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Participation in the administration of justice: deaf citizens as jurors ARC Linkage Project 120200261 – Project Update No. 2 (July 2014)

Project Background and 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. 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 (Heffernan, 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.

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.

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.

Project Update

From 16-17 July this year, the project investigators carried out a mock trial at the Sydney West Trial Courts in Parramatta, kindly facilitated by the NSW Department of Police and Justice. The development of the drugs-related trial case was led by two senior Legal Aid lawyers, Steven Doumit and Paul Johnson, who were instructing solicitors respectively for crown prosecutor Tim Macintosh and defence lawyer David Evenden during the mock trial. The trial was presided over by retired district court judge, Justice Chris Geraghty, with actors performing in the roles of the accused and his mother, two members of the NSW Police Force called in as witnesses, and Eve Gerzabek, a current court officer, performed her usual role. A mock jury initially comprising eleven hearing jurors and two deaf jurors observed the trial proceedings, interpreted by two alternating university trained Auslan interpreters seated nearby. Prior to jury deliberation on the second day, the number of deaf jurors was reduced to one, bringing the total number of jurors deliberating to twelve. The two Auslan interpreters entered the jury deliberation room to

interpret for the deaf juror. A verdict was reached in just over two hours. Following the mock trial, investigators conducted interviews with the actors, witnesses, legal professionals, court personnel, deaf juror and Auslan interpreters, in addition to a focus group with the hearing jurors.



Deaf Juror Mock Trial Participants, Sydney West Trial Courts, Parramatta, 16-17 July 2014 (Photo courtesy of David Spencer)

During this phase, the support of our Partner Organisations and Advisory Group members (detailed in the Project Information section below) has been essential. We particularly thank our contacts at Legal Aid NSW, NSW Department of Police and Justice, and NSW Police Force for all of their in-kind and logistical support. Their contribution was essential to the success of the mock trial. We are also grateful for the logistical support from Chantelle Porter, Jake Fing, Ivan Yau and Chirata Deneve Thomsen, who are Law and Interpreting students from the University of New South Wales.

Next Steps

Investigators are now preparing to analyse the audio-visual data collected from the mock trial. Preliminary findings will then be presented to a range of stakeholders and discussed through a number of focus and discussion groups during the next stage 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 (UNSW), Mehera San Roque (UNSW), Professor David Spencer (ACU)

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

Advisory Group: Sandra Huer (NSW Department of Police and Justice), Steven Doumit, Paul Johnson, Pam King, Joe Wasuruj (Legal Aid NSW)

Project Officer: Julie Lim (UNSW)

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Project Dates: 2013-2016