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## **SENTENCING BY VIDEOLINK: UP IN THE AIR?**

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## I ABSTRACT

A UK pilot scheme—where defendants pleading guilty to certain offences remotely from a police station are sentenced via videolink—has sparked considerable controversy. Although attracting less attention, sentencing by videolink also occurs in Australia. The enabling legislation contains few guidelines for the exercise of judicial discretion and little is known about the nature and scope of remote—or videolinked—sentencing, or its impact on the sentencing process and participants. This article presents unique findings from an Australian empirical study about uses of videoconferencing in the justice system. Semi-structured interviews were conducted with 56 judicial officers, court administrators, court staff, justice department officials, prosecutors, witnesses and lawyers. Responses pertinent to sentencing reflected both the rationale for implementing remote sentencing as well as concerns about remote sentencing procedures. Results indicated that the use of videolinks can alter the nature of sentencing proceedings, but views that technology necessarily degrades the sentencing process or renders it less effective, are overly simplistic. Attention to the configuration of the technology and participants, as well as protocols and procedures for videolink use can potentially preserve the essential functions of sentencing conducted remotely. Recommendations on ways to address stakeholders' concerns without compromising the critical features of sentencing proceedings are proposed.

## II INTRODUCTION

The recent award-winning American movie *Up in the Air*<sup>2</sup> stars George Clooney as Ryan Bingham, a corporate down-sizing expert. He travels the country firing people on behalf of employers who wish to avoid this confronting and emotionally-intense task, which his company euphemistically describes as “career transition counselling.” In some respects his role in executing the equivalent of capital punishment in the workplace is similar to that of a circuit judge. He is a stranger to these employees and has no ongoing relationship with them. The exchange rarely includes haptic communication—no hugs, no handshakes. To dignify the occasion, Bingham dresses in a suit, delivers the bad news in person, and offers a few ritual comments to placate fired employees.

While there are obvious limitations to the analogy, there are some parallels with the sentencing process. Judicial officers, too, are “career transition counsellors” performing an unpleasant duty on behalf of the community. They also dress for the occasion and make ritualistic comments. Many avoid eye-contact with the defendant, enter and leave the proceedings quickly, keep communications unidirectional, and, in higher courts, may read aloud written sentencing remarks that will be distributed later. Although sentencing is generally conducted in-person, the display of emotion is often controlled. Do these features suggest that sentencing is well-suited to be conducted by videolink?<sup>3</sup>

The lack of any apparent need for in-person engagement between those delivering the bad news and those receiving it is a consideration that persuades Mr Bingham’s employer to adopt a plan by his young co-worker, Natalie Keener, to fire people remotely, by videolink.

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<sup>2</sup> *Up in the Air* [motion picture] (directed by Jason Reitman, Paramount Pictures, 2009). The screenplay was adapted from the novel: Kim W, *Up in the air: a novel* (Doubleday, New York, 2001).

<sup>3</sup> The term “videolink” in this paper refers to all forms of audiovisual technology that allow remote participation in court processes, whether via ISDN, satellite or internet with videoconferencing technologies, or by direct cabling with CCTV technologies.

The savings in travel costs and the potential increase in efficiency are undisputed, however Bingham is adamant that digitally-mediated communication is ill-suited to this sensitive task and will fail. Ironically, when Natalie's boyfriend breaks up with her by text message—firing her as his girlfriend—she resents the use of cold and tactless technology in her personal life. Ultimately in the film, the videolink pilot is abandoned, and Bingham is vindicated.

