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First Nations interpreters cannot be neutral and should not be invisible

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Abstract: In this article I explore the challenges faced by First Nations language interpreters working in Australia's justice system in relation to the explicit requirement of impartiality/neutrality and the implicit expectation of invisibility in their day-to-day work. I interrogate the notion of (in)visibility and explore its potential to contribute to the marginalisation of First Nations interpreters in legal settings and beyond. In particular, I focus on the relationship between impartiality/ neutrality and the visibility of First Nations interpreters. I argue that while impartiality is a stance that can be consciously adopted by professional interpreters, complete neutrality is an impossible and unfair requirement given how neutrality can be impacted by kinship relations, historical racial politics, community expectations, and the power differentials inherent to the justice system. The data analysed are drawn from fieldwork conducted between 2018 and 2019 in the Katherine region of Australia's Northern Territory. The data include field notes, court observations, as well as interviews with First Nations language interpreters, legal professionals, and judicial officers.

Keywords: First Nations languages; legal interpreting; impartiality; neutrality; visibility.

1. Background

First Nations language interpreting in legal settings has long been beset by a number of issues including the under-utilisation of interpreters in the justice system, the inconsistent availability of interpreters, and the lack of recognition of interpreters' needs in legal contexts (Cooke, 2002, 2004; Goldflam, 1997, 2015, 2019) [1]. Multiple reviews commissioned by state and federal governments and bodies such as the Law Reform Commission have also pointed to a persistent dearth of engagement between the justice system and interpreting services, especially in remote communities where traditional languages are

[1] The term 'First Nations' is used throughout the article. Borrowed from North America, this term is increasingly used by Indigenous people in Australia to articulate their position in the wider global indigeneity movement, particularly in relation to sovereignty and self-determination.

spoken and interpreters are greatly needed.[2] In this article I argue that such issues should be approached with a better understanding of the specific, if not unique, challenges that set First Nations language legal interpreting aside from the interpreting of heritage languages in Australia such as Arabic, Mandarin, or Italian. Importantly, I call for greater acknowledgment within the justice system, and beyond, of the forces of power, place, kin, and culture that shape both the act of First Nations language interpreting and the professional experience of the interpreters themselves. I of course acknowledge that many of the underlying issues that can influence the provision and quality of First Nations language legal interpreting, such as linguistic proficiency and cultural competency, are equally important for the interpreting of non-First Nations languages. I argue, however, that the justice system must also take into account the specific and fundamental historical and racio-political factors that can contribute to the irregular availability of professional interpreting services for many First Nations communities. I maintain that in failing to attend to these factors, the justice system is contributing to the marginalisation of First Nations language speakers, including the interpreters.

I focus particularly on two related aspects of First Nations language legal interpreting – visibility and impartiality/neutrality. I argue that the emphasis on interpreters' invisibility in the profession risks marginalising First Nations interpreters and dehumanising them by reducing them to nothing more than their mechanical skills. First Nations interpreters, in particular, are often members of marginalised and invisibilised communities, and many enter the profession precisely in order to address these disadvantages. Therefore, while invisibility is in part designed to insulate interpreters from the consequences of legal cases, it can also have the by-product of entrenching some of the inequalities that interpreting is meant to address. Mitigating the latter requires an approach to interpreter visibility that considers both its impact on the interpreter's professional and personal experience as well as its potential to counteract years of marginalisation and active silencing of First Nations voices. This is an issue that First Nations interpreters are increasingly speaking about publicly. This article includes the perspectives of some of the interpreters I have worked with over the last few years, which will hopefully shed light on this under-explored area of First Nations language legal interpreting.

I also explore visibility through its relationship to another tenet of the interpreting profession, impartiality. The two notions are closely intertwined. Their relationship, and the tensions it gives rise to, can challenge the ability of First Nations interpreters to accept or complete certain interpreting assignments. This is a particularly pressing issue given the inconsistent availability of First Nations language interpreting in many legal settings as mentioned above. Therefore, exploring the issues that impact the engagement of interpreting services and/or the interpreter's ability to carry out their professional duties is a necessary step towards ensuring First Nations language speakers are provided

[2] Reviews include *the Royal Commission into Aboriginal Deaths in Custody* (1991), *Commonwealth Ombudsman - Talking in Language: Indigenous Language Interpreters and Government Communication* (2011), *Commonwealth Ombudsman - Accessibility of Indigenous Interpreters: Talking in Language Follow Up Investigation* (2016), *Royal Commission and Board of Enquiry into the Protection and Detention of Children in the Northern Territory* (2017), and *ALRC Pathways to Justice—An Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples* (2018).

with adequate and timely interpreting services, and in turn, with proper access to justice.

