

**AUSLAN CONNECTIONS**

MACQUARIE University

Live stream session:  
**Auslan interpreters in court – an overview...**



Della Goswell, Melbourne, 22 Feb 2016

## Format - 3 sections

### 1. Introduction & overview

- Key legal principles
- Court system & processes in Australia  
pause for Q&A

### 2. Interpreters in court

- Typical cases & clients
- Aims of courtroom questioning
- Common challenges – linguistic, behavioural, logistical  
pause for Q&A

### 3. Courtroom challenges & strategies/ ideas

Q&A @ end

**AUSLAN CONNECTIONS**

MACQUARIE University



# 1. Introduction & overview

## Summary of your questions (so far)

### What do you want to know about Legal Interpreting?

- Protocols & procedures for the courtroom
- Vocab lists/ legal terminology
- Matching register (legal practitioners – ML clients)
- Unpacking court questions without “giving away” information (avoiding leading questions)
- Attitudes from legal practitioners
- Verbatim expectations? esp. Frozen texts: police warning, oath, charges?
- What to do when you don’t understand the legalese (esp in discussion)

## Summary of your questions (cont'd)

- Managing people talking over the top of each other
- Level of assertiveness (& respect) – interjecting, following court directives.
- Managing team work/ roles – with multiple deaf parties, & between DIs and hearing terps
- Accessing briefing materials, preparation
- Our rights as interpreters?
- Where to get more training/ confidence/ resources – not just learning on the job: TRIAL & ERROR

## Law = agreed rules



Lady Justice

“the system of rules which a particular country or community recognizes as regulating the actions of its members and which it may enforce by the imposition of penalties.”

(Oxford English Dictionary)

## Rule of Law



the law rules over all “persons and institutions, great or small: monarchs and prime ministers and presidents and public officials as well as ordinary citizens” (Corkery, 2002)

### Principles:

- Independence of judiciary
  - Natural justice
  - Accessible courts
  - Laws made by following open and clear rules
  - Laws – publicised, clear & prospective
  - Limits on power of crime prevention agencies
- (adapted from Raz, 1977)

## How is Australian law created?

1. Parliament-made laws (state, territory and commonwealth) – ‘statutes’ or ‘acts of parliament’



- e.g. Marriage Act 1958, Racial Discrimination Act 1975
- drafted broadly – don't cover every aspect of the law or behaviour
- Judges need to interpret the statutes against the details of each case

## How is Australian law created?

2. Judge-made law (decisions) – ‘common law’ or ‘case law’



- accumulation of judgements (reasons) in deciding disputes
- need to follow ‘doctrine of precedent’ – consistency with previous decisions based on similar facts (not random decisions)
- decisions are named after the parties in dispute:

e.g. Crown vs Chamberlain, Gradidge vs Grace Bros,

D.Goswell 2016

10

## Breaking the rules: criminal vs civil law

### criminal law

the government (state) is responsible for ‘prosecuting’ - taking action against the offender (e.g. via police & Director of Public Prosecutions)

*DPP v Goswell*  
*R\* v Barsby*  
*Crown\* v Chamberlain*  
 (= *prosecution v defence*)

penalty can include fines, imprisonment



\* R = Regina (both Regina and Crown refer to the Queen)

D.Goswell 2016

11

## Breaking the rules: criminal vs civil law

**civil law** = everything else  
 (sometimes family law as separate)

- individual (or company) against other individual (or company) e.g.