Does Bingham's pessimistic view of the use of videolink apply to the sentencing process? In Australia and elsewhere, in the decade since publication of the novel on which *Up in the Air* was based, access to internet and digital communications technologies has expanded rapidly. By June 2009, there were 8.4 million active internet subscribers in Australia, including 1.4 million private and public organisations and 7 million households.<sup>4</sup> Improved videolink is a key plank of Australia's new national broadband rollout promising Australians the ability to use real-time high-definition videoconferencing collaboration to run businesses, access medical services and connect with family and friends.<sup>5</sup> Many services traditionally conducted in-person—such as psychological counselling and therapy—are now available via a host of asynchronous and synchronous technologies.<sup>6</sup> Courts, too, have integrated this new technology into various aspects of their practice, including sentencing.<sup>7</sup>

Nonetheless, little is known about the nature and scope of remote sentencing, or its impact on the sentencing process and participants. Few courts keep records about videolink

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<sup>4</sup> Australian Bureau of Statistics, Australia, *8153.0-Internet Activity* (2009) at <http://abs.gov.au/ausstats/abs@.nsf/mf/8153.0/> viewed 26 June 2010.

<sup>5</sup> Department of Broadband, Communications and National Economy, *National Broadband Network Policy Brochure* (2010) at [http://www.dbcde.gov.au/broadband/national\\_broadband\\_network/national\\_broadband\\_network\\_policy\\_brochure](http://www.dbcde.gov.au/broadband/national_broadband_network/national_broadband_network_policy_brochure) viewed 31 May 2010.

<sup>6</sup> Abbott, J-A M, Klein B, & Ciechomski L, "Best practices in online therapy" (2008) 26 *J Tech Hum Serv* 360-375.

<sup>7</sup> Johnson, M T, & Wiggins, E C, "Videoconferencing in Criminal Proceedings: Legal and Empirical Issues and Directions for Research" (2006) 28(2) *Law & Policy* 211-227. Victorian Parliamentary Law Reform Committee, *Technology and the Law*, Report (May 1999, Melbourne; Parliament of Victoria) at [184]; Australian Law Reform Commission, *Technology - what it means for Federal Dispute Resolution Issues Paper No 23* (1998) at [5.37].

use, and where records are maintained, they often do not specify the nature of the matter, or distinguish one type of proceeding from another. Many fundamental questions remain unanswered: is it inappropriate and undignified for serious legal proceedings to be conducted by videolink? Does the remote sentencing process pose insurmountable communication difficulties?

In this article, the authors explore these questions and present original data that provides an evidence-base to inform future practitioners and policy-makers. Recent remote sentencing developments in the United Kingdom are described. Next we review existing Australian legislation establishing the legal context in which videolinked sentencing can arise. Thirdly, results of a series of interviews with 56 court practitioners with experience of videolinked sentencing in Australia are presented. These interviews provided an empirical basis to assess these questions and outline policy recommendations for future users of this technology in the sentencing context.

#### ***A. The UK Virtual Court Pilot***

In May 2009, United Kingdom Justice Secretary Jack Straw launched a “Virtual Court” pilot that allows defendants to plead guilty via videolink to selected Magistrates’ courts in London and Kent, from the police station where they are arrested.<sup>8</sup> The pilot was designed to achieve greater efficiencies in the criminal justice process, provide speedier disposition of cases and achieve considerable savings in time and money.<sup>9</sup> The press release promised that “a case can be heard within hours of the defendant being charged and, if a

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<sup>8</sup> BBC News, *London hosts first virtual court* (BBC News) [http://news.bbc.co.uk/2/hi/uk\\_news/england/london/8070279.stm](http://news.bbc.co.uk/2/hi/uk_news/england/london/8070279.stm) viewed 22 August 2009.

<sup>9</sup> The potential savings of taking the scheme nationwide were estimated at £10m a year: Ministry of Justice (UK), *Jack Straw: new virtual courts launched and intensive Community Payback extended* (Ministry of Justice (UK) News Release) <http://www.justice.gov.uk/news/newsrelease120509a.htm> viewed 22 August 2009.

defendant pleads guilty, could see sentencing handed down on the same day.”<sup>10</sup> All this can occur without the need to remove defendants from the police station where they were first taken into custody.

