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Sentencing by videolink:

Remote Sentencing: Possibilities and Pitfalls

Professor Jane Goodman-Delahunty, Charles Sturt University

There has been a lot of work recently in social psychology, focusing on emotion rather than just decision-making and cognition. I am drawing a little bit on some of that literature, but I wanted also to work through this by, perhaps, referring to a shared cultural/social experience of our own, I am going to talk a little about the recent movie, that many of you might have seen, called *Up In The Air*. It stars George Clooney, who received a number of award nominations, and the film got accolades otherwise. I do not really share the enthusiasm for the film but it does raise some very interesting technological issues, that I wanted to draw out a little bit with you here.

In the film, Clooney plays the role of Ryan Bingham, who is a corporate downsizing expert, who travels around the country firing people for others when their own employers are too queasy to do this face to face in person. Immediately you can see that there are some parallels with some of the unpleasant aspects of issuing a sentence in person, that might have some dramatic emotional impacts on the subject of the sentence. In fact, he might be a bit like a circuit judge or a travelling judge, meting out the equivalent of capital punishment in the workplace world, by firing people.

He is a stranger to those employees and he has no ongoing relationship with them, simply superficial contact for the period while he administers that process, but he does dress up for the occasion, and wears a suit, and he is very committed to delivering that ill news in person. He refers, though, to his job as 'career transition counselling'. I think that there was even a ritual aspect, some ritual comments that he shared with the individuals that he sacked. In one of the famous quotes from the movie, he would say to people after delivering the bad news, "anyone who ever built an empire or changed the world sat where you are now and it is because they sat there that they were able to do it".

That was about as deep as the exchange between those participants ever got. There was certainly no haptic communication such as Emma referred to, no handshakes, no hugs, and I think one of the features that people pick on most when they compare what happens in a live situation versus a digitally mediated communication is the absence of the capacity to touch, and how important the tactile senses are to the communication of emotion.

So, one of the questions that we need to think about is: what is the impact of removing that haptic or tactile sense from these communications? I think you can draw the parallels that I want you to draw here, realising that in many sentencing situations people are dressing for the occasion. Perhaps many judges are. I certainly observe this even in some of the Administrative Decisions Tribunal settings that I have attended as a non-judicial member. When it comes time to pass the final judgment and decision, sometimes the judges are nervous, not eager to make eye contact at all with the person who is receiving that decision; they want to rush in quickly with a prepared transcript of notes, read it out, avoiding any of the human emotional interchange, and depart as rapidly as possible. There is not really an opportunity then for feedback. It is essentially a unidirectional but nonetheless quite emotionally intense process

When one acknowledges that, it does raise in my mind the question as to whether perhaps then sentencing determinations and decisions are the best suited of all, perhaps, to a digitally mediated communication because in fact we have minimised so much of the exchange that goes on in those proceedings, compared to some others in the legal arena

I will return a moment to share with you a few more parallels with this film, *Up In The Air*. One of the most fascinating features – in fact, the paramount one - is that all of the individuals in the film who portrayed the employees who were fired were not actors, but were in fact men and women who were found by the movie-maker who had lost their jobs in a recession, in a similar kind of situation to that portrayed in the film. They were invited by the producer not only to come and play this part, but they were asked to say on camera the kinds of things that they would have liked to have shared with the person who fired them, but did not have the opportunity or did not think of at the time. They were given this chance to use the movie as a vehicle to have a voice that they lacked in that earlier proceeding, and the kinds of things that they said were some of the most dramatic information of all in the film – what those individuals share as they try to get through to this person who has just fired them.

I think what that raises for us, as I think about that situation, is that there is often-times a real gap between what people will think and feel privately and what they will share publicly, in a situation such as those terminations in the film or certainly in the sentencing situation, whether that is true for all the participants, the judges as much as the offenders.