*Phillips v Goswell*, *Banton vs Amaca Pty Ltd*

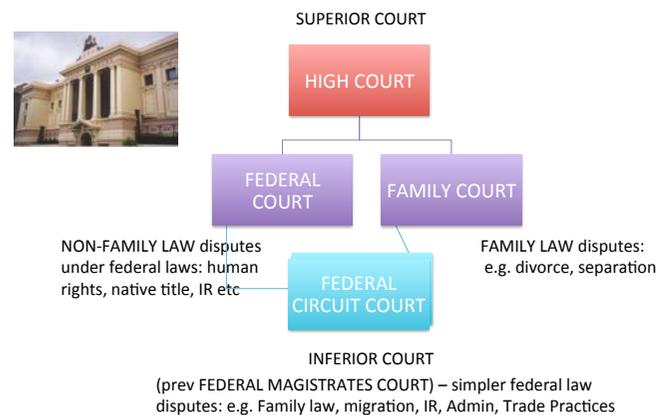
- one party ‘sues’ another (= **plaintiff** vs respondent)
- court can order ‘remedy’ rather than punishment (e.g. compensation, to stop behaviour, etc)



D.Goswell 2016

12

## Courts – Federal/ Commonwealth



D.Goswell 2016

13

## Courts – States & Territories



APPEALS  
= to higher court/s

**SUPREME COURT**

**SUPERIOR COURT**  
judge (jury for criminal trials)  
Court of appeal + trials for MOST serious cases

**DISTRICT/ COUNTY COURT**

**INTERMEDIATE COURT** - judge, (jury for criminal trials)

**LOCAL/ MAGISTRATES COURT**

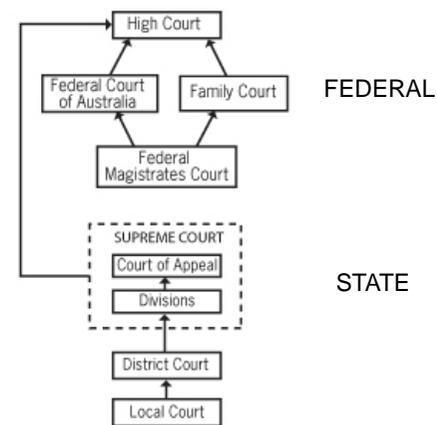
**INFERIOR COURT**  
magistrate & no jury

less serious matters (criminal & civil cases), mentions/ admin before trial at a higher court.

D.Goswell 2016

14

## Courts



D.Goswell 2016

15

(source: TAFE NSW)

## Courts



- adversarial - based on English system (both sides come to court to prove their story and ask the questions, call witnesses etc)
- rules of evidence (strict limits on what can be discussed in court & how it is discussed)
- jury for some cases (e.g. serious criminal)
- costly (limited legal aid)

D.Goswell 2016

16

## Tribunals



(retrieved: Refugee Review Tribunal)

- operate alongside court system
- inquisitorial rather than adversarial (tribunal member/s ask questions & run the case)
- smaller – generally informal & less costly
- state and federal jurisdictions
- civil rather than criminal matters

D.Goswell 2016

17

## Criminal procedure



## Criminal procedure

(Tarakson, 2004)

People can be brought before a court in 2 ways:

1. **Summons** (to court) – document issued for less serious crimes
  - contains details of suspect and charge
  - orders the suspect to appear at court at a specified date & time. If summons orders are ignored, the suspect may be arrested.
2. **Arrest** – police detaining someone for questioning – including suspects of serious crimes
  - after arrest, the suspect is taken to a police station for questioning.
  - If the questioning leads to being charged (for the offence), the suspect's police statement is an important part of the evidence for court
  - the suspect is either detained in custody before appearing in court, or granted bail before appearing in court.

D.Goswell 2016

19

## Criminal procedure

(Webbe, 1995)

2 main types of offences:

### 1. Summary offences

- usually less serious (e.g. offensive behaviour, driving offences, smoking marijuana)
- most common offences
- heard by a magistrate in a local/ magistrates (lower) court
- one-step hearing

### 2. Indictable offences

- more serious (including those leading to imprisonment e.g. murder, sexual assault, robbery).
- heard in two steps: a preliminary 'committal' hearing by magistrate at lower court - to determine if enough evidence to proceed.
- if so, moves to a trial hearing at District/ County Court (intermediate) or Supreme Court (superior)
- usually heard by a judge and jury.

