

# Exploring Themes in Stakeholder Perspectives of Video Remote Interpreting in Court

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## ABSTRACT

*This chapter reports on a project conducted to investigate the feasibility of providing remote signed language interpreting services through AVL in the legal system in the state of New South Wales (NSW), Australia. The project was commissioned by the NSW Department of Justice and Attorney General, with a view to informing policy about the provision of signed language interpreters in court remotely via video.*

*Until 2010, no research had been conducted on signed language interpreting services provided through AVL for legal purposes. Given the high stakes involved in legal proceedings mediated through interpreters, it is imperative to analyse the effectiveness of remote signed language interpreting via AVL to conduct legal proceedings.*

*Qualitative findings are provided that give an overview of the stakeholder perspectives of the effectiveness of AVL to enable signed language interpreter-mediated legal proceedings. Deaf and interpreter participants generally found that although there were no major issues, they were not entirely comfortable communicating via this medium and in particular there were pragmatic challenges. The chapter will inform spoken and signed language interpreter practitioners about issues to consider when interpreting remotely via video.*

## 1. INTRODUCTION

For the first time, deaf people can communicate using manual visual language, in many cases their native language, across space and time zones. This groundbreaking situation makes the Deaf community a particularly productive site for research into relationships between technological innovations and new communicative practices. (Keating & Mirus, 2003: 693)

Signed language interpreting is situated as a social practice within the wider context of interpreting and translation studies, and in some respects has led the way in the globalized understanding of dialogic public service interpreting practice (Napier 2011a). An emerging area of dialogic interpreter-mediated discourse for spoken and signed language interpreting involves the use of videoconference facilities (also known as *audiovisual link* or AVL). Interpreters are increasingly required to interpret through AVL, and there are two standard definitions: (i) *video conference interpreting* (VCI), where there are two locations and the interpreter is in either one: or (ii) *remote interpreting* (RI), where all participants are together in one location and the interpreter is in a separate, remote location. In both of these situations, the communication between locations takes place via AVL (Braun & Taylor, 2011a). In the signed language interpreting sector there is also the potential for three different locations where participants are in two different locations and an interpreter is in a third remote location, particularly through *video relay services*, which are effectively call centres for deaf people that have replaced text-based telephone relay services (Alley, in press). Thus to avoid any confusion between the differences, we will use a more generic over-arching term to refer to any of the above combinations: *video remote interpreting* (VRI), and more specifically will refer to interpreting via AVL.

This chapter reports on a study of signed language interpreting provided through AVL in courts in New South Wales, Australia. Video remote access to signed language interpreting was tested across five key venues and scenarios involving deaf people and signed language interpreters. This chapter focuses on a qualitative analysis of stakeholder perceptions of the effectiveness of interpreter-mediated communication in the three scenarios where the interpreter and deaf defendant were in different locations communicating via AVL. The chapter will inform spoken and signed language interpreter practitioners about issues to consider when interpreting remotely via video in any language and context, not only in courtrooms.

## 2. SETTING THE SCENE FOR THE STUDY

In order to set the scene for the study, an overview is given of relevant literature in relation to legal interpreting research, video remote interpreting, VRI in the legal context, and research on stakeholder perspectives of interpreting.

### 2.1. *Legal interpreting research*

The majority of research and discussion on legal interpreting focuses on court interpreting (see Stern 2011), with a reasonably large body of literature that discusses courtroom interpreting practice, the role of the court interpreter, and ethical dilemmas faced by court interpreters (e.g. Angelelli 2004; Fenton 1997; Martinsen & Dubsclaff 2010; Mikkelsen 1998; Morris 1999; Turner & Brown 2001).

There has been some discussion of other aspects of legal interpreting, such as solicitor-client interviews, police interviews, police interrogations and confessions, or immigration, refugee and asylum tribunals/hearings (e.g. Gibbons 1995; Perez & Wilson 2007).

In Australia, there have been several publications that explore the linguistic and cultural barriers for Aboriginal people in accessing court proceedings (Eades 2004; Goldflam 1995; Howard *et al.* 1993). In all aspects of legal interpreting, the person typically requiring the interpreter is the victim, witness, defendant or complainant; although there are cases of deaf lawyers relying on signed language interpreters (Kurlander 2008).

With respect to deaf people's involvement in the legal system, there have been a number of publications that specifically discuss deaf people's access to justice via signed language interpreters (Fournier 1997; Miller & McCay 1994; Nardi 2005; Stevens 2005; Tillbury 2005; Turner 1995; Wilcox 1995); and Miller and McCay have contributed significantly with their discussions of the potential linguistic barriers that deaf people face in the legal system (McCay & Miller 2001, 2005; Miller 2003; Miller & McCay 2001). In the Australian context, Fayd'herbe and Teuma (2010) have explored the challenges in interpreting for indigenous deaf clients in legal settings, and how a second interpreter is often needed to relay between the indigenous signed language and Australian Sign Language (Auslan).

Several in-depth linguistic studies, with spoken and signed language interpreters, have explored the complexities involved when interpreting in court; with the analysis of pragmatics and discourse in courtrooms, and in particular the challenges of interpreting legalese. Observation and analysis of spoken language interpreter-mediated interactions in the courtroom have demonstrated that interpreters make a range of linguistic decisions during the interpreting process based on their understanding of courtroom discourse, which influences elements of the interaction, such as: turn taking, pragmatic force, interruptions

or clarifications, variation in register, discourse markers and politeness (see Berk-Seligson 1990; Hale 2004; Jacobsen 2003; Lee 2009a, 2010; Pöllabauer 2007). Thus, as an inherent part of the process of interpreting, the presence of an interpreter alters the dynamics and, therefore, impacts on the interaction.

These studies of spoken language interpretation of courtroom discourse have also informed the practices of signed language interpreters in court, as the linguistic, pragmatic and power dynamics present challenges for all interpreters alike, regardless of the languages actually being used. There are three specific studies, however, that have advanced our understanding of signed language interpretation of courtroom discourse.

Brennan and Brown (1997) conducted a major study to assess the extent of deaf people's access to justice in the UK. They observed British Sign Language (BSL) interpreters working in court, administered a survey of legal interpreters, and interviewed deaf people and interpreters about their legal interpreting experiences in police, court and other legal settings. They highlight the fact that signed language interpreters experience conflict in terms of perceptions of their role; but the most interesting aspect of their study is their discussion of linguistic issues. In addition to the linguistic and discourse challenges faced by interpreters of all languages, signed language interpreters work bimodally, that is, between two languages that are expressed in different modalities (i.e. spoken and visual-gestural). This presents further challenges for interpreters, as the level of visual encoding required means information may need to be omitted or added to make the message clear. For example, in describing a window: How does it open? What shape is it? Does it have a handle? If so, what kind? How should the description be interpreted into a signed language? All of the information about the window would normally be visually encoded into signed language. The interpreter is then faced with a dilemma – do they interrupt proceedings to clarify in order that the deaf person accesses the right information? How important is it that they give visually accurate information? Likewise, in the other direction, if a deaf person signs that s/he opened a round window by pulling down on a long cord which was jammed, does the interpreter provide that level of detail in spoken English when it would not normally be encoded in English? This is challenging in any setting, but particularly in court when the level of detail can impact on the nature of evidence given, and thus perceptions of witness credibility. Ultimately, interpreting for witness testimony is acknowledged as a challenge for any interpreter (Hale 2007).

Another significant investigation of signed language interpreting in court was conducted by Russell (2002). She investigated the accuracy of Canadian English-ASL (American Sign Language) interpretations in courtroom discourse by contrasting the outcomes of simultaneous and consecutive interpreting approaches. Spoken language interpreters typically work in simultaneous whispered mode, or long or short consecutive mode when working in court (Hale 2007). Yet signed language interpreters typically work simultaneously as they work between a 'si-

lent' and a spoken language, so there is no apparent intrusion between languages as is evident with spoken language interpreting. Russell sought to challenge this default position, and investigate whether consecutive or simultaneous mode was more effective for signed language interpreting in court.

In her study, Russell (2002) conducted four mock trials with real judges and lawyers, some with experience of working with spoken and signed language interpreters. The interpreters worked in either the consecutive or simultaneous mode. Three different discourse events were analysed: (i) entering of direct evidence, (ii) cross-examination, and (iii) expert witness testimony. Russell found a statistically significant difference in terms of accuracy, with simultaneous interpretations 87% accurate, as compared with consecutive interpretations, which were 95% accurate.

