

Frontline perspectives on using audio visual links (AVL) for NSW criminal court proceedings

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AIM

To understand the perceived advantages and disadvantages of using audio visual links (AVL) for NSW criminal court proceedings, and ideas for improving practice, based on frontline perspectives.

METHOD

Semi-structured interviews were conducted with 37 professionals working in NSW criminal courts, including judicial officers, legal practitioners and other justice professionals. Qualitative content analysis was performed to identify themes across the interviews.

RESULTS

Interviewees voiced arguments both for and against AVL use, but none believed unequivocally that it should feature to a greater or lesser extent in NSW criminal courts. The main disadvantages of using AVL in criminal court proceedings reported by interviewees related to substandard infrastructure and a loss of human interaction, connection and emotion. These disadvantages make for a lower fidelity and dehumanised court experience for everyone. At the same time, interviewees indicated that there are clear advantages of AVL in terms of convenience, especially when participants are geographically dispersed, and comfort, for lay court users such as witnesses and defendants. Moving forward, interviewees felt that appropriate use of AVL in NSW criminal courts depends on the specific application and circumstances, but that a system level uplift is required to improve the online experience.

CONCLUSION

It is widely acknowledged that AVL will be an enduring mode of delivering justice. With further improvement of infrastructure, it is likely that many of the drawbacks associated with AVL use can be overcome, though there remains a need to be vigilant in applying technology-mediated procedures more routinely in criminal court proceedings. Further consideration of the unexamined link between AVL use and longer-term recidivism, as well as attention to procedural justice and newly created barriers of communication and technology, may also be worthwhile.

KEYWORDS

Criminal courts

Audio visual links

Qualitative research

Interviews

INTRODUCTION

Remote participation in court is a technology-mediated mode of delivering justice. It involves one or more individuals being physically absent from the courtroom but participating in a hearing online via audio visual links (AVL) (Kim, 2021). The individual online may be a lay court user (e.g. a defendant, witness or victim), a legal practitioner or, in some cases, a judicial officer. A hearing may even be fully remote, where it is conducted entirely online without anyone physically attending the court. AVL use in the context of a court proceeding also encompasses online legal conferencing between a person in custody and their legal representative (Kashyap et al., 2018).

In NSW, remote participation in court is governed by the *Evidence (Audio and Audio Visual Links) Act 1998* (NSW). This Act permits a court discretion to determine if and for whom remote participation is to be used in a proceeding. Well-established precedents for this are for vulnerable witnesses (e.g. children), witnesses whose travel to court is cost-prohibitive or inconvenient, ancillary services (e.g. expert witnesses) and people in custody facing bail or pre-trial hearings (Legg & Song, 2021). An unprecedented circumstance for remote participation in court was the COVID-19 pandemic, which posed the challenge of delivering justice amid social distancing and lockdowns. This saw drastic changes in NSW including a decline in the number of incarcerated individuals physically attending court from over 600 per week to fewer than five (Blogg et al., 2021), and the introduction of Section 22C (now repealed), which required accused persons to attend court via AVL for bail hearings.

The benefits and drawbacks of remote participation in court have attracted close examination (e.g. Hatzistergos, 2008; Legg & Song, 2021; Smith et al., 2021; Wallace et al., 2019). Benefits include more protection from re-traumatisation for witnesses and convenience for those with distance or health related barriers to physically attending court (Blogg et al., 2021; Wallace & Laster, 2021). Remote participation also negates prisoner transportation, which in turn reduces associated costs, time and security risks (Donnelly, 2018). However, there are also drawbacks to remote participation. For instance, the quality of technology has a significant impact on the operation of court (Rowden & Wallace, 2018; Smith et al., 2021; Thornburg, 2020). Remote participation has also been critiqued as constituting a disadvantage for those appearing online relative to attending court in person. For example, individuals participating remotely may be perceived as less trustworthy (Bild et al., 2021) or less likeable (Rossner & Tait, 2023), and remote participation can impede necessary communication during and surrounding court hearings (Donoghue, 2017; Fielding et al., 2020; Harris, 2018). Nonetheless, studies investigating the influence of remote participation on court outcomes find mixed results (Eagly, 2015; Kim, 2021; Thorley & Mitts, 2019). Some report that there is no significant impact, while others evidence less favourable outcomes for court users who participate online rather than in person.

