

# The Pixelated Prisoner: Prison video links, court 'appearance' and the justice matrix

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## Today

- Background to research
- Impacts on incarcerated defendants
- Impacts on procedural justice
- Case law database

## Background to research

*Evidence (Audio and Audio Visual Links) Act 1998 (NSW)*

### **Part 1B Use of audio visual links within places in NSW for appearances of accused detainees in proceedings in NSW courts**

s5BA: Accused detainee to appear physically in physical appearance proceedings

s5BB: Accused detainee to appear by audio visual link in criminal proceedings other than physical appearance proceedings

s5BC: Facilities for private communication

s5C: Premises to be considered part of the court

***physical appearance proceedings***  
defined in s3: trials, fitness to be tried, first appearances, certain bail hearings

# **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?

Book launch Thursday 1 November:

<http://sydney.edu.au/news/law/457.html?eventid=11905>

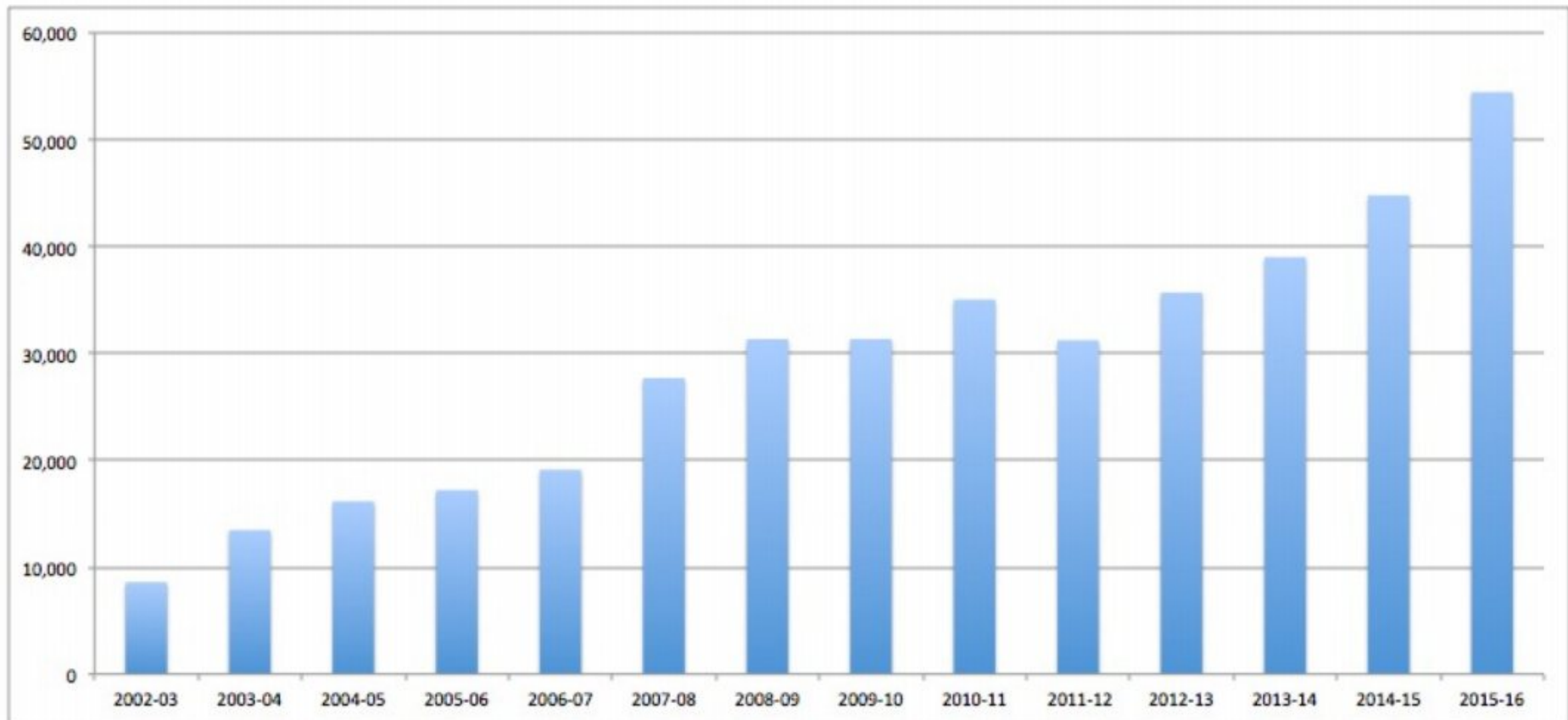
The screenshot shows the Routledge website interface. At the top left is the Routledge logo (Taylor & Francis Group) and a navigation menu with links for Subjects, Products, Resources, Info / Help, and Featured Authors. A search bar is located at the top right. The main content area features the book cover for 'The Pixelated Prisoner' by Carolyn McKay, which is part of the 'Routledge Frontiers of Criminal Justice' series. The cover art consists of a complex grid of lines forming a 3D structure. To the right of the cover, the book title 'The Pixelated Prisoner' is displayed in a large blue font, followed by the subtitle 'Prison Video Links, Court 'Appearance' and the Justice Matrix'. Below this, the author's name 'By Carolyn McKay' and the copyright information '© 2018 – Routledge' are shown. Further down, it states '232 pages | 9 B/W Illus.'. A vertical sidebar on the right side of the page contains a 'Purchase' button and a small square icon. At the bottom of the page, a navigation bar includes tabs for 'Description', 'Contents', 'Author', 'Series', and 'Subjects', with 'Description' currently selected.

