strong in your *position* with both the deaf juror and the hearing jurors, that I can't talk to you.

(22): Sam (SLI)

Well one thing that's very important is *positioning*... So in the beginning, so the first thing is the opening statements and that's when the two, the lawyers get to say their story of what they're going to show and they usually have a podium in there in the middle of the well, ... that space in the middle. So then we want to be of course on the opposite side of the jury box so that the deaf juror can see the person who's talking. When it's a witness we need to be right by the witness stand. So this is the thing, but that we need to talk to the court staff before and kind of set up and sometimes it's awkward... but all of this can be worked out.

(23): Jordan (L)

This might be given in directions by the judge, or form part of a standard form 'information sheet on use of interpreters' that could be prepared and approved by the courts, which is provided to them as part of their empanelling (it could include FAQs and directions, e.g., do not ask the interpreter what he/she thinks about any issue', do not speak to the interpreter, speak to the deaf juror; do not ask the interpreter to recall what was said in the courtroom; allow the interpreter to specify where he/she needs to sit or stand relative to the deaf juror to provide interpreting and respect this *positioning*. etc .)

One of the Lawyer-SLI participants refers to *position* in two different ways, in both a legal sense and a moral sense. Firstly, there is reference to taking the position (stance) that deaf people should be treated equally (24)—not only is this a legal requirement but a social responsibility; secondly, that having someone appointed in a dedicated SLI position ensures quality and standards of interpretation—it is a legal responsibility attached to the position to expect minimum standards, but it is also a moral responsibility to the community of SLIs that a contracted interpreter can provide support (25).

(24): Alex (L-SLI)

I think our *position* has been we try as much as possible to provide the same to the deaf juror as to the hearing jurors, not more and not less. It depends a lot on the deaf juror's English because like right now one of my deaf defendants, mostly oral, and he uses both CART real-time captioning and sign language at the trial...

(25): Alex (L-SLI)

So I've finally, I've finally convinced the state because I kept complaining about the quality of the interpreters over and over and over, they created a contract staff *position* and now we have a staff ASL court interpreter. And so she's you know really knowledgeable, she knows all the judges, she knows all the procedures, she knows a lot of the attorneys and she certainly knows you know what's the most frequent things that come up, and so she's going to be very good for that. And I'm hoping that if she ever moves on that she'll be able to train her, you know the next successor to her *position*. And I think having a *position* like that does a huge amount for the community because now she's available to the other interpreters, so if there's something that requires a team, she can really share a lot with that team and that experience.

4.7 Professional

Of the 14 instances of the term *professional*, 4 focus on legal professionals generally and so are not relevant to the discussion of the role/responsibility of interpreters. What is of particular interest is when interpreters use the term 'professional' to distance themselves from others in a legal role when they are working with deaf jurors, as seen in (26). It is not clear whether this should be considered as legal or moral responsibility (or both), because it is a legal requirement to only have 12 people on a jury, but a moral responsibility to do what is right and allow deaf people to serve on juries. By being present as a 13th person in the jury room, the interpreter in (26) is talking about how they try to make it clear that their role is not a legal one, so as not to have any negative impact on the sanctity of deliberations in the jury room (avoiding blame).

(26): Ashley (SLI)

I've gone in there a lot of times and purposely not worn my ID because I've had attorneys talk to me about, what they don't like is will citizens be able to talk as freely as they normally would having a perception of who we are... don't look like the government agent because what they are worried about and the reason that there is only twelve people in that room, they don't want a *professional* legal person in there when someone's doing that. You should now show anything about authority or partiality like a government official, thus should not put on your ID or badge.

Typically though, both the interpreter and lawyer participants referred to the legal responsibility of interpreters to behave professionally by abiding by the code of ethics and by upholding the principles of neutrality (27) and accuracy (28), and there is the implication of blame that if the interpreter does not adhere to the code of ethics things can go wrong.

(27): Ashley (SLI)

It inevitably happens [that people talk directly to the interpreter] and we just really interpret and look right beady eyes at the deaf person... So what we usually do is we almost turn our back to them, I mean we do everything before we start interpreting to be looking in our bags for no particular reason. It is harder when days after people know more about you and try to liaise with you so to be neutral, better find ways to avoid talk and keep *professional* distance.

(28): Taylor (L-SLI)

If it's, unless the interpreter is stepping outside of their *professional* obligation and outside of their role, people should not even know they're there effectively. I mean they, yes they, they will always register an interpreter's there, but if the interpreter's doing their role properly, it should be very apparent that the interpreter is merely facilitating for communication.

One interpreter raised the notion of how interpreters are regarded and treated as professionals by court personnel, and the different experiences depending on the court (29). This seems to imply that there is a lack of consistency in the recognition of the required duties and responsibilities of interpreters (legal responsibility) and in the treatment of interpreters with professional respect (moral responsibility).

(29): Lindsay (SLI)

I am sure that they [lawyers] don't have as much respect for interpreters as for other legal *professionals*. And I suppose higher up, the judges and magistrates it varies. If

you say OK look at the country court that I went to well they were very appreciative and I was treated like one of them but if you look at the Supreme Court, well I was just seen as a communication aide.