While the advantages and disadvantages of using AVL for court continue to be contested (McKay & Macintosh, 2024a; Page & Robertson, 2016), remote participation in court is now ubiquitous. The practical implications of this may be best understood by considering the frontline perspectives of professionals involved in court proceedings. Their first-hand experiences of working with AVL in court proceedings can provide contextualised information on which aspects of remote participation could be enhanced, and how.

The current study

This study aims to provide insight into frontline perspectives on remote participation in NSW criminal courts. We focus on the perceived disadvantages and advantages of remote participation and ideas for improving practice.

METHOD

Semi-structured interviews were used to elicit individuals' experience-based perspectives (Patton, 2002). Thirty-seven professionals working in NSW criminal courts volunteered to be interviewed. This included judicial officers (27%), legal practitioners (49%) and other justice professionals¹ (24%) with roles spanning the Local Court, District Court, Supreme Court, Children's Court, Drug Court, Legal Aid, Aboriginal Legal Service, Public Defenders, Office of the Director of Public Prosecutions, Police, Corrective Services and Youth Justice. Liaisons within each agency facilitated the recruitment of these interviewees. The sample size and composition yielded qualitative data of sufficient information richness to meet the aim of this study (Malterud et al., 2016).

Interviews occurred from February-May 2024. They were conducted online via Microsoft Teams and averaged 45 minutes in duration (ranging from 27-76 minutes). Each interview covered a pre-determined set of key questions² (see Appendix), was recorded with consent and transcribed. Interview data were analysed on NVivo software using a qualitative content analysis approach with greater attention to explicit rather than latent meanings (Braun & Clarke, 2022; Sandelowski, 2000). This involved reviewing all interview recordings and transcripts to gain familiarisation with the dataset; systematic coding of discrete meanings conveyed in each interview; iterative inspection and organisation of coded material to identify patterned meaning across interviews; and checking thematic interpretations against the dataset by re-reading interview transcripts in full.

RESULTS

Interviewees voiced arguments both for and against remote participation, based on their experiences of working in NSW criminal courts. Tellingly, none provided an unequivocal response to whether this mode of court should feature to a greater or lesser extent. We report their perspectives under three sections, corresponding to the aims of the study. The first, *a lower fidelity and dehumanised court experience for everyone*, describes substandard infrastructure and a loss of human interaction, connection and emotion among those involved in court proceedings as disadvantages of remote participation. The second, *a faster, cheaper, user-friendly way to run court*, describes convenience and comfort as perceived advantages of remote participation. The third, *moving forward with AVL*, describes the need for a nuanced approach to remote participation and a system level uplift as ideas for improving practice. Quoted material from the judicial officers (JO), legal practitioners (LP) and justice professionals (JP) interviewed is included.

A lower fidelity and dehumanised court experience for everyone

Infrastructure

According to interviewees, the disadvantages of remote participation in NSW criminal courts are in part due to infrastructure that is not wholly fit for purpose. It was reported that individuals dial-in to court from various locations and settings, using equipment ranging from laptops to tablets to phones depending on what is available to them. Signal strength and stability is not guaranteed and may mean seeing only "pixelated" (JO3) or "freeze-framing" (LP12) images of the person online, barely hearing them through distorted sounds and echoey feedback, or constant dropping out. It was also reported that AVL technology does not support the largely paper-based process of tendering, handing up, showing and sharing documents for a court proceeding. Where this involves sensitive information, secure handling is as concerning as operational ease. Adding to these issues, interviewees observed that orderly control is more difficult for a court to maintain when its participants are online and there is reduced visibility over who is in attendance at any given time.

¹ The roles of five professionals interviewed are non-frontline but involve close interaction with frontline professionals in NSW criminal courts.

² Due to a change in the scope of this study, interview questions specific to the COVID-19 pandemic are excluded from the present analysis unless relevant.

Another problem raised was a lack of soundproofing in rooms within correctional centres and police stations which are designated for incarcerated individuals to remotely attend court or speak to their legal representatives online. It may even be the case that there is no designated room and the only option to proceed is in the presence of other incarcerated individuals and authorities. This was regarded as a major issue of confidentiality.