Post-trial interviews with participants revealed that the lawyers and judges seemed to prefer experiencing interpretation in the simultaneous mode, especially during the cross-examination (for the lawyers). They stressed the importance of preparation with interpreters, and that interpreters should request permission from the judge to clarify information, or consult with one another. Deaf witnesses said that interpreters should be confident and well prepared; whereas the expert witness felt that it was important to prepare with interpreters, and commented that they did not seem comfortable using the consecutive approach or note-taking. The interpreters also stressed the importance of preparation, and recognized that the quality of their interpreting was better when they used the consecutive mode. In summary, Russell stated that interpreters should recognize the value of using consecutive or simultaneous interpreting techniques for different discourse types in court, and should negotiate carefully with lawyers and judge about what strategies to use and when.

Finally, Napier and Spencer (2008) conducted a study in order to assess the ability for deaf people to serve as jurors and access court proceedings via signed language interpreters. They investigated: (i) the translatability of legal concepts from English into Australian Sign Language (Auslan); and (ii) the level of comprehension of six deaf jurors as compared to a control group of six hearing jurors. Combining quantitative and qualitative approaches in the experimental design of a comprehension test with post-test interviews, content and discourse analyses, it was found that an interpretation from English into Auslan was highly accurate, and that there was no apparent difference in the level of comprehension between deaf and hearing participants. In sum, it was concluded that with trained and skilled interpreters, deaf people would be able to effectively access court proceedings via signed language interpreters, and perform their function as jurors, however, further research was recommended to investigate this issue in more depth. A follow-up study that replicated the same comprehension test with 60 deaf and hearing people across Australia found similar results, in that both deaf and hearing 'jurors' misunderstood some of the legal concepts (Napier *et al.*, in preparation).

Thus far, it has been noted that there are various challenges for interpreters in mediating courtroom discourse. Consider then the challenges of interpreter-mediated courtroom interaction when it takes place remotely via audiovisual link (AVL). Can the discourse be effectively conveyed? Can all interlocutors effectively participate in the exchange of information? Are there any barriers to communicating remotely through a video screen?

## 2.2. Video remote interpreting

According to Roziner and Shlesinger (2010: 215-216):

Remote interpreting is not a recent invention, nor is it confined to large international bodies. It is often proposed when constraints of space or technical set-up may preclude placing a booth inside the conference venue or when the participants, for whatever reason, do not wish the interpreting/interpreters to have a physical “presence” in the deliberations. The interpreting community has greeted the introduction of RI with considerable skepticism, notwithstanding the fact that the existing body of research seems to provide a mixed review, and to suggest that it is not necessarily either harmful or otherwise unacceptable – *provided* it is performed under the right set of technical, acoustical and psycho-social circumstances.

The provision of remote interpreting first began through the telephone and Mikkelsen (2003) gives an excellent overview of the various pros and cons of remote telephone interpreting. She refers to three key studies of remote interpreting by Kurz (1996), Hornberger *et al.* (1996) and Wadensjö (1999) who all found that interpreters preferred face-to-face interpreting rather than telephone interpreting. This consistent finding was later confirmed in a survey of Korean interpreters in Australia (Lee 2007).

Remote interpreting via AVL is now more common in spoken language interpreting, and has been used since the early nineties (see Azarmina & Wallace 2005; Böcker & Anderson 1993; Connell 2006; Fowler 2007; Jones *et al.* 2003; Mouzourakis 1996; Niska 1999). Thus far, the emerging body of research has shown that it is challenging for all participants: interpreters feel alienated and isolated; their interpreting performance suffers; and rapport with the client is harder to achieve (Braun 2007; Moser-Mercer 2003, 2005; Mouzourakis 2006). Overwhelmingly, it seems that interpreters do not like VRI, as they much prefer to be present with the client (Mouzourakis 2006; Roziner & Shlesinger 2010). However, the service users or professionals often do not seem to have a problem with interaction via VRI (Shlesinger 2011).

Given the visual nature of signed languages, it was inevitable that the provision of signed language interpreting services remotely through AVL facilities would become more popular, and would be introduced for the same reasons as for spoken language interpreters. VRI has been identified as an effective solu-

tion to providing cost-effective, increased access to signed language interpreters, especially for those in regional or rural areas (Spencer 2000), and has great potential in reducing the need for proximity (Lightfoot 2006). Although there is an emerging body of research on VRI with signed language interpreters, to date there has been no research on VRI in court.

There are several US-based studies that have focused on VRI across three locations, that is, through video relay services (where the deaf client makes a 'video call' to a hearing person in another location via an interpreter located in a 'call centre'). Taylor (2005, 2009) conducted two studies to identify the requisite competencies for effective VRI work. Based on observations of VRI sessions and interviews with nearly 200 interpreters, service providers and deaf clients in the United States across the two studies, Taylor identified key differences between traditional face-to-face interpreting and VRS. In particular, she noted that there are linguistic and paralinguistic limitations in VRI as compared to traditional interpreting, as it gives a two-dimensional perspective of signed language, there are limitations of signing space, contextual and environmental support cues are lacking, sociolinguistic factors are not explicit, and it can be difficult to monitor feedback and reactions to interpretations.

Brunson (2011) conducted a sociological study of VRI by conducting interviews and discussions with users of video relay services and interpreters, who further confirmed the differences between traditional and video remote interpreting, as found by Taylor. Furthermore, Brunson noted a common theme that emerged from interviews with interpreters: they reported that they find it difficult to establish rapport with their deaf clients when interpreting for a video relay service 'call centre' as they are not able to brief with the deaf client before the call to assess their linguistic needs. Quinto-Pozos *et al.* (2010) discuss the particular need for interpreters to identify the linguistic needs of deaf VRI users who live in California in the United States and make video relay service calls, as there are often trilingual requirements, between either spoken English or Spanish, and ASL and/or Mexican Sign Language.

Two other studies worth noting have explored the effectiveness of VRI across two locations: when the deaf client is in the same location as the hearing clients, but the interpreter is in a remote location. Wilson (2010) analysed and compared ten case studies of BSL/English interpreter-mediated police interviews conducted via VRI or face-to-face. She found that generally interactions using VRI were slower, due to the greater number of turns, but that as long as large screens were used, the use of technology did not interfere with the interpreting process. Nevertheless, she found that participants noted pragmatic difficulties in reading fingerspelling and facial expressions through the AVL technology, and deaf people in particular felt that the technology was a barrier to the quality of their interpreting experience.

An alternative view is presented in a recent evaluation of VRI by the Department of Human Services in the state of Victoria in Australia (BSR Solutions,



2010). Evaluations of a VRI trial by deaf service users and interpreters revealed that all participants were comfortable with the use of VRI, especially due to the fact that large 50" plasma screens were used, and that all participants would be happy to use the equipment again. The interpreters, however, noted some technological issues (e.g. time delay, problems with set-up, clients knowing where to look), which were also noted in the larger study of VRI in New South Wales' courts that was the precursor to this chapter (Napier 2011b).

Now that the literature on VRI in general has been reviewed, it is valuable to narrow the discussion to VRI specifically in legal proceedings.

### 2.3. VRI-mediated legal proceedings

Remote interpreting via telephone has been considered a solution for cost-effective interpreting services in courts, with positive evaluations from courtroom personnel in particular (Mikkelson 2003; Phelan 2001). However, as with VRI in general, studies of remote interpreting in court via telephone have found that interpreters are not keen on the experience (e.g. Lee & Newman 1997). Swaney (1997) notes that any type of remote interpreting is only appropriate in situations that involve the exchange or elicitation of raw data or facts.

The use of VRI in criminal proceedings, especially for witnesses or experts participating in hearings, has been allowed under EU legislation since 2000, and emerging settings include interviews with witnesses, experts or suspects abroad but also between courts or police stations and prisons. A communication report produced by the European working group on e-Justice shows that videoconferences are now widely used in criminal proceedings to speed up cross-border cooperation, reduce costs and increase security (Commission of European Communities, 2008). AVIDICUS is an EU-funded project that explores the use of VRI in criminal proceedings. According to the AVIDICUS project<sup>1</sup>:

In June 2007, the European Council confirmed that the use of videoconference technology is one of the priorities for future work in European e-Justice, in particular in the areas of evidence taking and interpreting. While these developments are changing the practice of legal interpreting, virtually nothing is known about the viability and quality of [VRI], and training for legal practitioners and interpreters on [VRI] is almost non-existent.

