Participation in the administration of justice: deaf citizens as jurors
ARC Linkage Project 120200261 – Project Update No. 4 (September 2015)

Project Aims
Deaf people cannot currently serve as jurors in Australia. 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. 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.

The key 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.

Project Update
In March 2014, partner investigators Napier and Russell visited the New York State Courts at the Monroe Country Hall of Justice in Rochester, USA. They undertook an ethnographic observation of the jury empanelment process involving deaf jurors, and also had the opportunity to speak with various legal practitioners and court personnel concerning jury service for the deaf.

In July 2014, project investigators simulated a mock trial at the Sydney West Trial Courts in Parramatta, kindly facilitated by the NSW Department of Police and Justice. The trial, involving authentic legal practitioners and actors as witnesses, was observed by a mock jury comprising eleven hearing jurors and one deaf juror. Two Auslan interpreters interpreted for two deaf jurors (with only one deaf juror participating in deliberations) and the hearing jurors were given a written brief about the role of the interpreter prior to commencing the trial. The position of the interpreters was determined in order to establish sightlines and to allow for filming. Following the trial and deliberations, investigators conducted interviews with the mock trial participants (actors, witnesses, legal professionals, court personnel, deaf jurors and Auslan interpreters) and held a focus group with the hearing jurors.

In July 2015, investigators presented preliminary findings to Partner Organisations and members of the Advisory Group, comprising representatives from community and industry. Discussions following the presentation focused on courtroom layout, interpreter positioning, the need for qualified and competent interpreters, and the introduction of specialist accreditation for legal interpreting, currently being considered by NAATI (National Accreditation Authority for Translators and Interpreters), and the professional industry bodies AUSIT (Australian Institute of Interpreters an Translators) and ASLIA (Australian Sign Language Interpreters’ Association). Best practice guidelines for using Auslan interpreters in the courtroom will be jointly developed by ASLIA and Deaf Australia. Once all data is analysed, investigators will develop recommendations regarding the ability of deaf persons to participate in a courtroom trial and jury deliberation process, and the use of interpreters associated with these processes.
Preliminary findings (continued from previous update)

**US Ethnographic Study**
The aim of the ethnographic observation and conversations undertaken in the US in March 2014 was to give investigators the opportunity to observe the processes, interactions, and communication between deaf people, sign language interpreters and any court personnel, in order to inform the design of the Sydney mock trial, carried out in July 2014.

The US has a long history of deaf people serving as jurors, dating back to 1979. Because of the constitutional and moral imperative that exists in the US not to exclude unreasonably a citizen with a disability from an activity that is the right and responsibility of all other citizens, various states have established guidelines for the provision of sign language interpreters for deaf jurors. Rochester, in New York State, is home to the Rochester Institute of Technology (RIT) and the National Technical Institute for the Deaf (NITD). There is also a large population of deaf American Sign Language (ASL) users living in the city, and as such, the Monroe County Courts have a well-established system that includes provisions to allow for deaf ASL users to serve as jurors.

**Observations of jury selection process**
Partner Investigators Napier and Russell spent one week at the Monroe Country Courts, during which they were able to observe a full day covering the jury pool induction and waiting period and the jury empanelment process, including one deaf juror and an ASL/English interpreter. They observed that in the jury induction waiting area, the interpreter explained her role before entering the court room. She would occasionally engage in conversation with the deaf jury pool member while waiting, but minimally so, and not about anything to do with the case being selected. The interpreter appeared confident about the processes involved and occasionally made comments to the deaf jury pool member about what was happening and why (e.g. while waiting and during the selection process). The work was tiring for one interpreter on her own for the full  day, and the investigators were informed that when a deaf person is selected for jury service, two interpreters are provided for the trial. It was also observed that the interpreter’s ergonomics were less than satisfactory: her seat was uncomfortable, she kept fidgeting, and crossing and uncrossing her legs. Although the deaf juror was not ultimately selected for jury, the observations presented valuable insight into how a deaf juror might participate in the trial process, what information they receive, and how an interpreter works with a deaf juror.