You've got to speak to them on a handheld phone in a bail yard with other inmates. ... Highly sensitive evidence being discussed in the middle of a bail yard with repercussions for them when they go back to their cell with people who may not have had any idea what they were in custody for having worked it out from a conversation between us and them on the phone, which ought to be always 100% confidential. (LP16)

I've had AVLs with people and the police on the other side, on what should be a soundproof room, are laughing about the instructions that they're giving because they're listening through the wall. The client can hear themselves being mocked. (LP4)

Further to this, interviewees highlighted that inadequate soundproofing leaves a hearing susceptible to disruption from "banging and clanging and carrying on" (LP9) in the background of the person in custody who, in turn, may be inadvertently excluded from proceedings because of being muted by the court due to noise. Comments were also made that the demand for remote participation of incarcerated individuals exceeds the supply of infrastructure in custody to do so, causing difficulties gaining timely access to the accused for the purpose of legal conferencing and court appearances.

Owing to the limitations of infrastructure, interviewees reported that remote participation hinders one-to-one interaction between legal practitioners and the individuals they represent. This interaction ordinarily occurs before, during and after court to ensure witnesses and defendants are supported through the legal process, understand the proceeding and can update instructions responsively in time with the progression of the hearing.

You might want to go to the accused and say, was there anything else? Or they might want to tell you that there's another little detail that you need to put to the witness. You can't do that at present via AVL confidentially, unless the court stops, has an adjournment, everybody leaves the courtroom except the prisoner on the screen and the representative in court. (JO8)

Say a witness or the Crown raised something that we needed to get urgent instructions on. If the person's at court, we can go down to the cells, we could spend two hours with them, talking about it, discussing it with them, in private, in a legal box. Can't do that when someone's on video link. (LP16)

The human element

Substandard infrastructure aside, perceived disadvantages of remote participation in court stemmed from observations that communication is richer in person than online. As explained by interviewees, body language, facial expression and any "imperceptible shift" (LP14) in demeanour can attract sympathy, stir suspicion, enhance persuasiveness or otherwise influence perceptions of the speaker. Such communicative features – relevant whether it is the accused or a witness giving evidence, a victim reading aloud their impact statement, or a lawyer making arguments before the court – are obscured online. Relatedly, interviewees reported that not having a full-body view of the online speaker and their surrounds is problematic. For instance, without seeing that a witness is being coached by someone off-camera, evidence integrity may be compromised; or, without seeing that the accused is affected by ill health, jurors and judicial officers may be less informed to make holistic decisions.

Apart from granting fewer opportunities to interact, communicating via AVL was referred to as “far more perfunctory” (LP15) and deprived of the “personable” (LP1), rapport-building dynamic of meeting in person. Illustrating the effects of this in the extreme, one interviewee remarked:

Quite often the magistrate will be like, who is your lawyer, and people will say, I don't know. There's six people up there, it could be any of them. ... People are putting their lives into someone's hands and they don't even know who they are. (LP2)

Comments from multiple others indicated that, in combination with infrastructure related malfunctions, losing “human connection” (JO1) through technology creates “hidden inefficiencies” (LP14) that can slow the pace of a court proceeding. Namely, people in custody are less at ease to speak freely with their legal representative when privacy and a trusting relationship are both missing. The relational dimension of a proceeding was also said to underlie participants' engagement with the judicial process, without which any rehabilitative effort of the court is weakened.

Further observations were made that remote participation introduces an “unhealthy degree of informality” (JO5) that undermines the etiquette and solemnity of court. For example, interviewees remarked on the unprofessional attire of some practitioners appearing remotely. They also directed critique at inappropriate conduct of lay court users in attendance online.

The victim wanted to watch the sentence, obviously couldn't come. Now that's fine, they turned her camera off, but during it, it accidentally got turned on. And she was having a barbeque with a heap of people in the back yard cheersing the fact that he was going to gaol. ... I can understand why she would want him to go to gaol, but that to me was just very inappropriate. (LP2)

Several interviewees added the comment that the gravitas of attending court in person makes the consequences of one's actions feel more “real” (LP14), either for an accused person facing sentencing or a witness alleging very serious crimes.

Altogether, interviewees' perspectives indicated that an absence of the “human touch” (LP15) when dealing with matters as “heavy” (LP14) as some heard by criminal courts makes for a “sterilised” (LP4) experience of justice. Relatedly, there were legal practitioners and justice professionals interviewed who perceived that sentencing someone to prison is easier when they are “just a person on a screen” (LP17).