Thus the AVIDICUS project sought to address the issue of viability and quality of VRI with spoken language interpreters and the need for training to work in this context. The project involves six partners in four countries and details are available in the AVIDICUS symposium proceedings (Braun & Taylor 2011b). The studies conducted through this project are of particular interest in relation to the

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1 See <<http://www.videoconference-interpreting.net/Avidicus.html>>



study reported in this chapter, as the AVIDICUS project focused on spoken language interpreting, but adopted a similar methodological approach to analysing VRI-mediated legal proceedings.

The project involved a survey of interpreters and legal practitioners (Braun & Taylor 2011c), and comparative studies of VRI-mediated legal proceedings (Braun & Taylor 2011d; Balogh & Hertog 2011; Miler-Cassino & Rybińska 2011). Initially with the survey study, 201 survey responses (166 completed) were received from 31 countries, and it was found that VRI was regularly used (or there were plans for it to be used) in court, asylum interviews, police interviews and charges, pre-trial hearings, trials, post-sentence hearings and lawyer-defendant communications (Braun & Taylor 2011c). The survey data revealed that legal practitioner responses did not correlate with interpreter perceptions of the effectiveness of VRI. Interpreters did not give positive responses regarding comprehension, production and rapport with clients, and reported that they found working via audiovisual link demotivating, fatiguing, stressful and isolating, particularly when in a remote location. These results confirm findings from other studies (Shlesinger 2011). The level of experience of the interpreter did not seem to influence their perceptions and there was uniform agreement that there is a general lack of consultation with interpreters about whether to use VRI.

The AVIDICUS comparative studies were conducted across three countries and compared traditional face-to-face interpreting in legal contexts with VRI (with either the interpreter or client remote). In order to produce experimental conditions for comparative purposes, simulated legal interactions were conducted in two police settings and one prosecution setting. In the UK (Braun & Taylor 2011d), interpreters were assessed interpreting for a police interview using a scripted dialogue, with comparisons made between traditional interpreting and VRI when the interpreter was in a remote location. In Belgium (Balogh & Hertog 2011), interpreters were assessed interpreting for a police interview using ad-libbed role-plays, with comparisons made between traditional interpreting and VRI when the interpreter was in a remote location or the minority language speaker was in a remote location. Although the studies used slightly different methodologies, the outcomes were the same. In Poland (Miler-Cassino & Rybińska 2011), interpreters were assessed interpreting for prosecution interviews in a pre-trial hearing of a witness, either face-to-face, in a remote location with the prosecutor or in a remote location with the witness, and using authentic scenarios.

In the UK study, 16 police interviews were conducted using 2 different interview scripts, with 8 experienced interpreters, 2 French speaking 'detainees', and 3 police officers who were familiar with working with interpreters. The interpreting quality was rated according to semantic content, linguistic performance, presentation, interaction, and comprehension (based on the work of Kalina, 2002). In sum, they found that when the interpreter was in a remote location, there was an impact on the dynamics of the interaction due to all participants' di-

vision of attention between screen and people in the room. They also found that interviews took 20% longer, and there were: a higher number of linguistic and paralinguistic problems; a higher number of critical inaccuracies, for example distortions and inaccurate names/numbers; more problems that occurred the longer the interview went on; and more turn taking problems, with a correlation between the number of omissions and turn taking problems. In the Belgian study, 6 role-plays were conducted with Hungarian role players and 4 different interpreters. The interpreting process and product was analysed, and individual feedback was elicited from interpreters in post-simulation interviews. They found no significant difference between traditional interpreting and VRI, although the interpreters stated a preference for traditional (face-to-face) interpreting. The Polish study tested three different interpreters working in three different scenarios and observed the quality of the interpreters' performance and communicative behaviour of all participants. Feedback was also sought from all the participants. They too found no significant difference between traditional interpreting and VRI in terms of interpreting quality, but interpreters noted that working remotely was stressful, isolating and fatiguing.

Obtaining the perceptions of different stakeholders in the interpreting process is an important aspect in order to adequately assess the effectiveness of any interpreting process or product, as different stakeholders often have very different perceptions (Napier 2011a); thus consideration needs to be given to existing research in this area.

#### *2.4. Stakeholder perspectives of interpreting*

In recent times, various researchers have acknowledged the importance of including all stakeholders in any exploration of interpreting quality and effectiveness, and have presented perspectives of interpreters (Chesher *et al.* 2003; Chiaro & Nocella 2004; McKee 2008), and minority language interpreting service users, such as refugees, migrants or deaf people (e.g. Baker *et al.* 1998; Edwards *et al.* 2005; Hsieh 2008; Iezzoni *et al.* 2004; Napier & Rohan 2007).

Few studies have attempted to explore interpreting from the different perspective of the majority language user, that is, the professional with whom the minority language user is seeking information. For those that exist, they typically involve the perspective of medical practitioners (e.g. Kuo & Fagan 1999; Smeijers & Pfau 2009). Other researchers have attempted to contrast the views of different stakeholders about interpreters and interpreting generally through conducting interviews or focus groups (see Dean & Pollard 2005; Napier 2011a; Singy & Guex 2005; Witter-Merithew & Johnston 2005). Overall, the literature demonstrates that although there may be some overlap in perceptions, stakeholder perspectives often differ – especially in relation to the role of the interpreter.

This difference has also been clearly demonstrated in previous studies of legal interpreting, as discussed by Hale (2007), Ibrahim and Bell (2003), Ibrahim-Bell (2008), Lee (2009b), Martin and Ortega (2009), and Morris (2008), who have all found that legal professionals and interpreters do not have the same perceptions regarding the interpreter's role or definitions of interpreting accuracy or quality. Likewise, as mentioned earlier, the perceptions are different for stakeholders involved in the spoken language interpretation of criminal proceedings via audiovisual link (AVL).

Until the study reported in this chapter, no research has been conducted on the stakeholder perspectives of signed language interpreting services provided through AVL for legal purposes. Given the high stakes involved in legal proceedings mediated through interpreters, the research presented in this chapter is timely and valuable and has implications for both spoken and signed language VRI in court.

In recognizing a need to improve and expedite access to signed language interpreting for deaf people in the court system in New South Wales (NSW) Australia, the NSW Department of Justice and Attorney General decided to test whether the in-house AVL system available in NSW courts was appropriate for the provision of signed language interpreting. The AVL system had not been designed or installed with Auslan users or interpreters in mind, so the Department was concerned to evaluate any issues that might arise, and whether there were any barriers for deaf people or Auslan interpreters in using the equipment.

The project was commissioned by the Department with a view to informing policy about the provision of signed language interpreters in court through AVL and sought to address the following research questions:

1. How easy is it for deaf people and interpreters to understand one another through video remote technology?
2. What are the challenges for all parties in communicating via video technology?
3. Are there any barriers to having deaf clients or interpreters in remote locations?
4. Is the integrity of the interpreting process affected by the provision of services through video remote technology?
5. What are the optimum settings for sign language interpreters to provide quality services remotely through video facilities?
6. What are interlocutors' perceptions of the effectiveness of video remote sign language interpreting services?

### 3. METHODOLOGY

#### 3.1. Framework and design

The framework for the project was a qualitative study: it involved a quasi-experimental design in that five simulated trial scenarios were tested under similar conditions, but each scenario was treated as a case study as it involved different scripts and/or participants. Results were triangulated with ethnographic observations during each trial scenario and follow-up interviews with participants.

The effectiveness of signed language interpreting services provided via AVL was tested in key venues across five simulated trial scenarios involving deaf people, Auslan interpreters and non-deaf participants. Each scenario represented various possibilities of combinations where deaf people or interpreters might be in remote locations and accessing the courtroom via AVL. The scenarios included:

1. Interpreter at interpreting agency, deaf person in Remote Witness Room or in Jail: both accessing courtroom via AVL;
2. Interpreter at interpreting agency accessing courtroom via AVL and deaf person in court;
3. Both interpreter and deaf person in Remote Witness Room or at Jail together and accessing courtroom via AVL;
4. Interpreter and deaf person in courtroom face-to-face (control);
5. Interpreter in courtroom and deaf person in Remote Witness Room or in Jail accessing courtroom via AVL.

The five scenarios of simulated courtroom interaction were developed using scripts from mock-trial scenarios based on real courtroom trial excerpts. The scripts were adapted in consultation with the Diversity Services Senior Development Officer at the NSW Department of Justice and Attorney General. It was decided to use the same two scripts for the scenarios, so Script 1 (*Breach of an Apprehended Violence Order*), was used for scenarios 1, 2 and 4; and Script 2 (*Driving whilst Disqualified*) for scenarios 3 and 5.

