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Remote Sentencing: Possibilities and Pitfalls

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Mr David Tait
My name is David Tait. My job is to acknowledge the really valuable contribution of all of our partners, particularly the Western Australian Attorney-General's Department, and the ACT Director of Public Prosecutions from this jurisdiction, and the Victorian Department of Justice. Also, we have other partners involved, Ice Designers, a technology company, and PTW Architects.

What have architects to do with courts? The answer is, everything, and the most exciting issues that we are dealing with come in part because we have architects as part of the team. This is an Australian Research Council-funded project with different academics and universities and some wonderful industry partners. We also have a first-rate Principal Investigator, who sometimes acts for us in various things, Justice Richard Refshauge.

Ms Emma Rowden
From the opposite extreme of remote Australia, we thought we would show you just a short film from densely populated London, about their foray into the Virtual Courts Pilot, which might just show you something about where sentencing by video-link might lead.

[film presentation]

As we can see from the UK experience there are a few issues that sentencing via video-link raises.

Firstly, when is sentencing by video-link appropriate and when is it not? Secondly, while sentencing via video-link promises to be quicker and more efficient are there ways in which we might improve the experience, both from the perspective of those in the courtroom as well as those in the remote space? Anne will discuss with you in a moment the legal position, when the law in Australia allows sentencing via video-link, as well as reporting on some of our interview data on the topic. David will report on some of the findings from our experimental research and Jane will offer some thoughts on communicating emotions in different technological environments.

Finally, Chief Justice Wayne Martin will then discuss with us the Western Australian experience of remote sentencing, before some time for questions at the end.

In my presentation I should like to address the following questions: what happens to the ritual of sentencing when it is conducted via video-link? Why might people take issue with sentencing via video-link as it operates currently, and how might some of these issues be addressed through better design?

There is no doubt that the experience of remote sentencing is one ripe for improvement. There has been widespread criticism of the Virtual Court Pilot and concerns include: that the lawyer must choose between being with their client or being in the courtroom, and the communication problems that either side poses; that there is a perceived sense of unreality involved in the encounter for the defendant; that the defendant cannot see their family and friends, and; that there is a diminished sense of gravitas. Overall, the process is seen as potentially isolating and depersonalising. These are not dissimilar comments to many of the criticisms and concerns about remote sentencing that we have heard in the interviews that we have conducted in our research, and Anne will elaborate on some of these in a moment.

How might design help address some of these concerns? Video-links, it might be said, alter the way the courtroom space functions. When the highly-structured court ritual operates in two discrete locations (the courtroom in the courthouse and the remote room, in this instance within the police station but most often in Australia within a remand centre) both central and incidental parts of the process are fundamentally altered.

One interpretation of the perceived failure of the UK Virtual Court Pilot is that while the central parts of the sentencing process are more or less maintained over the link the incidental parts of the process have been forgotten, and have not been re-integrated somehow over the link. Furthermore, the courthouse as a single space has an important role in bringing together those involved in the sentencing process, not just the defendant's family and friends but corrections personnel, probation officers, psychologists giving assessments, the police prosecutor, those who might give a more complete picture to the defendant's context and who, in this instance are not in contact with their lawyer.

Important, but not incidental conversations between such participants may easily be forgotten in the planning of an efficiently run virtual court, where people are only connected for the official business at hand. Some of the concerns raised could potentially be resolved, or at the very least improved upon, by more sympathetic design of the technology, along with the inevitable improvements to technology over the time. These may include creating a more sufficient sense of eye contact between participants, a better registration of non-verbal cues, and the introduction of multiple audiovisual links that attempt to recapture both the incidental and social occurrences that the traditional courtroom and courthouse allows. Such changes to the design of remote links may go some way to address lawyers' concerns about the ability to adequately engage and communicate with both their client and the judge equally, from either side of the link.

However, there are some things that mere technological improvements alone cannot address. There are certain parts of the court ritual that have to do with the experience of space that have been truncated or completely ignored with the introduction of remote links. The defendant, who in this instance sits in a small room within the police station, may have more difficulty in maintaining the sense that they are in a court space. Is this problematic? In some instances perhaps not, but in others it could lead to inappropriate behaviour, which may in turn impact adversely on the outcome of the defendant's case. It could be argued that currently there is a significant disjuncture between the special and tactile, or haptic, qualities of most courtrooms and remote spaces, particularly those in the remote prison environment from where most video-link defendants appear. The remote space can in many ways be seen as an extension of the courtroom, and yet the design of these spaces does not in any way reflect this. Anonymous, cold, bland and cramped, are descriptors that could be applied to most remote spaces, and they frequently lack the attention to detail, or warmth of materials, exhibited by most well-designed court interiors. Neither do they seem purpose-built, with often the video-link equipment sitting on a movable trolley, as if merely there for storage purposes.

In one study, where young witnesses were interviewed about their experience in remote witness spaces, the phrase most often repeated was, 'the TV link room was like a cupboard'. Similar statements might be said of the room we have just seen in the UK pilot. By comparison, even the most humbly furnished of magistrates courts can have, by way of their structural features and finishes, important environmental cues that may positively influence a more appropriate demeanour and behaviour. A sense of dignity, of solemnity, and of being taken seriously is the product of the carefully crafted courtroom space supporting a carefully performed ritual. Perhaps, if the design of the remote space achieved a similar sense of import and dignity, the sense of gravitas might not be as muddied, nor the sense of unreality as sharp, as when a court is perceived through the frame of a featureless and characterless remote space.

Despite being of a more modest scale, one could imagine that even a small remote space that exhibited a warm palette of materials with finely executed detailing might at least reflect, rather than contradict, the respectful ambience of the courtroom. It would seem that while video-conferencing technology has been used extensively for a number of court processes there is yet to be an acknowledgment of the significant role that design might play in achieving effective remote participation. Perhaps, then, as technology prompts us to reconfigure the courtroom for interaction with remote sites it also provides us with the opportunity to reflect upon what is achieved by court architecture that is critical for the sentencing ritual, and how these elements might be replicated or reinterpreted as the court takes place at multiple sites.