A faster, cheaper, user-friendly way to run court

Convenience

Speaking to the advantages of remote participation in NSW criminal courts, interviewees reported that, first and foremost, it is “enormously convenient” (JO3). As explained, traveling to and waiting around at court costs time and money, an imposition especially pronounced for those located long distances from the court. With the option of attending court online, usual barriers that delay or prevent participation are removed. The benefit of this was described as manifold: accused people and witnesses more readily attend court with minimal interference to their vocational commitments; family members can be in attendance to support lay court users through the court proceeding; and expert witnesses no longer need to rely on others to give technical evidence on their behalf when they cannot physically attend.

Interviewees further explained that convenience for participants equates to efficiency for the court, both in terms of time and resources. Using AVL, matters can progress without waiting for participants to travel to court, or when participants are unable to physically attend due to circumstances such as sickness or disability. AVL use also represents a “great saving to the public purse” (JO5) when accounting for the billable hours of practitioners, personnel for on-site security and resources for prisoner movement that no longer need to be expended.

Adding to these benefits, efficiency was viewed positively by interviewees on the basis that “justice delayed is justice denied” (LP9).

Comfort

Interviewees highlighted that the other significant advantage of remote participation is that it is more comfortable than attending court in person. Comments were made that courts tend to be overcrowded precincts. For lay court users, they can also be anxiety-provoking and intimidating environments with the potential to inflict psychological harms. The option of attending court online means a witness can give evidence from the comfort of their own home or in a setting more relaxed than the courtroom.

Sometimes they just can't travel to court, sometimes they find it too frightening to travel to court. And it's a much more user-friendly option to either—I mean, we can dial them in on phone, but usually they'll be on their iPhone or an iPad or a computer. (JO2)

In relation to comfort, interviewees drew attention to the experience of accused people in custody. For the incarcerated individual, it was remarked that attending court in person can be a “very, very unpleasant” (LP17) ordeal, not least because of the “horrific” (LP15) transportation involved.

Depending on which gaol they happen to be at, they might be woken up at 3:00 or 4:00 in the morning and not given anything to eat and shoved in some dirty truck and driven for hours halfway around the state. (LP12)

They're not your family sedan. ... They are sitting in a stainless steel, very hard environment. ... You might be sitting facing forward and travelling forward for that hour, but you equally could be sitting facing sideways or backwards depending on what seat of the vehicle you're going into. (JP7)

Attending court online means the incarcerated individual can avoid prolonged physical discomfort as well as unwanted interruption to their purposeful activities in custody such as work, rehabilitation or school. Interviewees reported that for these reasons remote participation tends to be desired by incarcerated individuals. It was also noted that this more agreeable mode of participation sees the incarcerated person less likely to be in an agitated state and is more conducive to a favourable presentation in court. Despite this, there were judicial officers, legal practitioners and justice professionals interviewed who speculated that incarcerated individuals appearing online may be happier without realising that remote participation could be detrimental to their court proceeding.

Moving forward with AVL

Horses for courses

Reflecting on the appropriateness of remote participation in NSW criminal courts, interviewees' overall stance was that it is a “horses for courses” (LP14) deliberation that depends on the specific application and circumstances. There was agreement that “purely administrative” (LP3) steps in a proceeding like mentions, adjournments and call-overs are suited to being conducted online. Interviewees referred to these types of hearing as unimportant, explaining that they tend to be mere minutes in duration and of a nature that is neither “complicated” (LP7) nor “contentious” (JP5). Illustrating how remote participation would alleviate inconvenience that can be grossly disproportional to importance, one interviewee offered:

If I was to have gone out today to Wilcannia for one matter, it would've involved a flight yesterday. The flight's at 10 o'clock with Qantas, which means that I would've had to leave from my place to get to the airport at nine o'clock to check in. By the time I get out to Broken Hill, it's 1:30, check into accommodation at 2:00. ... I'd have to hit the road at Broken Hill at 6:00 in the morning, so up at 5:00, 5:30, get in the car, drive 198Ks, get there for 8:30, nine o'clock, for a 9:30 start. Then because you don't know when you're going to be dealt with in the list and those things that are outside of your control, you're flying home not today, the best would be on Thursday. It really takes out a three-day turnaround for what is effectively only a ten or five-minute matter. ... Those small procedural mentions ... it doesn't necessarily require traveling out, wiping out three days from the diary for things like that. (LP11)

While this example spotlights the practitioner's perspective, many interviewees spoke of similar scenarios for accused people and witnesses.