Each scenario involved one interpreter, one deaf Auslan user and three non-deaf (hearing) English speaking participants (judge, prosecution and defence lawyer). Three professionally certified interpreters were used<sup>2</sup>: all were female and had VRI experience; one had substantial court interpreting experience; one

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<sup>2</sup> In Australia interpreters of all languages receive 'accreditation' from the National Accreditation Authority for Translators and Interpreters. See Bontempo and Levitzke-Gray (2009) for an overview of signed language interpreting training and testing in Australia.

had some court interpreting experience; and one had never stepped into a courtroom. Two deaf professional actors (one male, one female) played characters as assigned to them. A briefing was developed for the deaf actors and hearing participants, giving an overview of the ‘character’ of the deaf person in each scenario.

Non-deaf volunteers played the role of judge, defence lawyer and prosecution lawyer in each scenario. The hearing volunteers all worked for the NSW Department of Justice and Attorney General (DJAG) in various capacities, so were familiar with court procedures, but they were not real legal professionals. Although the ideal would have been to use authentic deaf clients and legal personnel, this was not possible for two main reasons: (i) there would have been ethical implications in seeking and recruiting deaf people with authentic courtroom experience due to charges/convictions; (ii) it was not possible to recruit legal personnel to participate in the study as the available budget would not have covered their time. Nonetheless, as all hearing participants were clearly briefed it was felt that their perceptions of the effectiveness of the VRI in court were still valid, as they were able to report on the actual experience they had as an end-user during each trial scenario.

In order to make the simulations as authentic as possible, the interpreters only received brief information about the assignment as would normally be given on a booking sheet from the interpreting agency, which included: the venue and address, the name of the contact person, date and time of the assignment, the name of the deaf person and the type of court matter. A breakdown of the participants and scenarios can be seen in Table 1.

| SCENARIO NO. | REMOTE WITNESS ROOM            | INTERPRETING AGENCY 1 | INTERPRETING AGENCY 2 | COURT   | SCRIPT NO. |
|--------------|--------------------------------|-----------------------|-----------------------|---|------------|
| 1            | Deaf person A                  | Interpreter A         |                       | Court personnel                                   | 1          |
| 2            |                                |                       | Interpreter B         | Deaf person A<br>Court personnel                  | 1          |
| 3            | Deaf person B<br>Interpreter B |                       |                       | Court personnel                                   | 2          |
| 4            |                                |                       |                       | Deaf person B<br>Interpreter C<br>Court personnel | 1          |
| 5            | Deaf person B                  |                       |                       | Interpreter C<br>Court personnel                  | 2          |

TABLE 1. Script and scenario allocation

### 3.2. Data collection process and analysis

The data collection process involved the complex organization of multi-location recording of five scenarios across four sites, using two scripts. The filming took place in four different locations, which required four researchers to be present to set up each location, film the scenario and interview participants. Prior to the day of data collection, DVD recorders were installed in the sites in order to record the video image sent between the courtroom and the remote locations via AVL.

The purpose of the study was to investigate the feasibility of using the existing DJAG AVL system for the provision of signed language interpreting. So the data collection was planned to follow real life conditions as closely as possible (when people are called in to court the court clerk switches on the AVL facility and the hearing proceeds). The DJAG AVL system uses fixed cameras that are located above the TV screens (usually located on the wall) with pre-determined angles on key areas in the courtroom. The cameras cannot be rotated, zoomed in or out, or their positions changed. The cameras are triggered by audio-feed, so that whoever is speaking triggers the active camera to feed into the AVL system and the connection with the remote location.

Before filming could commence, time was needed to set up each scenario to ensure that all participants could be seen and heard. It was found that in setting up each scenario, due to the fixed nature of the camera equipment, people had to be moved around so that the deaf person and interpreter in particular could clearly see one another. This often meant that the usual seating positions could not be adhered to and the 'views' on the screens either in the courtroom or the remote location room also needed to be adjusted.

Each scenario ran for approximately 10-15 minutes with simultaneous interpretation between English and Auslan. In order to make the simulation as realistic as possible, the deaf actors and hearing participants were requested to respond to the interpretation as appropriate, even though they were following a script. For example, if the script said: "Tell us your full name and date of birth", but the interpreter only signed: "Tell us your full name", then they were asked to follow what the interpreter signed. Or, another example, if the interpreter signed/said something that was unclear, then they were asked to respond as they thought would be appropriate. They were also told that if they deviated from the script (e.g. to clarify something, to interrupt, etc.), then they should return to the script as quickly as possible; and if they had to deviate from the script they should only make one variation before returning to the script and no more than three variations throughout the entire script.

In order to triangulate the data and ensure that all perspectives were captured, each scenario was video-recorded through three points: (1) a static video-camera on a tripod focused on the deaf participant; (2) a static video-camera on a tripod focused on the interpreter (or both the interpreter and deaf person if they were together); and (3) an in-house recording of the footage appearing on the screen through the DJAG AVL system.

Post-scenario interviews were conducted with all the deaf and interpreter participants using prompt questions that asked their opinions about the use of the technology, their perceived accuracy of the interpretation and whether it was impacted by use of video remote facilities, and their perceptions of the effectiveness of the service. In particular, the interpreters were asked about any challenges they experienced, and the deaf people about any barriers they felt they faced. A few of the hearing participants were also interviewed, but due to time constraints many of them had to return to work on completion of the data collection for their scenario. In these instances, the hearing participants were given a hard copy of the prompt questions and asked to email the research team with their responses. Interviews were conducted in Auslan with the deaf participants, and in spoken English with the interpreters and hearing participants.

The trial scenario data was analysed for any issues regarding comprehension or clarity as a consequence of the interpretations taking place via AVL. The spoken English interviews were transcribed, and the Auslan interviews were translated into written English<sup>3</sup>, and analysed for thematic issues and cross-referenced with themes noted in the trial scenario data. These two data sets were triangulated with the ethnographic observations of the research team. The combined data gave a clear picture of problem areas and participant perceptions of the effectiveness of signed language interpretation in court via AVL. This chapter focuses on stakeholder perspectives, and in particular the perspectives of the interpreters and deaf clients when they were in separate locations and therefore had to communicate with one another via the AVL (i.e. scenarios 1, 2 and 5). Further discussion of the research in terms of overall issues and pragmatic challenges can be seen in Napier and Leneham (2011) and Napier (2011b, in preparation).

#### 4. RESULTS AND DISCUSSION

As already discussed, the project attempted to simulate the range of contexts in which an Auslan interpreter may be required to interpret via AVL for a court matter. Throughout the process of collecting the data, it was obvious that employing the services of a sign language interpreter through AVL was effective. In all four scenarios that used AVL it appeared that communication was able to occur without any significant difference to the one scenario that did not use AVL (scenario 4

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<sup>3</sup> Stone (in press) notes the limitations, but also the necessity to present extracts of signed language data for publication in a translated written form (e.g. Auslan into English) when signed languages have no written form. In translating the deaf participants' contributions in this study, the researcher attempted to capture the nuances of their comments, and to reflect their affect. However, it should be acknowledged that there may be subtle aspects of the original Auslan discourse that have not been captured in written English.



– the control with all participants in the courtroom). However, to ensure effective communication was possible, some significant adaptations needed to be made in a couple of the scenarios. Here data is presented from the participant interviews about their experiences of communicating remotely via AVL, which have been organized according to scenarios 1, 2 and 5 (where the deaf person and interpreter were in different locations).

#### 4.1. Scenario 1

In this scenario, the deaf defendant was in ‘custody’, the interpreter was in a separate location at an interpreting agency, and both of these individuals were appearing in court via AVL. Some possible real-life situations represented by this scenario are:

- weekend bail hearing in regional centre, where no local sign language interpreter is available;
- unable to transport a defendant to court and no local sign language interpreter is available;
- deaf witness permitted to appear via video link, and no local sign language interpreter is available.

The deaf person and the interpreter could both see themselves on the screen, which they found to be distracting, but general issues observed were that the size of the television screen in the remote witness room was small, and that the background behind the interpreter was too busy (a board with logos all over it) which made it hard for the deaf person to concentrate. Throughout the scenario, there were several points where the interpreter-mediated communication was inhibited: the interpreter had to clarify a name that was fingerspelled by the deaf person, and also some referential information that was not clear; the interpreter could not hear what was being said in the courtroom; and at one point when interpreting into Auslan, did not indicate the interlocutor, so the deaf person would not have known who was speaking.