<https://www.routledge.com/The-Pixelated-Prisoner-Prison-Video-Links-Court-Appearance-and/McKay/p/book/9781138085107>

## 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

# Growth of AVL facilitated court appearances 2002-03 – 2015-16



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## Department of Justice Annual Report 2015-16 p. 86 re legal conferencing

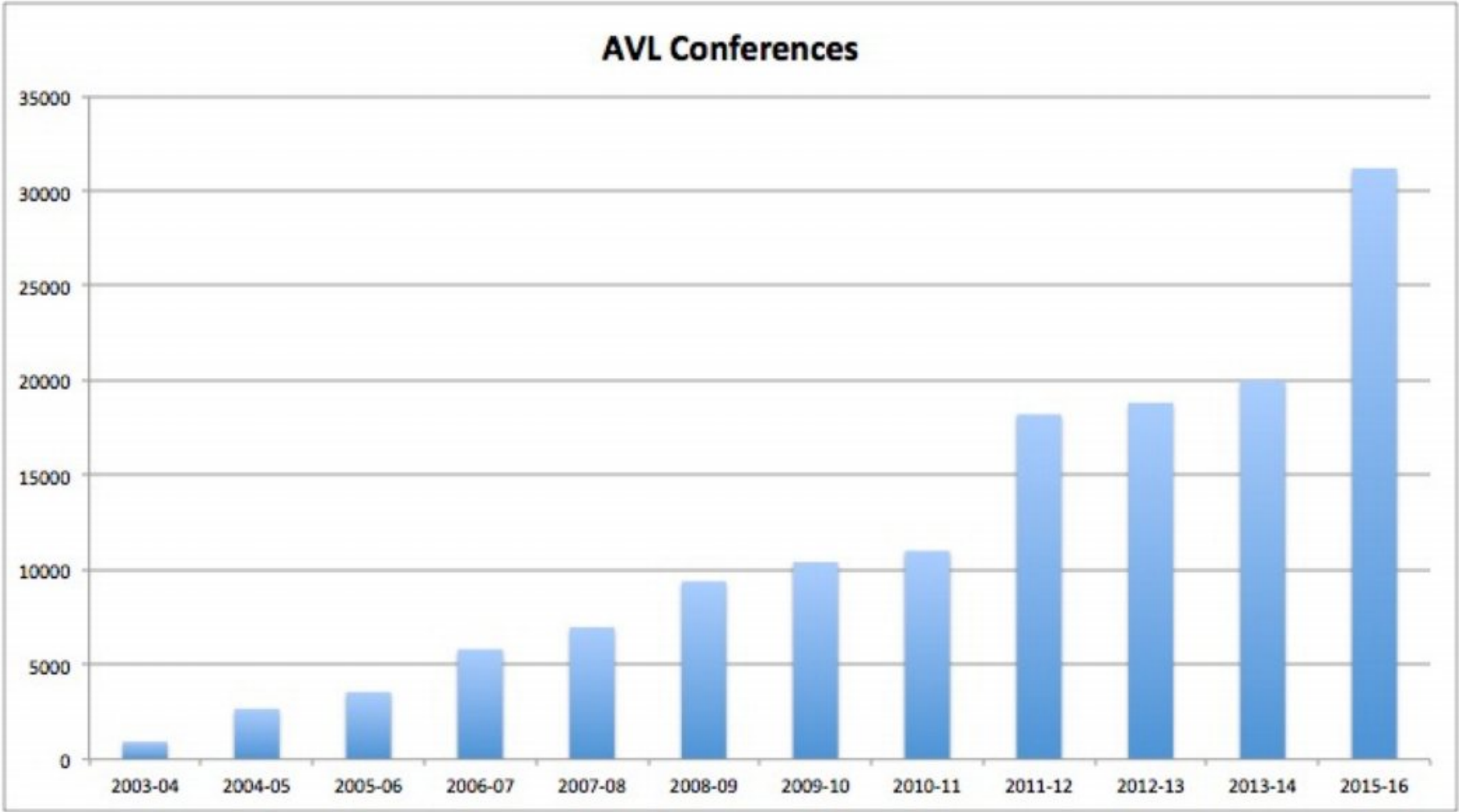
“More than **31,200** legal and associated professional interviews were scheduled using the electronic Video Conferencing Scheduling System (VCSS) in 2015-16. This is an increase of 57% from the previous year. In the same period, legal interviews scheduled for video conferencing represented approximately 63% of all legal visits with adult detainees.” (my emphasis)



## 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.

# Growth of AVL for legal conferencing 2003-04 – 2015-16



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Source: Department of Justice and Legal Aid annual reports  
NB no figures for 2014-15

## Research Method

Empirical data gathered from semi-structured interviews with 31 prisoners in Dillwynia and Mid North Coast Correctional Centres

**M04**

**You're only a bunch of pixels  
on a screen.**

# Impacts on prisoners

Audio visual links from prison:

Spatial, corporeal and visual demarcations



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# 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 DEMARCATON

- 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



## **Audio Visual Links: cumulative impacts of spatial, corporeal and visual demarcations**

M01:

Yeah [you] feel a bit out of it, a bit distant [by AVL]. Yeah they [the court] just look at you like, you know what I mean, on the video screen, you're just another person, you know, another, another inmate, I reckon that's the way they look at it. You're no different from the last bloke that sat in front of us.

# Impacts on procedural justice



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# 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.

## Further research

- What is the impact on legal outcomes e.g. bail, sentencing and parole?
- Implications for juvenile justice?
- Implications for Early Appropriate Guilty Pleas?
- How does AVL impact efficiencies in criminal justice?

## **Database on AVL cases**

What are the impacts on the administration of justice?