Per the rationale that inconvenience should be proportional to importance, consensus was reached that trials and defended hearings are unsuited to be conducted online. As explained by interviewees, it is in obtaining instructions, giving evidence, cross examination and document sharing that the "shortcomings" (JO9) and "clunkiness" (JO8) of remote participation are most obvious. As such, to attend online would be to suffer a disadvantage at the most consequential point of a court proceeding.

Cross-examining someone by AVL is not nearly as effective as it is when you're in the courtroom. ... There were times when it would appear that there'd been a breakdown in the technology and we'd have to go back and forth clarifying the question, but then that whole exchange has clearly adverted to the person being cross-examined what the issue was about. So you can almost see them on screen changing their answer as they give it. (LP12)

We're dealing with trials where the consequences might be decades in gaol. So, yes, it was inconvenient, but just for the sake of expedience I didn't think it was appropriate to reduce your chances at trial just to get the matter over and done with. (LP17)

Although remote participation for trials and defended hearings was mostly condemned, not all interviewees were opposed to it. Addressing concerns about evidence integrity, one argued that accuracy is likely to be enhanced rather than eroded when evidence is given online because "extraneous factors like anxiety and nervousness and fear of public speaking" (JO2) are dulled.

Other differences of opinion also led to divided suggestions for when and why remote participation is appropriate. Some interviewees made the point that a courtroom imbued with the emotion of its physical participants experiencing justice being delivered is a "powerful" (LP16) part of a criminal proceeding that is not replicated online and so ought to occur in person. In contrast, other interviewees felt that power is exerted by coercive outcomes irrespective of the mode by which they are delivered; conducting a court proceeding online makes no difference to the end result, ergo it need not be in person. In essence, there were mixed feelings about whether or not the process of court has a "deterrent effect" (JO3). This process culminates at sentencing, which prompted speculation on the longer-term implications of conducting such a hearing online:

What would be really interesting to know is what's the connection between people receiving their sentence on video link and recidivism rates, versus people who are in court, experience the process, understand the gravity of what's happened, maybe hear a victim impact statement directly in court, maybe hear what a judge has to say, maybe hear our submissions about their life and about what's going to change for them in the future. ... I don't know if there's a difference, but certainly the dehumanising of somebody's sentence proceedings when they're appearing on video link is a real thing, because you don't get the impact that you do in a courtroom. (LP16)

Interviewees also expressed mixed feelings towards remote participation in bail hearings. The general sentiment from interviewees was that an expeditious judicial remedy via AVL when the possibility of release is at stake is "sensible" (LP14) compared to subjecting the accused to prolonged time in custody until their matter can be heard in person. Resource efficiency is also gained as remote participation in bail hearings negates the need for people in custody to be escorted to courts. Highlighting a further benefit, interviewees reported that bail via AVL is a preferable alternative to a rural-dwelling accused person being left with no mode of transport home upon their release, having been brought in to court to physically attend their hearing. However, the concern with remote participation in bail hearings is that AVL infrastructure in police stations tends to be of an unacceptably low standard.

The issue is the facility isn't good enough. ... What's the facility? It's an interview room with a television or a screen outside the Perspex. You can't see them properly, they can't see you properly, you can't hear very well. ... It's just ridiculous. (LP5)

This was voiced by multiple interviewees along with caution that using remote participation because it is convenient can be a “slippery slope” (LP6). Indeed, interviewees recounted experiences where advocacy for in-person appearances is dismissed with an attitude of “we don’t do that anymore” (LP2). Several other remarks alluded to a concern that people grow accustomed to convenience and become resistant to anything less. Notably, convenience can manifest in unexpected ways:

The irony is that there’s I think up to 10 excluded places in the state under the regulations³ where they don’t have to bring people in person. Wilcannia is one of them, because of that distance, and they don’t take advantage of it. ... They do have the [AVL] machine, they just don’t use it. ... The cynic in me sees that Wilcannia is a very small community with a lot of very young police officers. Transporting people to Broken Hill provides an opportunity for them to access some of the facilities. (LP2)

Several additional remarks were made in relation to bail hearings. Interviewees reported that in-person bail appearances place extra demand on police personnel when corrective services are unavailable to escort the accused to court. There were also interviewees who were baffled by accused people being brought to court only to appear for bail via AVL in a cell downstairs.