During the post-scenario interviews, the participants indicated that they generally felt things had gone smoothly, but there were limitations in using the AVL equipment. This limitation was noted by the hearing person who played the magistrate who stated: *“I certainly had no problems. It just appeared from the AVL that perhaps the interpreter had big problems. But I don’t know what could be done to improve that”*. Although the hearing person could not make suggestions for improvements, the deaf person and interpreter were very clear about what the problems were and how they could be improved. The interviews yielded four clear themes in relation to the use of the AVL and the process of interpreting during the scenario: (1) need for pre-trial meeting; (2) sense of isolation; (3) pragmatic issues; and (4) general access.

The first theme is in relation to participants' discussion of the need for a pre-trial meeting or 'briefing session' between the deaf person and interpreter before commencement of the court matter, which would make the process more effective. The deaf person commented that: *"You need to explain the AVL process to the deaf client before it begins: 'You'll be in this room here. You're the witness. You will communicate via a video camera.' It's important to make sure they're aware of the process and understand what's involved before they start"*. The interpreter noted a similar concern, as she felt that if participants were better briefed, then everybody would be more aware of the interpreter's needs, as seen in Extract 1 (Note: Interpreter = INT, Research Assistant = RA ).

*Extract 1: Interpreter perception of need for 'briefing'*

INT: I suppose the only thing, is if everybody is very aware of how it's going to work. And very aware of the interpreter's needs – like if you have to stop something, or if you have to get clarification. And where we stand being able to do that from a remote spot. Because you get the 'vibe' when you're actually in a court about how you go about stopping the proceedings. You know, you get that 'vibe'. But I think when you sit remotely, it'd be a little hard to do that.

RA: So it might require a more explicit briefing – like, for everyone?

INT: Yeah. For everybody, I think.

This theme confirms the findings of Russell (2008), who interviewed ASL interpreters, and highlighted the importance of interpreter preparation before working in court. The second theme follows on from the need for a briefing, as all the participants noted that there was a sense of removal from the context, which created a sense of isolation. The hearing person playing the prosecutor observed that neither the deaf person nor interpreter could see her properly from their locations, but although it was not a problem for her it was probably more so for them. The interpreter noted that it was difficult to discriminate who was speaking when in a different location, as not everybody is visible on the AVL screen, and she commented that being removed from the deaf person exacerbated her sense of isolation: *"I don't like being away from the deaf person so much. [...] As an interpreter, it's about that control and being able to go, "Sorry, it's not working." And wondering whether they can hear me. And it just slows everything down"*.

Ironically the deaf person involved in the first scenario felt that he had more control when in a remote location, as the stress of being in the courtroom was removed. Nevertheless, he did comment that he also felt disconnected from the context: *"Sitting in this [remote] room, I felt like I had more control around how I said things. In the court I wouldn't necessarily have that same level of control. I feel that in court I'd be more anxious about what I say because I know there'd be other people watching me, so I'd have to be more mindful about what I said and how I said it. [...] The technology was fine – it was easy to communicate, but I felt quite disconnected"*.

The fact that the deaf person and interpreter both felt disengaged is borne out in their discussion of the interpreting process in theme three. Although they both felt that things had generally gone smoothly; that the communication was mediated effectively, they both acknowledged that there were pragmatic difficulties in relation to obtaining clarification of utterances. An example of the interpreter's perception of the clarification difficulty can be seen in Extract 2.

*Extract 2: Interpreter comment on clarification*

INT: Er... when I had to ask for a repeat I think had he been in person I could have got what I needed quickly without stopping everything... yeah... I actually had to stop something. Erm where as before, I can't remember... oh about paying me (signs PAY-ME) I wasn't sure what he meant and I could've just done that (signs PAY-ME INTERACTION with quizzical facial expression) without anybody knowing almost.

RA: The first time I think it was something to do, erm, with his address?

INT: Ah yes Fairfield

RA: But you clarified really quickly and it didn't seem to be a problem or anything...

INT: Yeah but I think because I had that wait wait wait (signs WAIT WAIT WAIT) and he was still going on, but see he was reading from the script

RA: And he wasn't looking at you as well

INT: But had he had his eye on me all the time I could have stopped that there and then without having to go (signs GO-BACK). So yeah, so that was an issue.

RA: So it's possible but it's not the same as if you were face-to-face?

INT: I think you can get it done more subtly if you're in person.

The deaf person confirmed the interpreter's perception that it is harder to seek clarification via AVL for both deaf people and interpreters: *"In real-life situations, when I am with an interpreter – face-to-face – if there is some uncertainty or something unclear, then I can easily interrupt and they can go back and clarify the information, or vice-versa if they don't understand me. But, through the AVL system, it's difficult for me to interrupt because the court is in session and things need to keep moving"*.

Another pragmatic issue identified by some of the participants was in relation to the need to accommodate linguistically for the fact that the communication was taking place via AVL. Both the hearing participants who acted in the roles of prosecutor and magistrate noted that they slowed down their speech, although it seemed to be because they were conscious of the needs of the interpreter, rather than the impact of using AVL itself. For example, the prosecutor said: *"I felt like speaking slower so that the interpreter could understand what I was saying"*. Similarly the magistrate confirmed that she was conscious of the interpreter: *"I*

*was mindful of the interpreter, but also, I know from my experience in court that people don't speak a mile a minute. And certainly from the Bench, they don't. So I was mindful of that" (magistrate).*

The interpreter, however, made explicit reference to changing her signing style due to the AVL, which also reiterates her point regarding the sense of isolation: *"I slowed down [my signing speed] because I couldn't get the feedback [from the deaf client]. [...] you always get that feedback as to whether they understand your signing and then you become more natural. But I didn't feel there was that feedback – there was a lack of closeness".*

In addition to how the use of the AVL had an impact on the communicative process, the deaf and interpreter participants in scenario 1 also referred to general access issues (theme 4), specifically in relation to the technology itself. The interpreter mentioned that there was a slight delay that she found distracting, and the deaf 'defendant' observed that he found the background behind the interpreter to be too bright, and that the picture quality was slightly blurry. However, he did like one aspect of the functional aspect of the AVL: *"The blue outline around the quadrant of the screen indicates who's speaking and I think that looks good and worked well".* The deaf person and interpreter each were looking at TV screens that were divided into 3 images ('quadrants'). In the top quadrant they could see the magistrate at the bench and the public gallery in the court, the bottom left quadrant showed the deaf person, and the bottom right quadrant showed the interpreter; as seen in Image 1. As the cameras were voice-activated, whenever anybody spoke the relevant camera sent a signal back through the AVL, so a blue line appeared around the appropriate quadrant to highlight who was speaking. This seemed to be an effective visual indicator for the deaf person.

Regardless of the limitations perceived by all stakeholders in Scenario 1, it is worth acknowledging one positive aspect of using the AVL that the deaf person conveyed: *"I think the communication in this scenario was actually quicker than in a real life court setting. For example, if a deaf person was really going to court, they'd have to wait for the interpreter to arrive, walk into court with them, of course there'd be a level of anxiety, the need to introduce the interpreter to other people, meanwhile the deaf person would be keen for things to get underway. But in this scenario, the interpreter came in, sat down and everything began straight away. It all ran very smoothly".* This comment is in direct contradiction of the theme discussed earlier regarding the need for explanation and briefing time before the court matter commences. So this comment demonstrates that there is feasibility in using the AVL for the provision of signed language interpreting from a deaf perspective, at least when the deaf person and interpreter are in different remote locations from the court.

Observations from the research team also confirmed that Scenario 1 seemed to be the one that was less problematic. It seemed to be that because both the interpreter and deaf person were in dedicated AVL rooms and were able to look directly at a screen, there were less distractions and logistical problems.

