Participation in the administration of justice: deaf citizens as jurors
ARC Linkage Project 120200261 – Project Update No. 1

Project Background and Aims
Currently, deaf people cannot serve as jurors in Australia. Until now, deaf people have only been permitted to serve as jurors in some states of the USA (LSS, 2000) and in New Zealand (Dominion Post, 2005). Non-English speaking people can now serve as jurors in the state of New Mexico in the United States (Montalvo, 2001) with the aid of interpreters. Thus the exclusion of deaf people who satisfy the criteria for jury selection could be considered a human rights issue that would be of interest to linguists, anthropologists, criminologists, and communication scholars. Originally deaf people were exempt due to their inability to hear. But after legal challenges and enquiries in England, Australia and Ireland, it has been established that: (a) deaf people have the capacity to make decisions as jurors, and (b) deaf people can sufficiently comprehend courtroom discourse and jury deliberations through a sign language interpreter. Yet, any challenges or recommendations have been overturned based on the long-held Common law principle that there cannot be a non-juror ‘stranger’ (i.e. an interpreter) as a 13th person in the jury room (Heffernen, 2010). The main concern has been that interpreters would inappropriately participate in confidential jury deliberations. The NSW Law Reform Commission (2006) and other interpreting scholars (e.g., Turner & Brown, 2001), however, have noted that interpreters are bound by a code of ethics, which requires interpreters to remain impartial and uphold confidentiality. There is no evidence for the impact that an interpreter may have as 13th person in the jury room on the sanctity of jury deliberations.

Although we know that deaf people can understand a judge’s summation and courtroom discourse through interpreters, we are still presented with a problem in that we need to understand more about how they can participate in the jury deliberation process and how their (and the interpreter’s) presence would actually impact on a criminal trial. This information is vital for the legal system to consider how deaf people can be involved; for the Australian Sign Language Interpreters Association (ASLIA) and the Australian Federation of Deaf Societies (AFDS) to understand how to provide and train interpreters for deaf jurors, as opposed to defendants or witnesses; and for Deaf Australia in order to educate the Deaf community about how they can perform their civic duty as jurors. Conducting a mock-trial with a deaf juror and Auslan interpreters provides an opportunity to examine these issues, make recommendations to all stakeholders and inform policy.

The primary aim of this research project is to investigate the capacity of deaf people who use sign language to participate in the administration of justice by serving as jurors. The project will expand Australia’s knowledge base about court interpreting and jury service, by pioneering the first study of its kind.

Our objectives are to:
• assess the ability for deaf jurors to access a courtroom trial and jury deliberations via Australian Sign Language (Auslan) interpreters;
• explore how a deaf person can participate in jury deliberations when relying on an interpreter;
• examine the impact of having an interpreter as a ‘13th person’ in the jury room;
• investigate how the presence of a deaf juror impacts on the administration of justice from the perspective of the advocates, the bench, the accused and witnesses, and all stakeholders.

The study comprises three main components: 1. Observation of court cases with deaf jurors in the United States and interviews with US court officials; 2. A mock trial followed by juror deliberations, which includes a deaf juror and sign language interpreters and 3. Interviews with all the participants of the mock...
trial, including lawyers, judge, witnesses, hearing and deaf jurors and interpreters about their experience in working with a deaf juror.

**Project Update**

Since July 2013, the project’s investigators have consulted with partner organisations and advocates from Legal Aid NSW to discuss the different stages of the research project. With thanks to the kind assistance from the NSW Department of Attorney General and Justice in booking a courtroom, investigators were able to start planning for a mock trial to be carried out in mid-July 2014. Stage 1, now complete, involved deciding on a suitable trial case which a mock jury would witness and deliberate on and engaging various legal professionals to participate in the trial. This was done with the invaluable assistance of two senior Legal Aid lawyers, Stephen Doumit and Paul Johnson, who will continue to be involved in the preparation of the mock trial.

The current Stage 2 has involved submission of a National Ethics Application Form, which has been approved by the UNSW Human Research Ethics Committee. Partner investigators Napier and Russell have also recently returned from a US fieldtrip, during which they undertook an ethnographic observation of the jury empanelment process involving deaf jurors at the New York State Courts at the Monroe County Hall of Justice in Rochester, and where they had the opportunity to speak with various legal practitioners and court personnel concerning jury service for the deaf.

**Next Steps**

Investigators are now making preparations for Stage 3 of the project, which entails carrying out the mock trial followed by interviews with the trial participants, including legal personnel, the mock jurors, and sign language interpreters. Planning involves finalising the trial case and associated statements of facts, sourcing suitable actors and other witnesses for the trial, engaging sign language interpreters, and recruiting participants for the mock jury. Following the mock trial, which will be audio and video recorded, an in-depth analysis of the jury deliberations and post-trial interviews with participants will be carried out, the results of which will inform a number of focus and discussion groups to be conducted with stakeholders during the final Stage 4 of the project in 2015.

---

**General Project Information**

Funding: Australian Research Council Linkage Program 2012 Round 2 (LP120200261)

Partner Organisations: Deaf Australia (DA), Australian Federation of Deaf Societies (AFDS), Australian Sign Language Interpreters Association (ASLIA)

Administering Organisation: University of New South Wales

Collaborating Organisations: Australian Catholic University, Heriot-Watt University, University of Alberta.

Chief Investigators: Professor Sandra Hale and Mehera San Roque (UNSW), Professor David Spencer (ACU)

Partner Investigators: Professor Jemina Napier (HWU), Professor Debra Russell (UofA)

Advisory Group: Stephen Doumit and Paul Johnson (Legal Aid NSW), NSW Department of Attorney General and Justice

Project Officer: Julie Lim (UNSW)

Project Dates: 2013-2016