Beyond the hearing type, interviewees reported that the appropriateness of remote participation can hinge on circumstantial factors. For example, the “tyranny of distance” (LP6) may make a court more amenable to hearing matters online. Logistics may underlie a decision to use AVL to sentence an already-imprisoned individual to prison. Certain courts within the criminal jurisdiction with ample opportunity for in-person interaction, or fewer “moving parts” (JP1), may be unconcerned about their participants being remote for hearings. As explained by interviewees, criminal court proceedings also involve individuals whose capacity as a participant is reduced by mental illness, cognitive or communication disability, language barriers, disadvantaged backgrounds or by virtue of being a child. For them, physical attendance at court is often requested by their legal representative due to concern that remote participation exacerbates a system where such individuals are increasingly disenfranchised.

It’s not just about moving somebody through a process and then giving them an outcome at the end, it’s about participation in that process, that feeling that they’ve got some engagement and some understanding. ... [They] are spectators to the process to a lot of extent, and AVL probably made that even more remote. They went from a small stadium to the MCG. (JP1)

Conversely, disadvantageous as they may feel it to be, a legal representative seeing their client’s wellbeing deteriorating from weeks of lengthy travel and “not being fed properly at court” (LP16) may request for them to appear online.

These numerous reflections converged on the perspective that the judiciary should retain discretion to determine case-by-case whether remote participation in court is, on balance, the “lesser evil” (JO9). However, as explained by interviewees, the judiciary is not a singular entity but many different-minded individuals. Comments indicated that differences in attitudes towards technology are not insignificant. A judicial officer who is a “tech dinosaur” (JO2) may be prone to excess conservatism and view the limitations of AVL use as “insurmountable” (JO8), while one who is an “evangelist for modernisation” (JO2) may be overly reductive of the problems associated with AVL use and view them as “easily solved” (JO2). In light of this, criticism was directed at the inconsistency in the use of remote participation in NSW criminal courts, though there was also recognition that until the advantages and disadvantages of remote participation can be quantified, decisions on its use remain somewhat arbitrary. Referring to such a predicament, it was suggested that a lay court user should be entitled to appear in court in person if they so prefer. Interviewees’ divergent perspectives also indicated that it would be beneficial for all parties and participants involved in criminal proceedings to have a greater awareness and understanding of the array of considerations and implications relevant to remote participation.

³ In the *Evidence (Audio and Audio Visual Links) Regulation 2024* (NSW) (now repealed under the *Evidence (Audio and Audio Visual Links) Amendment (Local Court Bail Division) Act 2005* (NSW)), the following places are prescribed as exempt from the requirement for an accused detainee to appear physically in bail proceedings: Surry Hills Police Station, Amber Laurel Correctional Centre, Wollongong Police Station, Wagga Wagga Court Cells, Riverina Juvenile Justice Centre, Wilcannia Local Court, Parkes Police Station, Tweed Heads Police Station, Deniliquin Police Station, the Newcastle Justice Precinct, Newtown Police Station and Fairfield Police Station.

System level uplift

Reservations towards remote participation notwithstanding, interviewees were unanimous in their view that an uplift of infrastructure and processes within NSW criminal courts is required to improve the online experience. Many acknowledged that the government's recent investment into technology and facilities for remote participation has allayed some concern. Still, it was emphasised that continued investment is necessary to ensure the quality and functionality of infrastructure is of a high enough standard to work reliably for all aspects of a court proceeding, and that the availability of fit-for-purpose equipment and spaces is sufficient for all who need it, when they need it.

With reference to infrastructure issues, suggestions were made to equip AVL rooms with a suite of technological solutions to allow for multiple forms of interaction between participants during a hearing.

You can't communicate with them on the screen, because everyone'll hear you. You can't go over and conspiratorially whisper, like in a dock. ... There needs to be a way of communicating with your client. There needs to be a phone in there with them, that's – look, there's a myriad ways to do it – but they need to, say, have a hands-free phone ... so I can at least have that whisper with the clients. (LP15)

It was also suggested that greater attention to the configuration of cameras and monitors may help participants online see and be seen more clearly and naturally. Adding to this, several interviewees felt it would be beneficial to standardise the technology used for remote participation so that it is compatible across devices and familiar across users.