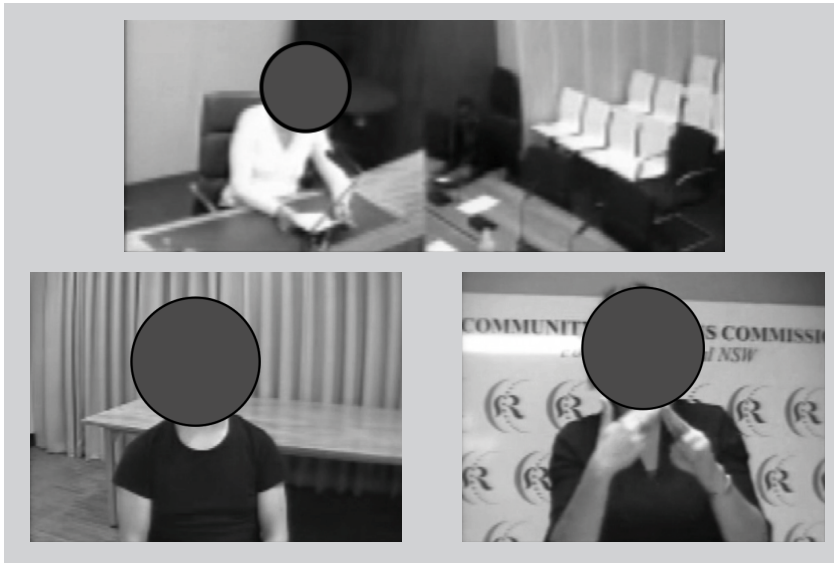


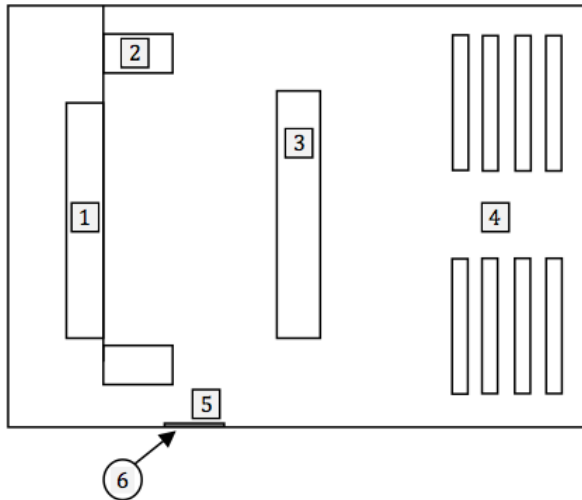
IMAGE 1. Image of divided AVL screen in Scenario 1

#### 4.2. Scenario 2

This scenario is similar to Scenario 1, in that the interpreter appeared in court via AVL; the difference in this scenario is that the deaf defendant was in the courtroom (so the interpreter was the only one who is remote). Some possible real-life situations represented by this scenario are:

- deaf defendant/witness in a rural/remote setting, with no local interpreter available;
- weekend bail hearing, with no local interpreter available.

Due to the fixed nature of the in-house AVL camera system, the deaf person had to sit in the witness box, rather than at the bar table next to his defence lawyer, in order to be seen clearly by the interpreter from the remote location (as the witness box was directly opposite the cameras, so the interpreter was able to get a good direct line of sight and see the deaf person's face and hands). The camera was placed above a very large plasma TV screen mounted on the wall, so the deaf person also was able to look directly at the interpreter. Figure 1 illustrates the layout of the court and the location of each participant. The interpreter was located remotely in a dedicated VRI room at a local interpreting agency, and her screen was divided into quadrants (as in Scenario 1), so she could see some parts of the courtroom, the deaf person sitting in the witness box, and herself in one of the quadrants.



- 1 Bench
- 2 Deaf defendant seated in the Witness Box
- 3 Bar table, with prosecution lawyer on right, and defence lawyer on left
- 4 Gallery
- 5 Large plasma TV screen mounted on wall
- 6 Interpreter at interpreting agency – appearing via AVL

IMAGE 2. Deaf defendant in courtroom; Interpreter remote appearing via AVL

Similar to Scenario 1, it was observed that there were no major communication breakdowns, as commented on by the hearing person acting as the prosecutor, who stated that: “[Everyone was able to communicate] very easily” and “because the interpreter took up the whole screen [...] it was just like having another person in the room”. Nevertheless, the deaf person commented that “Generally speaking, both in the remote witness room [Scenario 1], and here in the courtroom [Scenario 2], it was difficult to manage the communication”. Thus there were limitations in using the AVL system. Likewise, many of the problems were as a result of the fixed nature of the camera equipment. The participants reiterated many of the same points from the first scenario (the deaf person was the same participant, with a different interpreter – see Table 1), and four themes were clearly identifiable from the post-scenario interviews: (1) general access and communication; (2) remoteness; (3) pragmatic issues; and (4) anxiety.

In terms of the first theme of general access and communication, the deaf defendant noted that being seated in the witness box gave him better access and assisted his comfort level: “I was much more confident being seated here [indicates Witness Box] in the courtroom. Much more confident because I felt like the interpreter was talking straight to me. If I was sitting over there [indicates the Bar], then I wouldn’t have felt like she was talking straight to me”. It should be flagged, however, that this was an arrangement that was made for the purposes of this project, and would

not necessarily be feasible or appropriate in other courtroom contexts. Interestingly, the deaf person in this scenario also gave consideration to the access needs of other deaf people that may be present in the courtroom: *“You’d have to consider any deaf supporters there might be in the courtroom who might want to express their support for the deaf defendant. In this scenario, with the interpreter only visible on the TV screen on the wall, the other deaf people in the courtroom would not be able to view the screen, so would not have access to what is happening in the courtroom”*. Although this is a valid comment with regards to access, the primary goal of the Department of Justice is to ensure access for any deaf person who is a client of the legal system as a defendant, complainant or witness, but not necessarily for observers.

In Scenario 1 the deaf and interpreter participants both commented on feelings of isolation due to being removed from one another in different locations. The same opinion was evident in relation to Scenario 2, with the deaf and interpreter participants noting that the ‘remoteness’ impacted on the communication (theme 2). The deaf person stated that: *“...it was difficult to manage the communication. I’m not meaning in relation to working with an interpreter, I guess it’s more to do with the nature of the situation. That I’m not communicating with someone immediately present...”*

The interpreter agreed, feeling that she would have been able to cope better if the interpreting occurred face-to-face: *“I would have preferred to have been with the people around me. I think I would have felt ... erm ... much more at ease. Just knowing that I would have felt more comfortable interrupting or ... like even when I had to interrupt for the fingerspelling I felt really, erm ... you know, I don’t know what’s going on in the room around me and I’m just this loud voice going ‘hold on a second I don’t get it!’ So, erm ... I think I would feel more comfortable being in the presence of people”*.

In the previous comment, the interpreter notes that she had to interrupt to clarify a fingerspelled lexical item. This highlights that, as with Scenario 1, another theme that was evident in the post-scenario interviews with the deaf and interpreter participants was in relation to pragmatic issues that arose due to communicating via AVL (theme 3).

The interpreter commented on the location of the deaf person in the courtroom, and how this influenced her ability to read the sign language: *“It was all ok, with [deaf person] sitting in the witness box it was much better. But when he was in his initial place, the angle of the camera was not good it was sort of side-on, and there was no way I was gonna catch fingerspelling or anything on that angle”*.

Even when the deaf person had been moved, however, there were still pragmatic issues for the interpreter in reading his signing. At one point, when the deaf defendant was answering a question he looked to the magistrate. While signing his response the interpreter needed to ask a question for clarification, but could not get the defendant’s attention, as he was not looking at the plasma screen on the wall of the courtroom. It took her several attempts to get his attention and then ask the question. By that time, much of the information had not been interpreted, as the interpreter was focused on trying to get his attention.



Once the defendant realised, he quickly clarified and continued, but had to go back and reiterate what he had already said. This could be particularly problematic in serious cases, or if the situation was to keep re-occurring. The deaf person made an observation regarding this incident: *“Often when deaf people are working with interpreters, you’ll see that they sign everything directly to the interpreter. I think I’m a little bit different; I forget about the interpreter and sign towards the person I want to address. But after this scenario I realise that it’s important for the deaf person to watch the interpreter. I found that quite difficult because if I’m only watching the interpreter on the TV screen, then I may not be sure who is speaking and to whom I should respond. But if I’m not watching the interpreter, then she isn’t able to interrupt me to ask me for clarification, or to repeat something she might not have understood when I signed it. I admit that I ignored the interpreter in favour of focusing my attention on the participants who were in court with me. [...] For me, I’m very competent at working with interpreters, but it is hard to maintain focus on the interpreter on the TV screen, and the other participants in the court”*.

When asked how she felt about what had happened, and whether she would have done anything differently, the interpreter noted that: *“I still would have done it because I would still want to make sure that I was conveying the right message, erm ... but I feel like it would have been easier and ... yeah easier to manage the whole situation had I been in the room”*.

The deaf person also suggested another pragmatic issue that seemed to impact on the interpreter’s delivery of the message in Auslan: *“Having the large TV screen on the far wall, opposite the witness box was good, but it wasn’t always clear who was speaking – if it was the judge or one of the lawyers. Working through the AVL, [because she was remote] I don’t think the interpreter was fully aware of the positioning of people within the courtroom so wasn’t able to convey it clearly. For it to work effectively, you’d have to clearly inform the interpreter about who is in the courtroom and where they were positioned. Because the interpreter is conveying the speech from all the other participants, and without clearly establishing who is speaking, it is remarkably confusing”*. Signed languages such as Auslan inherently encode visual information through use of space and various forms of depiction (Johnston & de Beuzeville 2009), and can include explicit information as to where people are located and literally ‘draw a diagram’ in space. Thus it seems logical that if the interpreter could not see the various participants in the courtroom, she may have located those people in space inaccurately. As the deaf person noticed, this had an impact on his comprehension.