D.Goswell 2016

20

## Criminal procedure - overview

common steps/ situations:

- arrest of suspect/ 'person of interest' (POI)
- **police interview/s** (police statements as evidence)
- **suspect charged** before magistrate/ bail application
- **legal advice** from solicitor (conference)
- **pre-trial hearings @ court** (e.g. mention, committal)
- **court trial** – witnesses giving evidence, and the accused following proceedings

(adapted from Gentile, Uzolins & Vasilakos, 1996)

D.Goswell 2016

21

## Criminal trial – general steps

- Opening address to judge/ jury by prosecution
- Opening address to judge/ jury by defence
- Prosecution witness/es:
  1. examination in chief - by prosecution
  2. cross examination - by defence
  3. (optional) re-examination by prosecution
- Defence witness/es:
  1. examination in chief - by defence
  2. cross examination - by prosecution
  3. (optional) re-examination by defence
- Closing address to judge/ jury – prosecution, then defence
- Judge makes decision: ‘judgement’, then sentence  
(or jury decides verdict – usually higher courts/ indictable offences)



(adapted from Barker, 1995)

D.Goswell 2016

22

## Decision & sentencing

- If the matter is being heard by a magistrate alone, they will decide guilt or innocence, and then determine the sentence.
- If the matter is being heard by a judge and jury, the judge decides points of law, the jury determines guilt or innocence, and the judge determines the sentence.

### Burden of proof

- criminal cases ‘burden of proof’ (of guilt) = ‘beyond reasonable doubt’
- civil cases burden of proof is lesser = ‘on the balance of probability’

(Tarakson, 2004)

D.Goswell 2016

23

## Civil procedure



## civil trial – general steps

- Plaintiff (Applicant) – opening address
- Defendant (Respondent) – opening address
- Plaintiff’s witness/es:
  - examination in chief by plaintiff’s lawyer,
  - cross examination by defendant’s lawyer
  - (optional) re-examination by plaintiff’s lawyer
- Defendant’s witness/es:
  - examination in chief - by defendant’s lawyer,
  - cross examination by plaintiff’s lawyer
  - (optional) re-examination by defendant’s lawyer
- Plaintiff – closing address
- Defendant – closing address
- Judge makes decision: ‘judgement’  
(or jury decides verdict – usually only in higher courts & lots of \$ at stake)



D.Goswell 2016

(adapted from Barker, 1995)

**AUSLAN CONNECTIONS**

MACQUARIE University



## 2. Interpreters in court

## Interpreters



D.Goswell 2016

27

## Interpreters

common formal legal settings/ stages for interpreters:

- Solicitor interview (conference)
- Police interview
- Initial court appearance/s – bail application, mention/ committal
- Court appearance – trial
- Tribunal hearing
- Family dispute mediation
- Case conference with registrar
- Family court hearing

D.Goswell 2016

28

## Typical DSoc NSW interpreted cases in 2015

- Traffic offence
- Public nuisance/ intimidation while under the influence of illicit substances
- Assault occasioning actual bodily harm
- Aggravated break and enter and commit serious indictable offence
- Indecent exposure
- Sexual assault
- Domestic violence
- Divorce mediation – separation & custody
- Workers comp claim - injury
- Disability Discrimination claim
- Neighbourhood dispute re fence
- Guardianship decisions

D.Goswell 2016

29

## Rules of evidence – judge’s role

Ensure everyone appearing before a court is treated equally and subjected to the same set of rules about what evidence can and cannot be introduced:

- relevant statutes (crimes act & evidence act)
- **communication assistance (interpreters)**
- oaths & affirmations
- rules about questioning: examination in chief, cross-examination, re-examination
- unacceptable questions, leading questions
- opinion, hearsay, refreshing memory