2. Methodology and data

The data analysed in this article were collected during five field trips to the Katherine region in the Northern Territory, conducted in 2018 and 2019, as part of a research project exploring the availability of interpreting services to First Nations language speakers in legal settings. The project examined the linguistic, political, and sociocultural factors impacting the provision of professional and timely interpreting services. Data are drawn from extensive field notes and around 100 hours of court observations at five different locations across the Northern Territory - Darwin, Katherine, Mataranka, Barunga, and Ngukurr. The data also include twelve hours of recorded semi-structured interviews with nine participants, including First Nations language interpreters, legal professionals, and a judicial officer. Although the interpreters who took part in the discussions and interviews wanted to share their stories and perspectives, many requested to remain anonymous. As such, this article only includes the names of interpreters who wished to have their details publicly included; anonymised initials are used elsewhere.

3. (In)visibility and impartiality/neutrality in interpreting

Invisibility in translation and interpreting has long been associated with competence and professionalism. The traditional norms of impartial and accurate interpreting contain the implicit notion that a competent interpreter is, for the most part, an 'invisible interpreter' - the better an interpreter is at performing their job, the less noticeable they are to those around them. An interpreter's ability to act as an unobtrusive conduit is thus idealised and considered an indicator of mastery and professional conduct. Such approaches to the interpreter's role seem to prioritise fluency and linguistic skills while also explicitly discouraging interpreters from co-constructing discourse (Inghilleri, 2012, p. 128). However, as many have argued, interpreters cannot, nor should they be expected to, remain entirely invisible. The dilemmas of invisibility in interpreting are reflected broadly in discussions and debates within translation and interpreting studies (Baker, 2018; Boéri & Delgado Luchner, 2021; Koskinen, 2000; Venuti, 1995/2018, 1998). Specifically within community interpreting, the notion of an invisible interpreter is interrogated by Angelelli (2003) who notes that the visibility of interpreters, their very self, cannot be ignored or blocked in interpreted interactions. In a later work, Angelelli (2004) further critiques the 'myth of invisibility' arguing that idealising invisibility obscures the issues faced by interpreters when dealing with some of their ethical responsibilities such as impartiality. On the other hand, Ozolins (2016) posits that rather than focus on invisibility, the emphasis must be on the need for clear and unquestionable impartiality on the part of the interpreter, partly to demonstrate professionalism, and partly to protect interpreters from the consequences of the utterances. Downie (2017) argues that the terms 'invisibility' and 'impartiality' should be abandoned in favour of 'agency', a notion that allows for contextualising interpreting decisions in the communicative event rather than measuring them against current professional discourse.

The following discussion focuses on the complex relationship between visibility and impartiality in First Nations language interpreting. Firstly, however, I want to delineate some of the concepts and terms relating to this relationship before exploring some of the major factors that influence it. Impartiality is considered a fundamental principle of interpreting and is explicitly included in the Australian Institute of Interpreters and Translators (AUSIT) Code of Ethics alongside professional conduct, confidentiality, competence, accuracy, clarity of role boundaries, and the maintaining of professional relationships. The code is followed by all the major interpreting and translation bodies in Australia, including the three organisations dedicated to First Nations language interpreting - the Aboriginal Interpreter Service (AIS) in the Northern Territory, Aboriginal Interpreting Western Australia (AIWA), and the Aboriginal Language Interpreting Service (ALIS) in South Australia. The general principle of impartiality in the code and its explanation are as follows (AUSIT, 2012, p. 5, emphasis added)

> **Impartiality:**
> 'Interpreters and translators observe impartiality in all professional contacts. Interpreters *remain unbiased* throughout the communication exchanged between the participants in any interpreted encounter. Translators do not show bias towards either the author of the source text or the intended readers of their translation.
>
> **Explanation:**
> Interpreters and translators play an important role in facilitating parties who do not share a common language to communicate effectively with each other. They aim to ensure that the full intent of the communication is conveyed. Interpreters and translators are not responsible for what the parties communicate, only for complete and accurate transfer of the message. *They do not allow bias to influence their performance*; likewise, they do not soften, strengthen or alter the messages being conveyed'.