The notion of usability was raised in relation to the frustration experienced when technology does not work perfectly, or when users do not know how to work it. While training for frontline staff was suggested, the point emphasised was that technological literacy cannot be assumed as not all court users have access to technology in their everyday lives. More generally, infrastructure disparity between metropolitan and rural areas also affects the usability of remote participation, with one interviewee remarking:

You had better hope the weather is good on the day. Because it was well known that if there was any storm or rain or thunder over Orange, their court system would drop out. It was very much weather dependent. (LP12)

Interviewees' comments indicated that remote participation is also challenging because it is embedded in an "antiquated" (JP5) system. For instance, some of the state's courts are heritage-listed buildings that do not readily allow for the retrofitting of AVL infrastructure. At a process level, the challenge is similar in that the systems and procedures for integrating remote participation with the rest of a court's functions are still in development. To streamline the technology-mediated mode of court, suggested practice improvements included better structuring of court lists, processing of AVL requests and planning of contingencies for when technology fails.

As a final reflection, multiple interviewees remarked that court via AVL is the "way of the future" (LP5), now increasingly embraced since its forced uptake during the COVID-19 pandemic. Of note, the way in which remote participation was conducted during the pandemic was said to be the best that could be done at the time but far from exemplary.

DISCUSSION

The aim of this study was to understand the perceived advantages and disadvantages of using AVL for NSW criminal court proceedings, and ideas for improving practice, based on frontline perspectives. We found that AVL use presents clear advantages of convenience, especially when participants are geographically dispersed, and comfort, for lay court users such as witnesses and defendants. These advantages make using AVL a faster, cheaper and user-friendly way to run court. At the same time, there are disadvantages associated with the use of AVL which relate to substandard infrastructure and a loss of human interaction, connection and emotion among all involved in a proceeding. These disadvantages make for a lower fidelity and dehumanised court experience for everyone. Our findings echo many of the benefits and drawbacks of remote participation discussed in existing literature. They also foreground complex debates regarding the functions and experience of criminal courts and how they are altered by a technology-mediated mode of delivering justice. These include the unexamined link between remote participation and longer-term recidivism, consideration of how procedural justice for the incarcerated is enacted during the judicial process, and whether the online mode creates a more equitable justice system.

Does the traditional court process deter future offending?

The experience of the judicial process mediated through technology is different to the experience in person. A courthouse symbolises due process founded on a shared obligation to morality; its material form imparts legitimacy to the adjudication and instils in court users a sense of accountability to others (Rowden, 2018). Remote participation paradoxically provides a conduit between the spatially dispersed while heightening a sense of disconnection (McKay, 2016). It blunts engagement with the proceeding such that participants are not just physically remote but affectively removed from the sympathy, compassion, guilt, shame, regret, remorse, vengeance, outrage and disgust characteristic of the atmosphere surrounding criminal court matters (McKay & Macintosh, 2024b). These findings from previous research are consistent with our insights about the significance of humanness and emotional potency in criminal court proceedings.

Do these experiential differences between the in-person and technology-mediated mode of court amount to different outcomes? Studies to date suggest they do not (e.g. Briscoe et al., 2023; Kim, 2021). That is, the relationship between remote participation and outcomes dispensed within criminal court proceedings has not yet been established. However, while there has been some research examining court outcomes, the link between remote participation and the longer-term outcome of recidivism is yet to be investigated. This gap in understanding was highlighted in our findings. The question of whether a deterrent effect is lost through remote participation has been raised by other scholars (McKay & Macintosh, 2023), with some speculating that the process of court is consequential and can influence longer term outcomes related to offending (Wallace et al., 2019). Arguably, initiatives such as Circle Sentencing,⁴ Youth Koori Court⁵ and the Walama List,⁶ which are premised on promoting rehabilitation through an altered judicial process, lend weight to this notion. Still, any mechanism by which future offending behaviour is influenced by experiences of a technology-mediated judicial process remains to be studied.

4 Circle Sentencing is a restorative justice sentencing process offered to Aboriginal offenders as an alternative to the traditional criminal justice process.

5 The Youth Koori Court is a modified process of the Children's Court that involves Aboriginal and Torres Strait Islander young people, their families and the broader Indigenous community in the court process.

6 The Walama List is a therapeutic approach to sentencing that aims to reduce rates of reoffending among Aboriginal and Torres Strait Islander offenders.