D.Goswell 2016

30

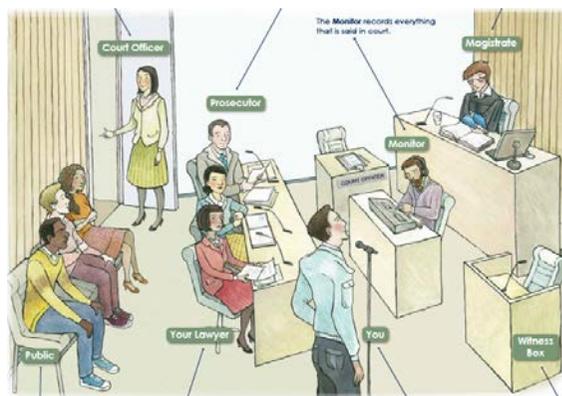
## ‘Communication assistance’

- No absolute right to an interpreter in court
- Very few statutes (laws), varies across states
- Mostly based on precedent (case law) & court practice (e.g. Gradidge vs Grace Bros)
- Most courts in practice do “err on the side of caution”  
(Dobinson & Chiu, 2005)
- Remember, courts are much more used to working with spoken language (LOTE) interpreters.
- This means: consecutive interpretation, one interpreter – solo (vs Auslan x 2 plus DIs...)
- They also have minimal training (cf Auslan interpreters), and many of the same challenges as us: minimal briefing etc

D.Goswell 2016

31

## Who’s who in the court?



D.Goswell 2016

32

## Who & what?

- Lawyer = solicitor (general legal assistance) or barrister (specialist advocate in court)
- Solicitors ‘brief’ barristers for court cases
- Barristers are also called ‘counsel’
- Senior barrister = prev: QC (Queens counsel) - more recently: SC (Senior counsel)
- Judicial officer = magistrate or judge: “your honour”
- Parties in criminal cases: **prosecution** vs defendant
- Parties in civil cases: **plaintiff** (or applicant) vs defendant (or respondent).
- Parties in appeal cases: (**appellant** vs respondent)

D.Goswell 2016

33

## Orientation

- Identifying court officer
- Knowing the roles of the court & judicial staff
- Where to stand/ sit – depends on court, and stage of proceedings
- Behaviour in the public gallery
- Learning the oath/s
- Addressing the judicial officer (magistrate or judge)
- Questions, interventions generally to the JO as manager of the proceedings – it's his/her court
- You as a 'servant' of the court

D.Goswell 2016

34

## Legal language & finding matches

Have you been noticing the duplication and strategies our interpreters are using to cover this information? – perfect example of our main challenge.

We do not have a legal register in Auslan, for a whole lot of reasons...

AND most deaf court clients are not bi-lingual, well-educated professionals, so we struggle to bridge the gap.

Inevitable conflict between interpreting for meaning vs the verbatim transfer expectations of the court. We need to learn to explain it, rather than expect to solve it.

D.Goswell 2016

35

## Our building materials

### Language resources:

- no history of Western legal research & practice in Auslan
- so, lexical/ conceptual matches not available for all/ most terms
- need to borrow from English (via f/s & mouthing) AND explicate (depiction, explanation)
- changed sentence structure (syntax)

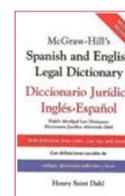
### Deaf consumer resources (language/ gen knowledge):

- usually less well-educated
- can't assume literacy in English - not fully bi-lingual
- not familiar with legal technical terms & concepts