Given the above comments, it is not surprising therefore, that the fourth theme arising out of the post-Scenario 2 interviews was in relation to anxiety. The deaf person in particular felt more anxious because of communicating via AVL with the interpreter: *“That I’m not communicating with someone immediately present and because I was aware that what I was saying was being recorded. As such, I needed to put more thought into what it was that I had to say. So it actually made me more tense”*.

Furthermore, the deaf person felt they were less able to monitor the performance of the interpreter because they were remote: “[...] will they be able to unpack the concepts that I’m trying to convey? I always wish I was able to see what the interpreter is saying to verify that it’s what I intended. But in reality, I don’t know how to avoid things being misinterpreted. I know when I’m signing, that I really have no way of checking what the interpreter is saying”. He also tried to empathise with how real deaf defendants or witnesses might feel if they were watching an interpreter via AVL, and felt that they would be similarly anxious (if not more so): “I’m trying to predict how another deaf person might feel if they were in this situation. And I imagine they’d be a bit anxious and wouldn’t know what to do and might feel intimidated with the cameras and other people watching them”.

The interpreter experienced mild anxiety due to technological aspects of using the AVL, either because she could see herself signing or because there was a slight delay in the transmission: “I think having me in the corner with a big delay was off-putting coz I could see myself as I was interpreting but a little bit behind where I was up to so that was off-putting”.

To sum up, it can be seen the stakeholder perspectives in Scenario 2 vary once more – the hearing participants felt that communication was smooth, but the deaf and interpreter participants felt that there were limitations in using the AVL and providing signed language interpreting in court with the interpreter in a remote location. The deaf and interpreter participants tended to agree on the challenges, especially in relation to pragmatic aspects of reading and understanding sign language when one of the participants is in a remote location.

#### 4.3. Scenario 5

This scenario was the last permutation for the combination of participants engaging in a court matter via AVL (scenarios 3 and 4 had the deaf person and interpreter together in the courtroom or a remote witness room – see Table 1). In this situation, the deaf defendant was in a remote location, but the interpreter was in court. Some possible real-life situations reflected by this scenario are:

- deaf witness in a remote/rural location some distance from the court where the matter is being heard, but an interpreter is available at the court;
- deaf defendant in custody and unable to be transported to court, but an interpreter is available at the court;
- weekend bail hearing in a location where an interpreter is not locally available, but one is available at another court.

It should be noted that once again, as in scenario 2, we had to position one of the participants (this time the interpreter) in the witness box. Unlike scenario 2, where there may be real-life circumstances when a deaf person would be seated

in the witness box, there is no real-life circumstance where an interpreter who is working in a court would be seated within the witness box. However, to circumvent the limitations of the current system and the fixed positioning of the cameras within the courtroom, this was the only viable option to be able to proceed with the scenario. As such, this solution highlights one of the major problems and limitations of the current system.

As in Scenario 2 portrayed in Figure 1 but in reverse, the interpreter was able to see the deaf person shown full-screen on the large plasma screen within the courtroom. The deaf person in the remote witness room, however, had to sit in front of a small television screen that had a four-quadrant screen split. She could see herself, the interpreter seated in the witness box, and two other different angles in the courtroom of the judge's bench and the public gallery, as seen in Image 2. Although the interpreter in Scenario 2 had the same view while she was in the remote location (interpreting agency), she was seated in front of a large plasma screen so the divided screen was less of a problem as each quadrant was still fairly large. In Scenario 5, the divided screen proved to be particularly problematic for the deaf person.



IMAGE 3. View of deaf person in remote witness room in Scenario 5

As with the previous two scenarios, four common themes were clearly identifiable from the post-scenario interviews: (1) need for pre-trial meeting; (2) disconnectedness; (3) pragmatic issues; and (4) general access and communication. Both the deaf person and the interpreter stressed the need to meet beforehand

to establish communication protocols, and develop a level of familiarity in order to mitigate any impact from the AVL (theme 1). The deaf person suggested: *“I’m wondering in the kind of scenario we depicted, would there be time or opportunity for the deaf person and the interpreter to meet for a “warm up”? So the deaf person has to deal with the challenge of possibly having an unfamiliar interpreter that they may not have worked with, or do not work well with, plus having to conduct their business in the court”*. Likewise, the interpreter confirmed that she would have liked the opportunity to check-in with the deaf person, and also with the court in general, before and during the scenario to ensure that the communicative process was smooth, as seen in Extract 3.

*Extract 3: Interpreter perception of need for checking*

INT: As long as ... communication happens. I dunno, I feel like there needs to be a check at some point, like I’ve just come in, I’ve not had a chance to say hello to the client or been able to establish any type of communication and no one’s actually checking that on the other end, like how would we know that everything’s fine over there [...] like she wasn’t given an opportunity [...] [name of RA] was there at the time but would I have been given the opportunity to say (turns to where plasma screen is in courtroom and signs and speaks at the same time) ‘is it clear can you see me alright?’, you know, before it started?

RA: So it would almost be better if you guys could have a little chat before it started?

INT: Yeah...

The fact that the interpreter and deaf person did not have the chance to ‘meet’ pre-trial seemed to exacerbate a feeling of disconnectedness (theme 2), which replicates themes observed in the previous scenarios of a sense of isolation and remoteness. The deaf person mentioned that she felt weak and intimidated being alone in the remote witness room with everybody else in the courtroom, and that it was definitely more difficult being in a different room from the interpreter (as opposed to Scenarios 3 and 4 when she had been face-to-face with the interpreter in the remote witness room or the courtroom – see Table 1). She remarked that: *“[the communication] wasn’t clear at all. I felt incredibly disconnected from the proceedings. [...] If it wasn’t for the script, I don’t think I would’ve been able to follow the proceedings very well”*. She went on to suggest that: *“I found it very hard to feel like I had a connection with the interpreter – for example, if I needed something clarified”*. Although the interpreter felt more positive about the communication overall, she supported the deaf person’s perception that face-to-face was preferable: *“I think there was definitely communication there, but it didn’t feel as smooth as compared to if she were in the room”*.

As with the previous two scenarios discussed, the deaf and interpreter participants in Scenario 5 asserted that there were pragmatic issues in producing, reading and understanding Auslan as a consequence of communicating via AVL

(theme 3). It was observed by the research team that the deaf person's view of screen was so bad in the remote witness room that she found it incredibly hard to figure out who was talking and when. Also due to a minor delay in the transmission of the footage, she did not understand that it was her turn to speak until there was a long pause with nobody speaking/signing, then she looked at her script and realised she had been asked a question. She responded to the question appropriately, but she looked extremely discombobulated. In a real-life situation she would have had to ask for a repeat, as she did not actually see what the question was – the only way she could respond was because she had a script. The deaf person commented on this very issue: *“I felt that normally a deaf person would be able to ask an interpreter for clarification, that the interpreter would get the message and stop straight away, but in this situation it wasn't possible. It would require me to draw attention to myself, and while some deaf people might not mind that and would be able to assert themselves and ask for clarification, there would be other deaf people who would be too intimidated by having everyone's eyes on them. The less-assertive deaf person might not say anything, or ask for clarification until after the court proceedings”*. The interpreter also acknowledged that she found it hard to assess the deaf person's comprehension and need for clarification: *“There was definitely a preference for when I was with her in the room, I felt like I could get more feedback from her, I knew if she was understanding”*.

The interpreter also noted another important pragmatic issue, in that she adjusted the way she signed to accommodate for communicating via AVL, as can be seen in Extracts 4 and 5. First of all she identified that she adjusted the way that she used fingerspelling by orienting her palm towards the screen so that the fingers she was pointing at could be more clearly seen.

*Extract 4: Interpreter comment regarding accommodation of fingerspelling*

INT: A little bit yeah, for example when I was fingerspelling 'bail' (fingerspells B-A-I-L) I was very conscious of having my [indicates holding palm forward, towards the camera], yeah...

RA: Did you fingerspell slower?

INT: Yep, slower...

Secondly, she discussed the reliance on use of space as a grammatical marker, and how the communication via AVL impacts on how space can be referred to and be meaningful if the deaf person is in a remote location.