We have to think, then, whether having video-mediated communications in fact is more inhibiting or disinhibiting of that process. In other words, with respect to the private and the public self, and the sharing, does more of that happen when the process is digitally mediated or less? This issue has studied quite a bit by social psychologists. You would think that, given the concerns that have been raised with the technology, that because there are fewer cues available when the process is digitally mediated – no touch, less chance to observe, as Anne was saying, the non-verbal cues and so on – with perhaps such a diminished capacity for communication, this question would not really have any great moment.

We found in our study [of communication by video-link] that the transition between public and private has to be very carefully managed because it is less obvious when you are sitting in a remote room, and so people need very clear instructions, for

example, 'do not say anything at all until you are given a very clear signal that the microphone is turned off and the video link is shut down'. Otherwise, what tended to happen, even in an experimental situation, is that the witnesses would provide their testimony and then think it was terminated and start speaking about what they really thought and there would be a big difference between the private and the public presentation, that was not really intended as part of the communication. Sometimes that can be very disconcerting. I think the first lesson that we learned is that there needs to be more management of that personal versus private emotional response and of the space as well.

Paradoxically though, the findings from the social/psychological literature are that the remoteness in time and place and space in a way intensifies our awareness of what we are presenting and although it is different people have much more control of, and sensitivity to, their self-presentation through digital media. Even though there is perhaps loss of voice or you do not see facial expressions quite as clearly as you would if you were there in person, and the cues are diminished, there are different ways that the communication is then expressed. Initially, for example, in email people developed emoticons to add to their messages to fill up that space, and in video links there are other kinds of conventions that will emerge in that way.

[Refers to slide presentation] With regard to my question about whether the technology is more inhibiting or less inhibiting, and whether the emotions are poorly managed when they are digitally mediated, is something that the movie *Up In The Air* did have a theory about, that you may have observed if you saw the film. Mr Bingham has a younger female co-worker and so we get to gender difference here. Her name is Natalie Keener and she is an absolute advocate of the new technology and so she develops a software program that can be used to fire people over the internet instead of having Mr Bingham travel around the country doing it in person. He is adamant that this communication mediation will fail. His motive in avoiding it, though, is not entirely pure. It is not really a technologically based, philosophically thought out motive. He simply is interested in racking up as many frequent-flyer miles as he possibly can so that he can achieve a personal goal of ten-million airmiles and that is why he does not want to support the video mediation. However, he does argue that you will lose a lot of cues and lose information that people convey to you. In fact he goes so far as to pretend that he does not remember the response of one woman who was fired on video, when as soon as she told she was going to be terminated her response was, 'I think I'll just go to the top of the building and jump off', immediately became suicidal. When asked about this in the film later on he pretends that out of the thirty people that day he did not remember this cue at all.

We start to get an idea that maybe technology is bad, from Bingham's response. That theory and that theme is developed a little further in the film when Natalie Keener's boyfriend dumps her by SMS message and she experiences all the distress but he is not there and she is never going to see him again and all she has is a text message. Ultimately, when it turns out that the woman who threatens suicide in fact did leap off the top of the building and kill herself that becomes too much for Natalie and, despite her advocacy for digital media she then quits her job and moves on to another field. The message we are left with is that technology is tactless, technology is cold. There is no question that the backlash that Richard mentioned earlier is the major theme.

I think that what we have to think about then, as we look at the results that are emerging from the study and consider remote sentencing, is whether that sort of thesis, however simplistic, is really right or not. Is that portrayal – that it is inappropriate and perhaps undignified and too tactless to use in sentencing – the accurate one? This is a new frontier in empirical research. There are not a great deal of studies on this point to date, particularly focusing on social/emotional exchanges, but those that do exist – and I think that a group of social psychologists at Cambridge University, led by Parkinson, are the forefront here – show that once there are different modes of interpersonal contact then you develop different styles. You adapt. We went through a major cultural shift from oral presentation to written presentation. Just as with that technological change Anne found that the remoteness offered by writing in fact allowed more nuanced emotional exchanges, much more fine-grained analyses and sensitive, thoughtful logical presentation and had many advantages, in fact, that oral exchanges did not, so I think that the new research is showing that our restructuring with digitally mediated communication offers a whole new set of conventions that will develop, and does show that there is room for the emotional exchanges to be maintained.