D.Goswell 2016

36

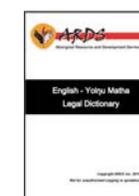
### Spanish Chinese Yolgnu Matha Auslan



approx  
13,000  
entries



approx  
9,000  
entries



approx  
150  
entries

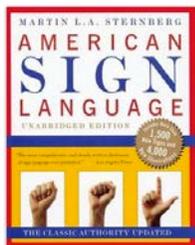


approx  
40  
legal  
entries

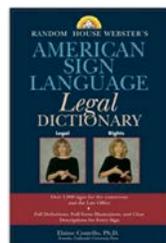
D.Goswell 2016

37

## Auslan vs ASL



approx 7,000 entries



approx 1,000 entries

D.Goswell 2016

38

## impact on legal interpreting?

- limited precision (specificity) - more ambiguity (room for interpretation)
- increased footprint (role) with less educated/ literate clients
- what do other spoken language interpreters do with similar clients?
- neither party understands that/ how/ why we sometimes make significant changes to bridge the gap
- maintains (false) assumptions about client literacy, knowledge base & capacity for 'word-for-word (sign)' matching
- minimal leeway for negotiation of meaning (vs medical & educational settings – different goals)

D.Goswell 2016

39

## specificity-ambiguity-variation

### CRIMINAL LAW

- accused
- allegation
- appeal\*
- charge\*
- summons
- defendant
- police prosecutor
- prosecution
- court\*

### OTHER USAGE

- sue\*
- complain against
- compensation\*



D.Goswell 2016

40

## specificity-ambiguity-variation



- legal
- judge
- magistrate
- court
- trial
- solicitor
- lawyer
- barrister

D.Goswell 2016

41

## hypernyms/ hyponyms

abuse



crime



D.Goswell 2016

42

## Questioning in the courtroom

(adapted from Hale, 2000)

- all oral evidence in court must be presented in the form of question-answer
- questions are used strategically by counsel **to guide, control and constrain information** presented in evidence.
- function of questions = an **order to respond**, rather than seek new information. (Power ≠)
- questions aim to **support** or **discredit** a case
- difference in function of questions from client's legal representative (examination in chief) vs other side (cross-examination)
- "I hate using interpreters" (Defence barrister comment)

D.Goswell 2016

43

## Interpreting & credibility - how do juries & judges evaluate character and truth?

"I unfortunately can't escape the fact that I... I just formed an unfavourable impression of the manner in which uh, Mr uh X. and in particular, more particularly his wife, gave their evidence. I regard it as, uh, just unconvincing"

NSW Court Magistrate (quoted in Hale, 2000) explains why he dismissed charges.

D.Goswell 2016

44

## 'Credibility' is a combination of:

1. Consistency of story
2. Manner of presentation

"Demeanour, paralinguistic cues, and register are evaluated by the judicial officer or jury to determine the credit of a witness"

Judge Margaret O' Toole, the NSW Compensation court, 1993  
(Hale, 2000)

D.Goswell 2016

45

## Interpreting & **accuracy** = equivalence of:

### Content

- facts
- descriptive detail
- sequence
- linkage - conjunctions

### Style & manner

- delivery: *pace, pitch, hesitation, emphasis*
- powerful language
- powerless language
- register

D.Goswell 2016

46

## risks to accuracy & credibility?

- **missing lexical/ conceptual matches for legal terms**
  - more ambiguity
  - assumptions of 'verbatim' transfer, suspicion of interpreter impartiality when we need to expand/ clarify
- **unclear &/or conflicting witness testimony**
  - between court answers, and written English police statements
- **lack of interpreter confidence or meta-language** to interrupt proceedings for: turn-taking control/ clarification of ambiguity/ explanation/ alternative strategies

D.Goswell 2016

47

AUSLAN  
CONNECTIONS



## 3. Interpreter challenges - strategies

## Your brainstorm – challenges

### PROTOCOLS & PREPARATION:

- asking for more briefing information
- inappropriate deaf defendant behaviour in court
- protocols for clarifying deaf person's evidence
- "being told by Magistrate to NOT interpret whilst a prior case was being heard – deaf client and I were waiting our turn"

\* RED = points we got time to discuss, briefly

D.Goswell 2016

49

## Your brainstorm – challenges

### RELATIONSHIPS & ROLE/S:

- when the other interp/ DI isn't doing their job, or not performing well
- not having the right tandem interpreter
- negotiating/ clarifying each person's role/ positions etc
- impact of interp on DI success
- when the deaf client doesn't think they need a DI
- when the hearing interps don't think they need a DI
- how to advocate for/ explain role of a DI
- how much does interp need to pass on of DI interpretation?
- deaf people using their voice (when not intelligible)
- emotional demands of legal settings, esp family break-ups/ child custody and criminal matters with ML clients. Vicarious trauma.