At the centre of the code's definition of impartiality is the interpreter's obligation to remain unbiased throughout interpreted encounters. Notably, the varying wording about bias in the principle and its explanation alludes to a slight but arguably significant difference in the conceptualisation of interpreter bias. While the general principle requires that interpreters "remain unbiased", the statement "They do not allow bias to influence their performance" in the explanation suggests that bias may be present, but interpreters must be aware of its potential to influence their performance, and therefore, presumably, work actively to control it. This ambiguity in wording highlights the tension between the expectations of *being* unbiased and *seeming* unbiased. In any case, bias is widely understood as a hinderance to the interpreter's ability to perform their role professionally.

As well as pertaining to impartiality, the absence of bias mentioned in the code alludes to an expectation of *neutrality*. In fact, while the term 'neutrality' does not appear in the AUSIT Code of Ethics, it is explicitly included, alongside impartiality, in the codes of ethics of some interpreting bodies outside of Australia. For example, the American-based National Association of Judiciary Interpreters & Translators' Code of Ethics includes the following statement (NAJIT, emphasis added): [3]

[3] https://najit.org/tag/code-of-ethics/

> Court interpreters and translators are to remain impartial and neutral in proceedings where they serve, and must maintain the appearance of *impartiality and neutrality*, avoiding unnecessary contact with the parties.

The conceptualisation of neutrality and impartiality as synonymous is nothing new; the two terms are reciprocally used to describe the action or position of not taking sides. There have been, however, several attempts to distinguish the two concepts both in interpreting and translation studies, and in other academic and public spheres. From an interpreting perspective, Zimanyi (2009) examines the complexity of the potential roles played by interpreters ranging from neutral translators to cultural brokers to conciliators and advocates. Zimanyi argues that impartiality is in fact a continuum with an 'impartial interpreters' on one end and an 'involved interpreter' on the other, and that neutrality must be explored in relation to this continuum rather than as static and decontextualised expectation (see also Roy, 2000).

Hale (2007, p. 120) argues that the expectation that court interpreters be strictly impartial is problematic because interpreters cannot be expected to be devoid of subjectivity. Hale also links impartiality with visibility, noting that a completely impartial interpreter is as much of a myth as a completely invisible one. Addressing this dilemma, Hale states that "no one can deny that total impartiality is impossible. However, a conscious 'neutralistic' stance can go a long way in assuring as much impartiality as is possible to allow for an ethical performance" (Hale, 2007, p. 123). Hale's distinction between impartiality and neutrality differs from some other interpretations found outside linguistics/ interpreting and translation studies. A different interpretation, for example, can be found in the realm of peacekeeping and humanitarian work. In his exploration of peacekeeping policies and operations, Donald (2003) describes what he terms the 'Fallacy of Impartial Neutrality', arguing that treating impartiality and neutrality as synonymous concepts leads to a flawed understanding of both. Donald concedes that there is common ground to the two terms but explains that such common ground "does not stretch to include their respective essences" (Donald, 2003, p. 418). Donald delineates the two notions as such: Neutrality in peacekeeping is a passive policy, distinguished by the fact that it entails the absence of decided views, without a core principle other than the avoidance of trouble. Impartiality, on the other hand, is a coherent and deliberate position predicated on the desire to avoid favouritism and emphasise fairness. Donald summarises the distinction by stating that "At its simplest, neutrality is an absence, impartiality is a presence" (Donald, 2003, p. 418). Importantly, Donald argues that neutrality and impartiality are heavily influenced by the relations of power and that 'impartial neutrality' is unattainable unless there is a static balance of power, which is never the case during wars and other conflicts (see also Tryuk, 2021 for a discussion of interpreter neutrality in conflict and crisis).