Procedural (in)justice for the incarcerated

Procedural justice, also called 'procedural fairness', is one of the fundamental values of a criminal court, alongside impartiality and open justice (Dixon, 2023). In the context of remote participation, procedural justice is relevant when considering ease of access to legal support for the defendant, risks to evidence integrity and potentially biased judgements of witness credibility (Legg & Song, 2021; Smith et al., 2021). However, procedural justice also refers to defendants being treated with respect and dignity in their interactions with authorities, and having a voice and an active role in decision-making processes in the application of the law (Meyerson et al., 2021). Our findings suggest that these aspects of procedural justice in the context of remote participation warrant discussion.

The experience of the incarcerated individual in a criminal court proceeding seems to involve a level of procedural injustice with or without remote participation. When participating in person, the incarcerated individual is subjected to inhumane conditions during transportation from cell to court (McKay, 2016; McKay & Macintosh, 2023). The conditions they endure during their day at court may also be crippling uncomfortable, according to our insights. On the other hand, when participating remotely, the incarcerated individual may have exercised agency in choosing their mode of court attendance. Yet, agency can be sacrificed when they are relegated to spectating online and are at risk of being silenced from the judicial process. Appearing from a setting of incarceration void of the dignified ambience of a courtroom has also been argued as unfair (McKay, 2016). Overt derision, as described in our findings, from confidential legal conferences being overheard and inappropriate online behaviour, again jeopardises the dignity of the accused. These scenarios demonstrate the need for multifaceted consideration of how fairness within a judicial process is enacted for all participants when court is mediated by technology (Kashyap et al., 2018; Wallace et al., 2019). Ongoing attention to procedural justice is important given its implications on perceptions of legitimacy, compliance with the law and satisfaction with legal proceedings (Sargeant et al., 2020).

Disadvantaging the disadvantaged, or a step closer to parity?

A key benefit of remote participation in court is its potential to create a more equitable justice system (McKay, 2022; Rossner & Tait, 2023; Wallace et al., 2019). Consistent with previous research, our findings show that the opportunities for access afforded by an online mode of court attendance – or a 'distributed court' – are profound. Especially for court users with geographical barriers to physically attending court, remote participation negates the demands of time and money involved in long distance travel. However, as articulated by Wallace and colleagues, "any loss of engagement when court proceedings are conducted using AV links may be felt most by those who are already the most disadvantaged participants in the criminal justice system" (Wallace et al., 2019, p. 57). Apart from being held in custody, circumstances associated with disadvantage include age and socioeconomic background (Page & Robertson, 2016), and physical, mental and social functioning (Donoghue, 2017). In this way, remote participation sees inequity experienced within the judicial process amplified by newly created barriers of communication and technology. The criminal justice system faces the challenge of remote participation being at once a step closer to parity and a disadvantage to the already disadvantaged.

Future directions

Looking to the future of criminal court proceedings, it is widely acknowledged that remote participation will be an enduring mode of delivering justice. With further uplift of infrastructure, it is likely that many of the drawbacks associated with remote participation can be overcome. However, a resounding message is to be "vigilant" in applying technology-mediated procedures more routinely (Legg & Song, 2021, p. 166; McKay & Macintosh, 2023, p. 1). Scope for continued research includes investigation of the effect of remote participation on recidivism, and exploration of lay court user (e.g. defendants and witnesses) perspectives on remote participation in NSW criminal courts. Such evidence may strengthen the case for featuring this mode of court to a greater, or lesser, extent.

ACKNOWLEDGEMENTS

We gratefully acknowledge Jerwayne James for his assistance during data collection, and the interviewees for sharing their perspectives. We also thank the liaisons from each agency for facilitating the recruitment of interviewees.

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APPENDIX

Key interview questions

1. What kinds of criminal proceedings are you involved with in your role and in what capacity?
2. What group of court users do you most come into contact with in your role, and in what capacity?
3. How often was AVL used in criminal proceedings during COVID-19?
4. How often is AVL being used now in different criminal proceedings?
5. For what types of court proceedings was it appropriate to use remote participation during COVID-19? How has this changed post COVID-19?
6. How were different types of court users benefitted or disadvantaged by using remote participation during COVID-19? Does this persist to the present?
7. What were the benefits of increased use of remote participation or AVL during COVID-19? How does this differ to the use of AVL post-COVID-19?
8. Were there any difficulties with increased use of remote participation or AVL during COVID-19? Do these persist to the present?
9. What aspects of remote participation during COVID-19 should be retained?
10. Are there aspects of remote participation during COVID-19 which should not be retained?
11. Are there any other improvements which could be made to the use of AVL in NSW?
12. Moving forward, do you support more or less use of AVL in NSW courts?