This Virtual Court is not intended for cases involving children, or multiple defendants. Guidelines for custody officers suggest that it may be unsuitable for certain other types of defendants, such as persons with mental health problems.<sup>11</sup> Its focus is “low level crime such as public order offences, theft and criminal damage.”<sup>12</sup> However, the enabling legislation does not specifically limit its operation, so it could potentially apply to offences that carry significant financial penalties or sentences of imprisonment.<sup>13</sup>

There has been considerable criticism of the Virtual Court Pilot from lawyers in the United Kingdom. One major concern was that the configuration of the Virtual Court effectively requires lawyers to choose between accompanying their clients or attending the courtroom.<sup>14</sup> Lawyers who opt to attend court may gain a better understanding of how the Magistrate is receiving their client’s case at the expense of the opportunity for quiet asides with their client to clarify their position. Some lawyers contended that videolinked sentencing felt “unreal” and depersonalised defendants, comparing the experience to participation in “a remote video game.”<sup>15</sup> This echoes concerns by academic commentators that communication difficulties arise from limited transmission of body language and non-verbal cues, where

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<sup>10</sup> Ministry of Justice (UK), *Jack Straw: new virtual courts launched and intensive Community Payback extended* (Ministry of Justice (UK) News Release) <http://www.justice.gov.uk/news/newsrelease120509a.htm> viewed 22 August 2009.

<sup>11</sup> According to the Virtual Courts Pilot brochure, the custody officer uses a “Suitability for the Virtual Court Process Checklist”, see: Kent Criminal Justice Board, *Virtual Courts* (Kent Criminal Justice Board, video) <http://lcjb.cjsonline.gov.uk/Kent/2867.html> viewed 7 May 2010.

<sup>12</sup> Criminal Justice System, *Virtual Court, Information for Defence Representatives* (Criminal Justice System) at Annex A Virtual Courts Suitability Criteria, <http://frontline.cjsonline.gov.uk/guidance/cjs-reform/efficiency-and-effectiveness/#vc> viewed 6 March 2010.

<sup>13</sup> Crime and Disorder Act 1998 (UK), s 57A-57E.

<sup>14</sup> BBC News, *Solicitors boycott virtual courts* (BBC News), [http://news.bbc.co.uk/2/hi/uk\\_news/8177567.stm](http://news.bbc.co.uk/2/hi/uk_news/8177567.stm) viewed 2 February 2009

<sup>15</sup> “I think it is an isolating feature — the fact that you are almost taking part in a remote video game. It rather depersonalises the whole process”. Mr Robin Murray quoted in: BBC News, *Solicitors boycott virtual courts* (BBC News), [http://news.bbc.co.uk/2/hi/uk\\_news/8177567.stm](http://news.bbc.co.uk/2/hi/uk_news/8177567.stm) viewed 2 February 2009.

participants appear remotely.<sup>16</sup> Lawyers also argued that the gravitas of a court appearance might not be registered by defendants who appeared from a remote and anonymous room within a police station, and that there was a diminished sense of dignity when a defendant was sentenced by videolink.<sup>17</sup>

Defendants who are sentenced from the police station shortly after arrest lack the opportunity to garner support that is available during the sentencing process in a physical courtroom.<sup>18</sup> They are in the same position as a defendant in custody, with no opportunity to go home, re-group, and bring a friend or relative with them, having considered how best to present themselves to the court. The configuration of the technology also deprives them of a view of any family and friends present in the courtroom—a view often, although not always, available to a defendant who appears in person.<sup>19</sup>

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<sup>16</sup> See: Poulin, A B, “Criminal justice and video conferencing technology: The remote defendant” (2004) 78 Tul L Rev 1110-1111; Johnson, M T & Wiggins, E C, “Videoconferencing in Criminal Proceedings: Legal and Empirical Issues and Directions for Research” (2006) 28(2) Law & Policy 211-227; Mulcahy, L, “The Unbearable Lightness of Being? Shifts Towards the Virtual Trial” (2008) 35(4) J Law & Soc 484; Wallace, A & E Rowden ‘Gateways to Justice: The use of videoconferencing technology to take evidence in Australian courts’ (Paper presented at 9th European Conference on eGovernment, London, 2009) 655-656. The ways in which participants are framed by the angle of the camera can influence inferences drawn about the defendant: Locke, J, “Staging the Virtual Courtroom: An Argument for Standardising Camera Angles in Canadian Criminal Courts” (2009) *Masks: The online Journal of Law and Theatre* 36-58; Lassiter G D, Geers A L, Handley I M, Weiland P E, & Munhall P J, “Videotaped confessions and interrogations: A simple change in camera perspective alters verdicts in simulated trials” (2002) 87 J App Psychol 867-874; Lassiter G D, Geers A L, Munhall P J, Handley I M, & Beers M J, “Videotaped confessions: Is guilt in the eye of the camera?” (2001) 33 *Adv Exp Soc Psychol* 189-254; Lassiter G D, Diamond S S, Schmidt H C, & Elek J K, “Evaluating videotaped confessions: Expertise provides no defence against the camera-perspective effect” (2007) 18 *Psychol Sci* 224-226.