In the following discussion of First Nations language interpreting in legal settings, I follow Donald's delineation, viewing impartiality, not neutrality, as a consciously adopted stance. I regard neutrality as a personal orientation that is tied to individual and collective experience as well as current circumstances. Absolute neutrality is therefore an unrealistic and unfair expectation of interpreters because it requires setting aside the basic human tendency to have an attitude or view about most aspects of life (see also Wadensjö, 2014). This is especially the case for First Nations language interpreting where history, race relations, politics, and communities of kin are never far from the minds of interpreters. These factors influence both the lived experience of First Nations interpreters and their working conditions. They can also present real challenges

to neutrality and, at times, compel interpreters to make decisions to refuse specific interpreting assignments, step down during these assignments, or breach their Code of Ethics.

3.1. The weight of power, race, and history

First Nations languages legal interpreting can be particularly influenced by the racio-political context in which it takes place. Even setting aside the issue of race for a moment, there are clear and recognisable power disparities between those who occupy authoritative positions in the justice system and the interpreters they work with. An interpreter I spoke to noted that even though professional First Nations language interpreting services were established decades ago (the Institute for Aboriginal Development established an interpreter service in Alice Springs in 1983), interpreters were still sometimes viewed as only secondary participants in the delivery of justice *[Darwin, DQ, Interpreter]*. Some interpreters also believed that the decision to engage them is often disproportionally concentrated in the hands of few key players in the justice system, for example, judges, lawyers, police, correction and parole officers, and government staff *[Katherine, FN, Interpreter].* This is unsurprising, given the stratified structures of power that influence the decision-making process in all aspects of the justice system and beyond. The fact is that, more often than not, the decision to engage interpreting services is based on the desires of powerful participants in the justice system rather than the linguistic needs of First Nations language speakers.

Once race relations are added into the mix, the power differentials are further magnified. First Nations interpreters work in institutions where structural racism is a common feature, and they regularly face the challenge of carrying out their professional duties in contexts that make them feel disempowered and even marginalised. Such challenges are of course not unique to First Nations language interpreting; interpreters of all minority languages in Australia commonly deal with the fact that they come from potentially marginalised groups in society. However, the added weight of history must also be considered when examining the marginalisation of First Nations interpreters. The spectre of colonial legacy and historical injustices looms large over the participation of First Nations interpreters in the legal process. It challenges their ability to enter a courthouse, a place that they associate with over-imprisonment and the fragmentation of their communities, with a completely neutral position. To what extent these challenges are recognised by the justice system is unclear. Certainly, many of the First Nations interpreters I spoke to felt that there was inadequate acknowledgement that they and their colleagues normally come from marginalised communities and with a history of witnessing injustices towards their people *[Darwin, DQ, Interpreter; Katherine, Miliwanga Wurrben, Interpreter]*. The corollary of turning a blind eye to this important aspect of interpreting is that many of the issues encountered by First Nations interpreters, including their ability to strictly adhere to the code of ethics that regulates their profession, can go unnoticed and unaddressed.

Interpreters must also deal with the tension created by having to work within the parameters of a Code of Ethics that value impartiality/neutrality, while also maintaining solidarity with their community and people. Of course, the two aspects are by no means mutually exclusive, but there are many contexts in which interpreters can find their neutrality tested by the injustices they encounter in their day-to-day work. There are contexts where injustice is perceived to be so egregious that no interpreter can be expected to have no biases or decided views (Brennan, 1999). In Australia, the circumstances that can challenge the interpreter's ability to remain neutral are varied, but often they

involve perceived injustices against the interpreter's community or First Nations people in general. For example, two different interpreters indicated to me that they declined to interpret for the Northern Territory and Federal Government representatives during the Intervention [4] because they felt that they could not act impartially in a situation they considered profoundly unjust *[Darwin, DQ, DP, Interpreters]*. Another interpreter spoke about a fellow interpreter who took on an assignment with a mining company during a period of tense negotiations with the traditional owners of a proposed mine site extension. The interpreter had to step down from their role because they recognised that they could not continue to be impartial during the negotiations and another was brought in to complete the assignment *[Alice Springs, SA, Interpreter]*.

These sentiments were shared by Miliwanga Wurrben, a First Nations elder and Kriol interpreter, who recalled to me a particular time when she was asked to be the interpreter for government officials during the Intervention and felt compelled to decline. As an elder, she wanted to be able to speak on behalf of her community in meetings with government officials, which would not have been possible had she been working as an interpreter.