**Interpreter costs/funding**
Each month it is typical to have a deaf person participate in the jury selection process and interpreters who are certified and have specialised legal training work for the empanelment and subsequent trials if the deaf person is selected. In spite of the significant cost involved in having interpreters (approximately US$300,000 annually, including US$100,000 for ASL interpreting), there is a shortage of interpreters across most major cities in the US and interpreters do not always want to work for the rates paid by the courts, which tend to be lower than in the private sector.

**Specialised training for interpreters**
The importance of specialised training was a common theme from the conversations. In the US, the Register of Interpreters for the Deaf, Inc. (RID) administers a national program of training for the Specialist Certificate: Legal (SCL) that can be undertaken with a minimum of an undergraduate degree in interpreting and relevant experience. The training is two years part-time, followed by a specialised skills and knowledge exam that leads to national certification as a specialised legal interpreter. There is noticeable difference in quality of interpreters that are SCL certified. However, not all states require the SCL and therefore, courts might be accessing interpreters who lack the specialised skills and knowledge required.

**‘Fearing the work’**
The issue of interpreters fearing the work arose from a combination of interpreters lacking the specialised training for interpreting in legal settings, and legal discourse having no schema for what might take place in such a legal event. It was also a matter of other interpreters who do the work engaging in what investigators call ‘gatekeeping’ – some existing interpreters who like the work and wish to maintain their workload say to potential interpreters: “it’s difficult, you can’t make a mistake and they don’t treat us
well”, creating an impression that the working conditions are terrible and that one can be held liable for mistakes, feeding that fear.

**Judicial perceptions on deaf people and interpreters**

Among the judges and lawyers there were differing perceptions concerning the notion that having an interpreter working might be distracting for the jurors and they might miss the aspects of the trial; one lawyer spoke about having the attention taken away from him and worried about it undermining the process based on a misconception that the interpreter could bring a bias into the trial. Other lawyers and judges who had positive experiences did not report that it was distracting at all if the interpreter was well trained in both language and protocol. There was overall general agreement that experiences with deaf people were positive, however, some were concerned that the interpreters did not respect the judicial space and the jurisdiction of the judge, and others emphasised the need for interpreters to be unobtrusive and not to be advocates for the deaf juror.

**Appropriateness of trial**

Some judges said that they wished they could select the trials that might be appropriate for an interpreter, suggesting that interpreters would not be able to work in a trial where there is audiotaped surveillance, again, based on misperceptions of what interpreters can handle in the language. The lawyers, on the other hand, did not perceive this as problematic. One suggestion for cases involving audio-taped evidence (e.g. a wire-tapped conversation) was for transcripts to be provided to all deaf and non-deaf jurors.

**Accommodations**

Some deaf people expressed a desire to have captioning in the courtroom with interpreters. This has not been introduced as yet.

**Translatability**

Finally, translatability was that over-arching idea from judges and lawyers who thought interpreters could not convey emotions and affect of a witness, and that the signed language is impoverished, without ways to address concepts covered in the courtroom.

**Next Steps**

Investigators are continuing with their analyses and are also making preparations to present their preliminary findings to a range of stakeholders, including deaf people, Auslan interpreters, court and other legal personnel and policymakers, through a number of focus and discussion groups.

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**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 (UNSW), Mehera San Roque (UNSW), Professor David Spencer (ACU)
- **Partner Investigators:** Professor Jemina Napier (HWU), Professor Debra Russell (UofA)
- **Advisory Group:** Professor Rosalind Croucher (Australian Law Reform Commission), Sheriff Tracey Hall (Department of Justice), Steven Doumit, Paul Johnson, Pam King, Joe Wasuruj (Legal Aid NSW)
- **Project Officer:** Dr Julie Lim (UNSW)
- **Research Assistant:** Gerry Shearim (UNSW)
- **Project Dates:** 2013-2016