

Accessing justice from prison: Videoconferencing, digital devices and legal support for the incarcerated

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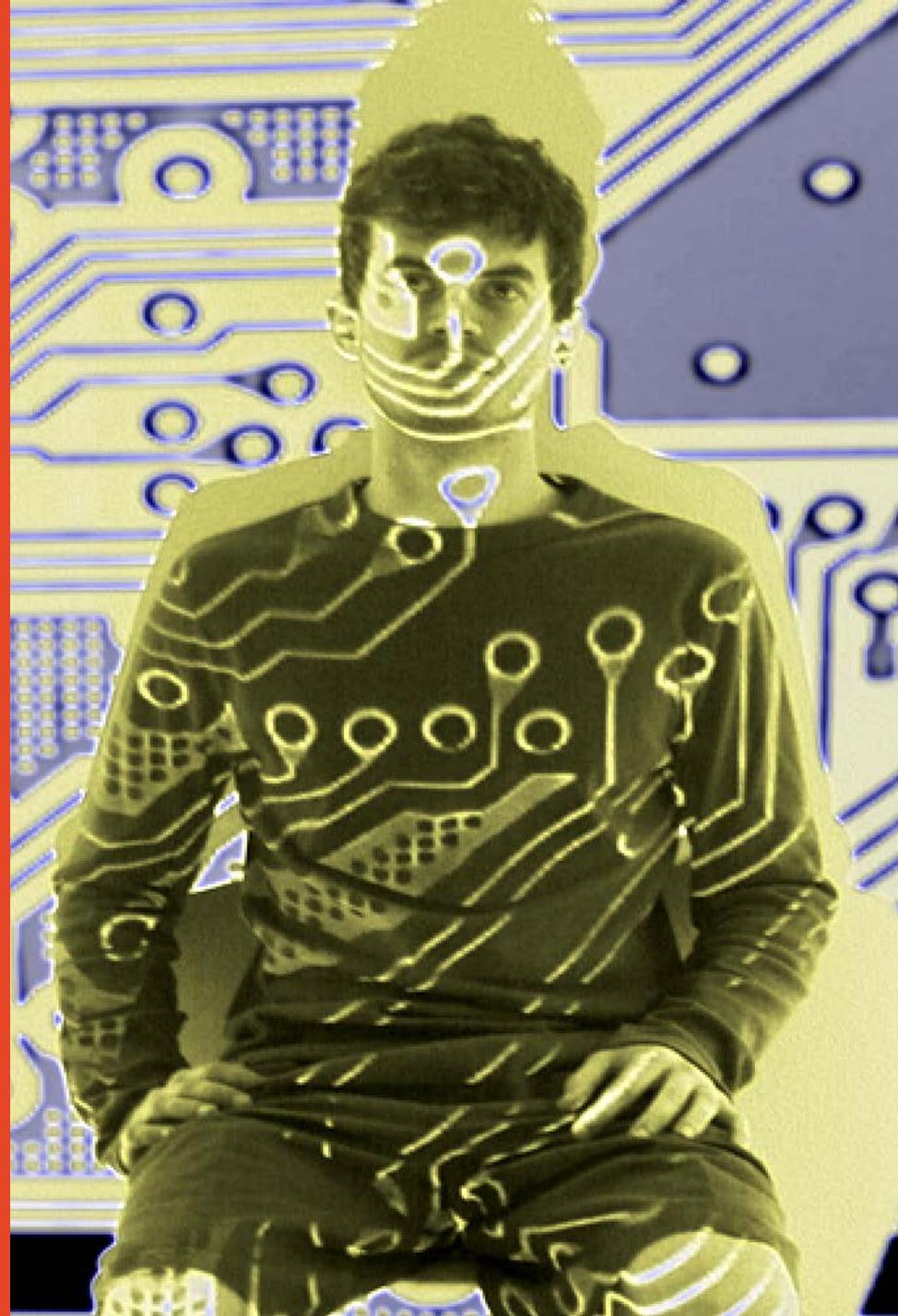
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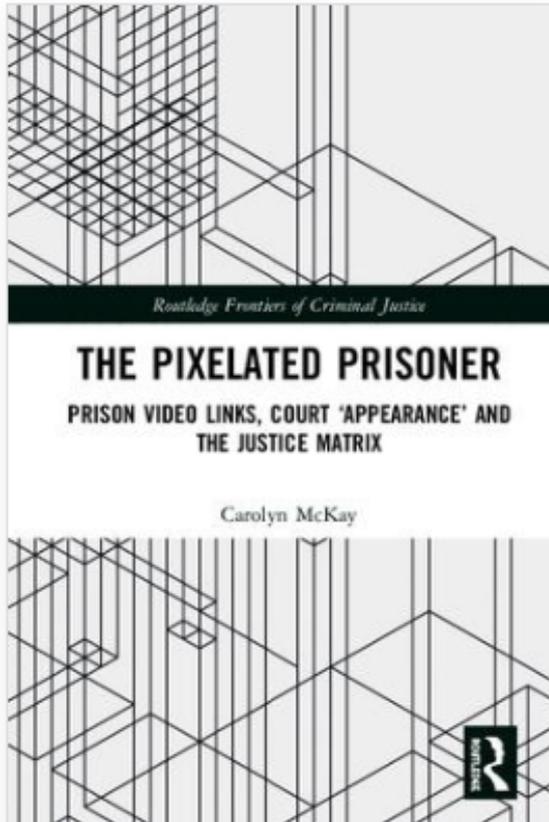


THE UNIVERSITY OF
SYDNEY



The Pixelated Prisoner: Prison video links, court ‘appearance’ and the justice matrix

How does appearance by video link from correctional facilities affect prisoners and their experiences of legal proceedings and access to justice?