> I had to step down from being an interpreter when they first came and spoke about all these special measures, about intervention… *"Excuse me, I'm not going to speak for [the government] because I'm going to speak for my community, so you have to find another Kriol speaker"*, I said. *[Katherine, Miliwanga Wurrben, Interpreter]*

Aside from recusing oneself, interpreters usually have little agency when confronted with what they perceive as an injustice, especially if it takes place during an interpreted interaction. Responding to this scenario requires interpreters to make decisions that potentially involve breaching the principles of accuracy and impartiality, for example by altering the meaning of an utterance or giving advice to a client. There are recorded instances, especially in cases involving disempowered people such as refugees, where interpreters have deviated from their code of ethics because, in their opinion, failure to act would entrench and reinforce social injustices. Tryuk (2017), for example, argues that interpreters in refugee hearings in Poland face a number of challenges in their role that prevent them from staying neutral or invisible. These include having to help assess the refugee's credibility, resolve any conflicts that arise during hearings, and even reprimand their client to assist their case (see also Nartowska, 2015).

First Nations interpreters are confronted with similar challenges. They may witness a member of their community being treated unfairly in a legal setting and may feel compelled to act, rather than simply recuse themselves. An

[4] The 'Intervention' is a name given to the Northern Territory National Emergency Response, a set of sweeping measures imposed by the Howard government in 2007. The controversial package of policies included alcohol bans, welfare payment reforms, the extinguishing of Native Title in some communities, and sending large numbers of police and army personnel into First Nations communities.

example of such case is a story told to me by an interpreter who helped a witness who was being badgered by the defence lawyer in cross examination. The interpreter noted that the lawyer was aggressively repeating and rephrasing a question to the witness and gave both the interpreter and the witness little opportunity to interpret and respond. The witness, who was a vulnerable young woman, was becoming obviously distressed, but neither the judge nor the two legal teams present acknowledged her distress or intervened. As the question was repeatedly rephrased and interpreted, the witness became increasingly flustered and provided seemingly incoherent answers. The interpreter initially asked the lawyer to be allowed more time to ensure the witness understood the question and responded truthfully but she was ignored. She then made the decision to intervene and speak directly to the witness to ask her to slow down, think carefully about her answers and rephrase her previous statements if needed. The interpreter admitted that this approach violated the Code of Ethics by which she usually abides, but she felt that the witness was not receiving the help she needed in a clearly upsetting situation. She also noted that these scenarios were common in court and that her community members were frequently denied the opportunity to tell their stories, especially when the case load was high and lawyers were impatient due to the added length of interpreted hearings. The interpreter ultimately believed that had she not intervened to directly help the witness, the outcome of the trial may have been very different *[Katherine, EA, Interpreter]*.

These perspectives demonstrate that the legacy of historical and ongoing injustices towards First Nations people can render complete neutrality and impartiality almost impossible. Interpreters in the justice system are cognizant of both this legacy and the power imbalances that continue to inhere in their workplace. Satisfying the requirement of impartiality and unbiased conduct obliges them to *appear* neutral despite knowing that they are never on neutral ground. Interpreters are frequently told that they are the 'alter ego' of the other speakers, when in fact they are often required to be their own alter ego, their other self, standing in non-neutral territory with their interpreter hat on, proclaiming neutral impartiality. It is a tightrope dance that many interpreters find arduous. A decision to decline an assignment is the interpreter stepping off the tightrope and acknowledging that the challenge to neutrality is such that impartiality is not even attainable in this case. In these contexts, the link between neutrality/imperiality and visibility is highlighted through the interpreter's choice to visibly align themselves with their communities and their people while also asserting their agency through the deliberate absence from their usual role. Notably, some interpreters choose to continue working impartially in situations that severely challenge their neutrality, predominantly out of a desire to mitigate any potential exacerbation of injustice from the lack of interpreting assistance. The burden to act impartially in these situations is undoubtedly immense, yet it is frequently unrecognised by those working outside of the interpreting services including in the justice system.