D.Goswell 2016

50

## Your brainstorm – challenges

### LINGUISTIC ISSUES:

- "the language of the court and of laws in general is very, very specific and complex and finding appropriate and accurate equivalents is extremely difficult"
- dealing with general terms: weapon, abuse, hit - in Auslan
- "Need to meet the deaf person beforehand so you know their references, and can make sense of the crime scene" etc
- "Difficulty in knowing who is doing what to whom and being able to accurately understand a complicated situation.. & set up in space"
- "Managing the speed & register of the legal professionals who can assume that the Deaf person has fluency in legal terminology"

D.Goswell 2016

51

## Some strategies/ ideas

### PROTOCOLS & PREPARATION:

- Get more familiar with the legal process before you start/ proceed – visit court cases (esp. interpreted)
- Research the court, type of case & processes online &/or via accessible community information (e.g. Legal Aid)
- Learn as much legal terminology as you can – in context. e.g. Legal glossaries & court transcripts (avail online)
- Ask the interpreter agency (to ask for) for more information
- Ask the solicitor about access to the brief of evidence
- Legal interpreting is a difficult but important job - we need training and support to do it as well as we can & to know how to explain the challenges.

D.Goswell 2016

52

## Some strategies/ ideas

### RELATIONSHIPS & ROLE/S:

- Understand that there is a legal culture that we need to adapt to – to help them do their job – try and see it from their P.O.V.
- If there is a problem, let someone know what's happening for you/ the deaf client.
- Success is based on teamwork – with your co-terps, and with the court.
- No one-size-fits-all answer to the interp/ DI role & positions – need to be flexible according to client needs and court protocols.
- Aim for good working relationship with solicitor – help them to do their job. Brief them beforehand.
- Aim for a respectful relationship with the court officer and the JO – it helps to have them on your side.
- Debrief so that you can process difficult experiences (and get ideas for next time).
- Don't always rescue a deaf client – they may need to learn some things for themselves.

D.Goswell 2016

53

## Some strategies/ ideas

### LINGUISTIC ISSUES:

- Don't assume that you know how to explain all legal terms
- Learn & use a few of the terms that are meaningful to the legal system: e.g. accuracy, miscarriage of justice, denial of natural justice.
- Prioritise the questioning of the deaf client – the quality of their evidence is what does most harm or good. Try summarising the other stages if it's too fast/ hard to follow.
- Know that we don't have the same linguistic resources to work with between languages – there is no legal register in Auslan, and our clients are not always fluent in Auslan, so we sometimes need to explain the consequences of that.
- Do what you think is right – be prepared to explain your choices.

D.Goswell 2016

54

## NB we are not responsible for everything...

If any court client is not well-educated, or not following the process, they are encouraged to let their legal representative/ the court know that they are struggling:

- Don't be afraid to say you don't know if you really don't
- If you don't know the answer to a question, just say so, don't guess
- If you don't understand a question, just say so, or ask for it to be said again
- If the question is difficult to follow or confusing, you can ask for the question to be said again in an easier way

(NSW Dept of Justice: Tips about giving evidence)

We need to apply these to ourselves & show the same level of honesty and transparency when we get stuck.

Judges say they WANT to know when/ why we are struggling, esp. when it impacts on the accuracy of testimony and we are the only ones who know what's happening.

D.Goswell 2016

55

AUSLAN  
CONNECTIONS



Thank you  
& good night!