The Pixelated Prisoner

Prison Video Links, Court 'Appearance' and the Justice Matrix

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Significance of Research

- NSW prisoners, both adults and children, increasingly use AVL for various court appearances, bail, parole, legal conferencing, sentencing and for other functions including family video visits and psychological assessments.
- During 2002-03 – 2015-16, court appearances by AVL have risen from 8,605 to 54,456, an increase of **532%**.
- In 2016-17 over 67% of matters were heard by AVL

Legal Aid, legal advice and AVL

- The extension of AVL into the realm of legal advice has been described as a **‘by-product’** of the technological rollout between prisons and courtrooms (Forell, Laufer and Digiusto 2011: 3).
- It is a by-product that has grown from 938 AVL sessions in 2003–2004 (Legal Aid 2004–2005: 23) to 31,200 AVL sessions (Dept. of Justice 2015-16), an increase of over **3,226 %** in just over a decade.

My findings

Audio Visual Links: Spatial, Corporeal and Visual Demarcations

AUDIO VISUAL LINKS FROM PRISON: A SPATIAL DEMARCATON

- The conceptual relocation of the courtroom custody dock into prison space: through technological linkages, courtroom space is effectively conflated with prison space exaggerating the spatial hierarchies inherent in legal procedure
- A comparison of AVL and high security enclosed docks to draw parallels between their prejudicial and isolating spaces: *R v Baladjam and Ors* [No 41] [2008] NSWSC 1462; *R v Benbrika and Ors (Ruling No. 12)* [2007] VSC 524
- The carceral context of the prisoner's environment during AVL is problematic
- Environment of segregation, of diminished containment within containment → feelings of disempowerment and disconnection
- Legal procedures are diminished in size and scale when the prisoner is contained in a compact AVL studio, watching their legal status and liberty being determined on a small screen
- Time in holding space
- The soundtrack of incarceration

AUDIO VISUAL LINKS FROM PRISON: A CORPOREAL DEMARCATION

- Is the virtual appearance of prisoners the same as their physical appearance in court?
- Corporeal benefits that stem from AVL: the minimisation of the embodied hardships and degradations of strip-searches and prison transport
- Corporeal losses:
 - Ritual and acknowledgement
 - Barriers to communication
 - Loss of comprehension
 - Loss of physical proximity with legal representatives
 - Loss of confidentiality
 - Loss of family support
 - Loss of independent scrutiny of prisons

AUDIO VISUAL LINKS FROM PRISON: A VISUAL DEMARCATIION

- The visual stigmatisation of the contemporary prisoner dressed in prison garb and labelled by the prison backdrop: presumptive guilt? *R v Hawi and ors (No 5)* [2011] NSWSC 1651; *Tasmania v Seabourne* [2010] TASSC 35
- Court appearance
- Self-view mode
- Partial and asymmetrical view
- Lack of eye contact
- The processes by which a prisoner is criminalised and stigmatised by AVL are aggregate, encompassing their attire, the prison studio labelling, technological framing and the lack of visual symmetry

THE IMPACTS OF AUDIO VISUAL LINKS ON PROCEDURAL JUSTICE AND EFFICIENCIES IN JUSTICE

- **The hearing rule:** procedural fairness requires both parties be enabled to understand and answer a case brought against him or her
- **Open and impartial justice:** AVL explicitly realises a conflation of the courtroom with the enclosed and non-public site of state incarceration
- **Equality of arms:** e.g. negative impacts on prisoners' access to confidential legal representation from the site of state imprisonment and the resulting power imbalance in preparing a defence case
- **Right to confrontation:** judicial statements acknowledge the tensions between the right to confrontation and the AVL legislation that erodes that right
- **Presumption of innocence:** the cumulative factors of prisoners' spatial, corporeal and visual delineation by AVL that together raise presumptive guilt

Conclusions

- AVL introduces a heightened zone of demarcation into criminal process resulting in the traditional *symbolic* isolation of the defendant in a courtroom custody dock now being a *literal* expulsion from the courtroom, with appearance from behind prison walls.
- Like enclosed docks, prisoners appearing by AVL are separated from everyone else in the courtroom, however, this isolation is exaggerated by AVL because the prisoner is contained within the enclosed space of state incarceration instead of within an open and civic courtroom.
- The absence of an embodied engagement with legal proceedings impacts prisoners' communication, participation and comprehension as well as their abilities to engage in confidential interactions with their legal representatives.
- The emergent visual demarcation is a function of a number of cumulative factors including the prisoners' attire, the labelling of the prison video studio and the designated framing by screen technology.
- The technology visually contributes to the construction of criminality, presenting prisoners as 'the lowest form of human kind' (F05) and 'abject carceral subjects' (Brown 2014: 180), again provoking 'presumptive guilt' (Grunseit et al 2008) instead of presumptive innocence.