3.2 When everyone is a relative: kinship and neutrality

Neutrality for First Nations language interpreters can also be challenged by kinship relations and the rights and responsibilities they give rise to. This is especially the case for interpreters who come from smaller communities where they are often considered kin by most, if not all, members of the community. To truly understand interpreting in First Nations communities, we must first recognise that such communities are not merely congregations of people who share a defined space, rather they are assemblages of families linked by history, country, language, and kinship. Systems of kinship in many First Nations

communities are implicated in historical associations between families, as well as ceremonial alliances and connections to country (Dousset, 2011; Finlayson et al., 1999; Keen, 1988). Kincentric social organisation therefore creates a distinct political realm within which operate relations of loyalty and solidarity. Solidarity with one's kin is expected of all community members, and interpreters are no exception. The challenge for many interpreters is that they are often the only link between this political realm, with its own power structures and expectations of solidarity, and the dominant Western justice system that values their impartiality above all else. Interpreters therefore frequently find themselves in the unenviable position of having to balance their kinship affiliations and loyalties with their responsibilities as impartial facilitators of communication in the legal process.

This issue is particularly amplified in circuit courts that take place in First Nations communities where the small number of language speakers often means that there is regularly only one qualified interpreter for that language.[5] In these contexts, the families of victims, defendants, witnesses, and interpreters are frequently one and the same, meaning that interpreters may be related to people on both sides in a criminal case. Unsurprisingly, some interpreters can experience great difficulty being or seeming to be impartial in these situations. There are numerous instances where a lack of alternative options can leave an interpreter having to interpret either for a relative of theirs or for the opposite side to their relative. While this challenge may also be faced by interpreters of some non-First Nations minority languages, there are some variances that differentiate First Nations language interpreting. For example, the court hearings involving non-First Nations languages usually take place in settings that are physically removed from where the interpreters would regularly live. Circuit courts, on the other hand, are held in the very communities where the interpreters either reside or return to regularly. For interpreters working in circuit court settings there is no escaping both the physical proximity to one's kin and the weight of expectation to help.

Neutrality is further tested in cases involving serious crimes perpetrated against or by the interpreter's kin. One interpreter recounted a time when she was asked to interpret for a defendant who was accused of assaulting the interpreter's young niece. The interpreter, being related so closely to the victim, asked to be excused from working as she felt that she could not be neutral or impartial about the defendant or the victim. She also noted that she wanted to be in the courtroom to support her niece as a member of the public rather than as someone working for the other side *[Katherine, FN, Interpreter]*. These sentiments were repeated to me by various interpreters who often had to make the decision to either excuse themselves or to continue working regardless of their personal relationship to the parties in the court case. This is an issue that disproportionally affects First Nations interpreters from small communities and forces them to constantly traverse the difficult terrain of obligation, tradition, representation, and professional expectations. On the one hand, they have a commitment to their communities which is born of the deep sense of belonging that kinship affords First Nations people. On the other hand, they have a responsibility to carry out their interpreting duties with the professionalism that instils trust in them by the justice system. Moreover, interpreters are dealing with the enduring legacy of the justice system failing to recognise the

[5] Circuit courts, also known colloquially as 'bush courts', are scheduled court sessions that take place in remote locations throughout Australia, including many First Nations communities. They are designed to address the disadvantages that geographical distance creates in terms of access to justice.

importance of their kinship systems. Such lack of recognition has gone on for so long that it is now simply accepted by some interpreters, and they rarely articulate their concerns about being asked to navigate contrasting expectations. Thankfully, organisations that train and employ interpreters, such as AIS, AIWA, and NAATI regularly run professional development workshops where interpreters are trained to indicate any conflicts arising from kinship relations and other factors.

An added layer of complexity is that First Nations norms of interaction can sometimes give an impression of bias. For example, it is not uncommon in court for witnesses and defendants who know the interpreter to greet them with a hug or to refer to them as 'uncle' or 'auntie'. Even when interpreters are not known to the client, they may still be referred to using such terms. These are often expressions that signify respect for the interpreter, but unfortunately this level of familiarity in interaction can potentially diminish the confidence of judicial officers and legal professionals in the impartiality of the interpreter and lead to a perception that First Nations interpreters are less professional than other interpreters *[Alice Springs, SA, Interpreter]*. Clearly it would be discourteous for an interpreter to ignore their kin or to insist on formal contact, which forces interpreters to navigate having to preserve harmonious relationships with family and other kin while safeguarding themselves from claims of partiality. Judicial officers and lawyers need to understand that the norms of interacting with kin can pose certain dilemmas for First Nations interpreters and should therefore not construe such interactions as signs of bias.