5. Limitations of the Study

Before we conclude, it is necessary to acknowledge the limitations of the study. Data was only collected in two countries with similar court systems (Australia and US) so it does not necessarily represent the global view of lawyers and SLIs about the role and responsibilities of interpreters in court. Also, the study draws upon data sets collected as part of different projects, so the goals of the interviews for each data set were slightly different, and thus the nature of the questions asked may have influenced the answers. Furthermore, different data collection methods were used: the interviews were conducted face-to-face, or by Skype or email, which may have changed the nature of the answers to questions. In particular, the relationship between the interviewers/researchers and the interviewees may have been affected by the medium of interview, in that the building of rapport can be harder when people are not in the same room. The interviewee responses may also have been influenced by how well they knew the interviewers. The interviewers previously knew all the Australian interpreters, but not all the American interpreters. Nevertheless, the interpreter respondents may have felt more comfortable talking to interviewers who are also interpreters and therefore 'get it'. The lawyers may have been more guarded in their responses. Finally, this study only presents the reported views of SLIs and lawyers, and although it is possible to analyse the language used in interviews to talk about perceptions of the role and responsibilities of interpreters in court, the ideal would be to examine interactions in a courtroom and see how the discourse of responsibility actually manifests in the courtroom.

6. Conclusions

This study has provided an exploration of the views of SLIs and lawyers regarding their perceptions of the role and responsibilities of SLIs in court. Many of the issues raised correspond with those noted in the literature review; namely that SLIs position themselves in court in relation to their sense of responsibility to judges and lawyers, and their perception of responsible behaviour equates to appropriate professional behaviour that is codified in the codes of ethics (Solin and Östman 2012); value is placed on the code of ethics as an operational contractual form of behaviour management (Tebble 2012); domains of responsibility for SLIs primarily relate to the task of message transfer (Dean 2014); SLIs still predominantly use the term *role* rather than *responsibility* to explain and define their function and scope of practice (Dean 2015); and lawyers have a narrow view of the role of interpreters (Hale 2011). The lawyers were particularly concerned with interpreter accuracy and quality of interpretation, and with minimising the influence of the interpreter on court proceedings.

It is evident from discussions with the interpreters that perceptions of their role and responsibilities vary in response to the particular court case, the level of the court, the particular legal professionals and clients involved. Some of the key concerns were the ability of interpreters to maintain accuracy and impartiality faced with the challenges of courtroom protocol, specialist language, conflicting expectations of clients, lawyers and judges. The interpreters in particular, expressed a concern for the rights of the clients and also that their role included adapting to the particular needs of the client in question.

Most of the interview discourse focused on the legal responsibility of interpreters to perform their required duties as expected of their role, but there were also clear instances of references to the moral responsibility of interpreters to do what is morally or socially right, and also to judgments that overlapped between both legal responsibility and moral responsibility. Responsibility is assigned in terms of blame, trust and duty by both stakeholder groups, but it is interesting to note that there are clearly more tensions between a sense of

legal responsibility and moral responsibility among interpreters, than among lawyers. One common theme was that the interpreter's role is diminished as compared with the legal professional's, the latter being perceived as having higher status.

In relation to codes of ethics for interpreters, the discourses clearly fit with the main principles outlined earlier: (i) *Professional conduct*: Judgements were made by interpreters and lawyers about what is considered to be professional, ethical and responsible conduct of interpreters; (ii) *Impartiality*: It is the perception of both stakeholder groups that interpreters should not be involved and should keep distance; (iii) *Clarity of role boundaries*: Both groups presented clearly defined role boundaries for interpreters and recognised the need to have the interpreter's role and responsibilities explained when necessary; (iv) *Maintaining professional relationships*: Although the need for professional relationships was acknowledged, there appears to be less professional respect from lawyers towards interpreters; and interpreters tend to focus on building relationships with their deaf clients rather than with interpreters.

In revisiting the research questions we can see that lawyers attribute a diminished role to SLIs in court, and both lawyers and interpreters construct their positions and relations by establishing clear role boundaries with reference to legal responsibilities and duties. Interpreters who behave professionally and ethically are perceived with higher regard and importance is ascribed to this conduct, with blame featuring as an underlying penalty if the interpreter responsibility is not appropriately observed; and interpreter responsibility is aligned with both legal responsibility and moral responsibility, depending on the perspective of the interpreter or the lawyer.

It would appear that although they are guided by a code of ethics, SLIs take on responsibility in court according to what is expected of legal professionals and the justice system. High importance is placed on the code of ethics and professional conduct, but more importance is given to what judges want in court.

So it's a fine line and, and then sometimes when, in the situation I've just asked to talk to the judge and explain the situation without having to make this whole performance in front of everyone (Sam: SLI)

This study reveals that although there appears to be in principle agreement about the professional practice of sign language interpreting in court, there are still conflicting views on the expectations of legal SLIs depending on the disciplinary perspective; thus SLIs need to walk a fine line in how they manage their role to meet the linguistic needs of their deaf clients in court, as well as adhering to their responsibilities as perceived by the justice system.

There is a significant dearth of research on the role and responsibilities of SLIs in court. To date legal interpreting research is dominated by studies of spoken language interpreting, and also by survey research. More studies of authentic sign language interpreted legal interactions are needed to better understand the dynamics of the courtroom and professional sign language interpreting practice. A clear recommendation from this study is the need for an interdisciplinary approach to the study of legal interpreting to ensure that the role and responsibilities of interpreters are considered from the perspectives of scholars of applied linguistics, interpreting studies and justice.

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Endnotes

1. Interpreting is defined by Dean & Pollard (2013) as a practice profession rather than a technical profession, "like medicine, law, teaching, counseling, or law

enforcement, where careful consideration and judgment regarding situational and human interaction factors are central to doing effective work”.

2. Both studies were conducted while the co-authors were working (Napier) and studying (Banna) at Macquarie University in Sydney, Australia.
3. Two lawyers were also interviewed by telephone, but because the interviews were not recorded, they have been excluded from this analysis.
4. At present people are typically not eligible to serve as jurors if they cannot understand the language of the court, so spoken language interpreters do not work with jury members (apart from in the state of New Mexico in the US). In many US states, however, deaf people are allowed to serve as //check formulation// sign language interpreters are provided as a form of accommodation under the civil rights based Americans with Disabilities Act.

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