*Extract 5: Interpreter comment regarding accommodation of pointing*

INT: I just slowed down a bit more, and paused a bit more I think ... and the other thing I was wary of was pointing. So I wasn't sure when I was pointing at the prosecutor (points left) and her lawyer (points middle) whether it was showing the opposite ... yeah ... I'd say at first, like [signs: POINT POLICE], or [signs:

POINT LAWYER] is saying, or [signs: POINT JUDGE] is saying now, but I wasn't sure if that was clear [in the remote witness room]. I think you'd always have to make sure that you say who is talking before you interpret it for them. But if [the deaf defendant's] seeing this [signs: TV screen divided into four sections], if I'm pointing there (to left side of courtroom), that might actually be nothing (indicates end of screen that the deaf person would be looking at) and that they're actually over there (points to the right).

The comments above highlight the fact that although the use of AVL can work for the provision of signed language interpreting in principle, using video screens and thus augmenting visual communication is not necessarily an automatic solution as there are linguistic issues that arise for signed language users because of the impact of communicating via a screen. The deaf participant in Scenario 5 commented on general access and communication issues (theme 4), saying that *"In terms of 'communication' and 'access', it was there, but in terms of it being 'equal' and feeling 'empowered', I felt at a disadvantage"*. The interpreter felt that it was difficult to know whether the deaf person was receiving sufficient access: *"I wasn't sure whether there was any delay or [the deaf defendant's] feedback wasn't immediate, so it was hard to know whether things were going okay"*.

It can be seen that the participants in Scenario 5 generally felt that VRI was not as effective as in the other scenarios, and the research team observed that this combination (interpreter in court, deaf person remote) seemed to throw up the most challenges. It should be acknowledged, however, that the challenges from the deaf person's perspective were primarily due to the small size of the television screen that she had to look at in the remote witness room. If the screen had been larger the problems may not have been as significant.

## 5. LIMITATIONS OF THE STUDY

Before concluding this chapter, there are some limitations to the study that are worth noting. Given that the study did not use authentic courtroom data, various issues were identified that influenced the outcome of the research, as follows:

- The first limitation to note is the fact that deaf actors and Department of Justice employees were used as participants rather than actual deaf defendants/witnesses and legal personnel. It was acknowledged in the planning stage that this would have been the ideal, but it was difficult for two reasons: (i) the ethical tension in asking a deaf person who is in a potentially vulnerable position to participate in a research project; and (ii) the difficulty in finding suitable legal personnel to be involved, as the project did not have the budget to match their usual fees, and they would be busy with real cases.



- Secondly, in using simulated trial scenarios and employing professional actors, the study may not have adequately reflected the real experience for deaf people in the court system who are not well-educated or literate, nor familiar with working with interpreters, or confident at being in a formal setting such as a courtroom. Although the actors were 'in character' and the interpreters were briefed on the 'type' of deaf person they were interpreting for, the interpreters still seemed to interpret to the actual 'person' present rather than his/her 'character' (e.g. use of fingerspelling for a bilingual deaf person, rather than targeting the monolingual non-English literate character).
- This situation could have been exacerbated by the fact that the interpreters often had to interpret for the deaf person during the set-up of technical logistics before the scenario began, so that the deaf person could understand what was going on. This means it may have been harder for the interpreter to regard the deaf person as a 'character'. Although interpreters were not asked to interpret the set-up, they often took it upon themselves because of delays with the start, and the fact that the lead Research Assistant in the courtroom was talking to the JACS technician via an audio communication link to iron out any technical problems.
- Aside from any potential technical difficulties, deaf well-educated bilinguals who are used to interacting with interpreters and technology may have more facility to make accommodations to using interpreters via technology, that is, they may be more adaptable in new environments. Thus the deaf actors' perceptions of their experience may not adequately reflect the wider deaf population.
- As the study focused on the technological aspects of interpreting in court via AVL, none of the typical legal procedures were followed: there was no introduction to the case, no reading of the oath/affirmation for the interpreter; and there was no opportunity for the interpreter to 'meet' the deaf client beforehand and prepare. The lack of adherence to these protocols may have affected the interpreter's and deaf participants' sense of involvement, ability to make inferences, etc.
- The use of scripted scenarios may have been problematic. The research team tried to account for the potential lack of authenticity by using scripts in advising participants to allow for deviations (e.g. incorrect interpretation, clarification, repair) then return to script. It would have more closely replicated an authentic court case to have no scripts, with just briefs and participants ad-libbing. Scripts were chosen in order to try and standardize the language used in each scenario (e.g. to prevent more use of fingerspelling in one scenario than another). But it was noted that the use of scripts did impact on the authenticity of the data; especially in relation to potential communication breakdowns.



## 6. CONCLUSIONS

This chapter has reported on a qualitative study of signed language interpreting provided through AVL in courts in New South Wales, Australia. Video remote access to signed language interpreting was tested across five key venues and scenarios involving deaf people and signed language interpreters. An overview has been presented of stakeholder perceptions of the effectiveness of interpreter-mediated communication in the three scenarios where the interpreter and deaf defendant were in different locations communicating via AVL. Overall access was achieved in all three scenarios where at least one of the participants was in a remote location; there were no significant communication breakdowns, and the interpretations of the trial dialogues were all accurate. Thus it seems that it is possible to provide Auslan/English interpretation in court via AVL, with either the deaf person, or interpreter (or both) being in remote locations. However, it is important to note that logistical adaptations had to be made to make the provision viable, and the deaf and interpreter interlocutors did make pragmatic accommodations in their delivery of Auslan in order to account for being in a remote location and/or the two-dimensional nature of using video conference technology.

The stakeholder perceptions varied according to scenario. Hearing participants tended to notice no problem in using the AVL, but at least one person did comment that there seemed to be challenges for the interpreter. The deaf and interpreter participants' perceptions, however, were not as positive. They identified some significant areas of concern and limitations of the **current** AVL system being used in NSW courts. To further summarise the results arising from this data, Table 2 illustrates the key themes that were raised during the post-scenario interviews.

| THEME   | SCENARIO 1                 | SCENARIO 2                     | SCENARIO 5                     |
|---------|----------------------------|--------------------------------|--------------------------------|
| Theme 1 | Need for pre-trial meeting | General access & communication | Need for pre-trial meeting     |
| Theme 2 | Sense of isolation         | Remoteness                     | Disconnectedness               |
| Theme 3 | Pragmatic issues           | Pragmatic issues               | Pragmatic issues               |
| Theme 4 | General access             | Anxiety                        | General access & communication |

TABLE 2. Summary of themes in participant interviews

It can be seen that there were common themes raised by the participants in the scenarios where either the deaf person or interpreter was remote. These themes all concentrated around the need for stakeholders to have preparation time to ensure that the VRI could be provided effectively. Participants also discussed the limitations of the AVL in providing general access through interpreters, and feelings of remoteness, isolation and disconnectedness as a consequence of being removed from the courtroom and accessing information via the AVL system. One of the major themes raised by the deaf and interpreter stakeholders in particular was in relation to pragmatic issues. Examples were given of how participants had changed the way they spoke or signed, and had slowed down the rate of speech or signing. They also remarked on how difficult it was to interrupt or clarify information as being separated by the AVL imposed a different sense of rapport.

The results of this study highlight the fact that there are differing opinions between different stakeholders about the effectiveness of signed language VRI in court. This outcome reinforces findings of earlier studies with spoken language VRI stakeholders, especially in that interpreters did not find working through AVL an overall positive experience. There did not seem to be any actual hindrance, however, in using the AVL in terms of accuracy. The limitation was associated more with comfort levels than whether communication could effectively occur. It should be reinforced that this study focused on the use of the existing AVL system in courts in New South Wales, Australia.

Further research is needed on VRI in spoken and signed languages in other courts, and in different contexts, to ascertain whether the use of AVL can be truly effective in providing interpreting access. Nonetheless, this study does demonstrate that the use of AVL may not be the panacea for cost-effective interpreting services, especially in high consequence settings such as court, as there may be more risk in using the system than the inconvenience of waiting for an interpreter to be available face-to-face.

#### ACKNOWLEDGEMENTS

Thanks go to all the participants and also Anne Mangan and Julia Haraksin from Diversity Services at the NSW Department of Justice and Attorney General for their support in organising the data collection; Patrick Donoghue, the manager of the Department's video conference system for his technical support during the data collection; Marcel Leneham as principal research assistant; Lindsay Ferrara for her assistance with data collection; and George Major for her assistance with data collection and for her feedback on an earlier draft of this chapter.

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