4. The flipside to visibility

Increasing the visibility of interpreters in court settings can go some way in addressing the historical invisibilisation of First Nations communities, but it can have the unwanted side effect of placing interpreters in the position of being held responsible by their communities for the outcome of court cases. The fear of blame, sometimes referred to as 'blame job' by First Nations interpreters, is an important, but often overlooked, aspect of First Nations language interpreters' work (see Cooke, 2004, pp. 88–89). It is one of the reasons for interpreters declining certain assignments or, less commonly, failing to complete them. Concern about being blamed for the outcome of a court case is particularly problematic for interpreters who come from small communities where the boundaries designating the impartiality of the interpreters are often blurred by the close relationship interpreters have with many members of the community, including the kinship relations discussed above. This is further complicated by the fact that the culturally based conceptualisations in First Nations communities of the interpreter as an advocate and a spokesperson can contrast with the expectations of impartiality that are found in the interpreting Code of Ethics. Traditionally, the duty of interpreting between different First Nations language groups has been a part of a larger set of responsibilities given to elders and spokespeople in the community. The expertise and trusted position of these elders gives them the authority to act as intermediaries with speakers of other languages, but also places the burden of the outcome of negotiations on them. As a result, some members of community may mistakenly assume that the interpreter is able to alter the outcome of a court trial. In an interview, Miliwanga Wurrben describes how these conceptualisations persist in her community:

Miliwanga: Interpreters have always been like spokespeople and our spokespeople have always been our interpreters…Yeah, they're spokespeople for our entire community.

Interviewer: So is that still an expectation in the community?

Miliwanga: Oh yeah. [For community] I'm there as a leader, I'm there as an elder speaking. Traditionally, interpreters are actually our elders, people who are representing the community.

[Katherine, Miliwanga Wurrben, Interpreter]

Unlike the conflict of interest relating to kinship relations, which is generally recognised by the legal profession at large, blame is less understood. However, some judges and lawyers who have worked with First Nations communities for extended periods are better at recognising the fear of blame and taking it into consideration when engaging interpreters. A judicial officer described their understanding of why some interpreters tend to step aside in cases involving their own or neighbouring communities out of concern that they may become the subject of blame:

> It requires quite a robust person to be an interpreter in courts and be prepared to, kind of, fight for the fact that they are independent, they are not taking sides, whereas it's seen in the community that they are taking sides or helping the prosecution to put someone in jail. So many interpreters do not want conflict in the community, do not want conflict with family. And in order to stop the humbug, it is easier for them not to come to court.
>
> *[Katherine, Elisabeth Armitage, Magistrate]*

Interpreters do not always express fearing potential blame or feeling intimidated by community members, although they are being increasingly trained by interpreting providers such as AIS and AIWA to articulate these concerns to the court. Finnane (2016, pp. 199–200) describes an interpreter reporting being intimidated by a member of one of the families involved in a dispute that led to a well-publicised court case. The interpreter was threatened and warned not to take sides, which left her shaken and temporarily unwilling to continue interpreting. Although the incident was resolved by the court and the interpreter returned to work, her decision to step aside speaks to the fear of blame and accusations of partiality that interpreters must deal with (see also Cooke, 2004, pp. 88–89).

Interpreters fearing blame are not only concerned about being criticised or ostracised by their community but may also worry about being the subject of

acts of 'payback',[6] which threatens their safety and the safety of their families *[Katherine, Miliwanga Wurrben, Interpreter]*. Payback may involve physical assaults and acts of intimidation as well as the threat of using sorcery against the interpreter. Fear of payback can easily be overlooked by legal professionals who have little appreciation of the importance of the interpreter's personal and cultural beliefs in the decision to be part of a legal case. It is vital, therefore, that those working with First Nations language interpreters in legal settings are made aware of the issues around blame and the genuine concerns that interpreters have about being held responsible for the result of a legal case. If an interpreter declines a particular assignment or steps aside during a court case in order to avoid potential blame, legal professionals need to recognise the serious concerns that the interpreter has and either attempt to resolve them, or when possible, engage another interpreter from a different community. The latter approach is obviously more viable in larger languages where interpreters can be drawn from various communities.

Community confusion about the role of the interpreter as an impartial participant in the legal process can be exacerbated by the physical proximity of the interpreter to the person for whom they are interpreting during a court case. In most cases, interpreters have little choice in where they are positioned in a courtroom, but the mere fact that an interpreter is sitting on one side of the court can expose them to the risk of being perceived as working for one party over the other, and as such, undermine their status as impartial participants in court proceedings (Wadensjö, 2014). A possible solution to this problem is to have a designated section of the court where interpreters can sit prior to the commencement of proceedings and introduce themselves to the court before moving to be near witness/defendant. This would be in accordance with the existing norm of designating separate areas within a courtroom for different participants. Current configurations of courts in Australia (with very few exceptions such as Koori court in Victoria) allocate specific spaces for judges, legal teams, juries, witnesses/defendants, and the public. Having a separate section of the court for interpreters has the dual effect of signalling their role as valued officers of the court and protecting them from perceptions of partiality.

The risk of interpreters being blamed by members of the community for legal outcomes is also greatly intensified by the practice of summoning interpreters as witnesses in court trials. This can occur in cases where the issue of miscommunication is central to the argument of one side of a dispute. For example, a defence team may be challenging the quality of interpreting in a police interview, or they may call on the interpreter to shed more light on a particularly contentious communicative interaction. This practice may seem innocuous, but in fact seeing an interpreter in the witness box can lead to significant misunderstanding in community about their impartiality. This can erode the community's trust in interpreting and leave the interpreters vulnerable to accusations of taking sides, even if communities were educated about impartiality being a pillar of the interpreting profession and its Code of Ethics. Organisations like AIS have been working to educate the justice system about the negative impact of summoning interpreters as witnesses. An interpreter who has been advocating to limit this practice described its effect to me:

[6] The term 'payback' is used extensively in Aboriginal English, but understandings of it in the wider community can be over-simplified and problematic. The notion of 'payback' in First Nations society is very nuanced and extends beyond simple revenge to encompass a range of understandings of First Nations Law, process, and logic.

> Impartiality is not understood, and we have people like the police who don't make it any better when they often summon interpreters as witnesses, which I've been fighting ever since I started in this role. The interpreter goes into a Record of Interview and says: *"I'm impartial, end of story".* The next thing, they're a police witness because they've been summoned...That's not the role of the interpreter…It gives them no credibility with their communities.
>
> *[Darwin, DQ, Interpreter]*

While there is no doubt that summoning interpreters as witnesses is sometimes unavoidable for evidentiary purposes, it is important that such decisions are carefully considered. Highlighting the visibility of interpreters by placing them in the witness box can be immensely damaging to their relationship with their community. Summoning any interpreter as a witness should therefore be a last resort for the court, and if unavoidable, the court should take appropriate measures to shield interpreters from potential blame. This may include judicial officers and legal professionals reiterating to those present in court that the interpreter's appearance as a witness is necessary for establishing certain facts, is outside of their normal duties, and does not impact their impartial status. Interpreters should also be given the opportunity to explain their usual role and their code of ethics if they wish to do so. These strategies are already considered best practice when interpreters are engaged in courts[7], but they are even more pertinent when interpreters are summoned as witnesses. Finally, in cases where an interpreter's appearance as a witness leads to direct accusations from community members, it is incumbent on the court and the interpreting service providers to assist and support the interpreter accordingly.

5. Concluding remarks

The lack of recognition in the justice system of the many challenges faced by First Nations language interpreters is an issue that must be addressed immediately. Interpreters are working in contexts that force them to navigate contrasting expectations from their communities and the justice system. In particular, the expectation that interpreters remain neutral and impartial is challenged by a legacy of historical and ongoing power differentials, as well as by the drive to express solidarity with one's kin, community, and people. The visibility of interpreters is equally impacted by these factors. In some contexts, the increased visibility of interpreters is sorely needed to counteract the historical marginalisation and invisibilising of First Nations language speakers. In other contexts, highlighting the visibility of interpreters can expose them to accusations of partiality and lead to potential blame. Ultimately, what is required is a nuanced and informed approach to interpreter visibility and impartiality/neutrality that empowers interpreters to carry out their professional

[7] See for example *Interpreter protocols, Northern Territory Supreme Court* (https://austlii.community/foswiki/pub/NTLawHbk/Interpreters/Interpreter_Protocols_-_Northern_Territory_Supreme_Court.pdf)

duties with agency and confidence. This will undoubtedly lead to greater engagement with the justice system and support First Nations language interpreters in facilitating access to justice for their communities.

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