<sup>17</sup> Smith R, “*Virtual court*” cases go on trial in London (The London Evening Standard) <http://www.thisislondon.co.uk/news/article-23395607-virtual-court-cases-go-on-trial-in-london.do> viewed 2 November 2009.

<sup>18</sup> BBC News, *Solicitors boycott virtual courts* (BBC News), [http://news.bbc.co.uk/2/hi/uk\\_news/8177567.stm](http://news.bbc.co.uk/2/hi/uk_news/8177567.stm) viewed 2 February 2009.

<sup>19</sup> At the beginning of the UK Virtual pilot proceedings, as shown in the *Virtual Court Pilot* promotional DVD, the defendant is provided with a quick view of the public gallery in the courtroom, but during the proceedings, the cameras and screens are set up in a way that denies them the opportunity to make eye-contact with, or even see, those in the public spaces of the courtroom. See: *The Virtual Court* [promotional DVD] (Criminal Justice Board UK, 2009); Kent Criminal Justice Board, *An Introduction to Virtual Courts* (Kent Criminal Justice Board, promotional video downloaded from website at <http://lcjb.cjsonline.gov.uk/Kent/2867.html> viewed 7 May 2010.



The Virtual Courts project has been promoted as a major justice initiative and a formal evaluation of the pilot is under way.<sup>20</sup> However, while initially established as a voluntary program requiring informed consent from the defendant,<sup>21</sup> its use has since become compulsory<sup>22</sup> for all first hearings in the pilot areas “within certain parameters and conditions.”<sup>23</sup> Although guidelines indicate instances where it may not be appropriate, for example, with vulnerable defendants who require an interpreter, discretion to use the link in the first instance is now effectively in the hands of the police. The use of videolinks, particularly for sentencing, has raised concerns amongst UK lawyers that bureaucrats are prioritising cost and convenience over a defendant’s right to due process.<sup>24</sup> This paper explores whether similar concerns are being expressed about videolinked sentencing in Australia.

### III LEGISLATIVE FRAMEWORK FOR VIDEOLINKED SENTENCING IN AUSTRALIA

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<sup>20</sup> See: Tenders Direct, *Invitation to Tender Notice* (Tenders Direct) <http://www.tendersdirect.co.uk/Ourservice/TenderView.aspx?ID=%20000000002436629> viewed 6 May 2010; The UK Government has already signalled its intention to expand the scheme to other aspects of the criminal justice process, for example, enabling police to make “virtual” applications for warrants; BBC News, *Solicitors boycott virtual courts* (BBC News), [http://news.bbc.co.uk/2/hi/uk\\_news/8177567.stm](http://news.bbc.co.uk/2/hi/uk_news/8177567.stm) viewed 2 September 2009; *The Virtual Court* [promotional DVD] (Criminal Justice Board UK, 2009).

<sup>21</sup> In the first stages of the pilot, using the “virtual” system was voluntary. The person in custody was given the option by the police, and handed a brochure, which explained the pilot. If they intended to plead not-guilty, and there were not other factors (such as any disabilities, etc), the defendant was eligible. The defendant signed a form agreeing that their case would proceed in the virtual court. See: *The Virtual Court* [promotional DVD] (Criminal Justice Board UK, 2009).

<sup>22</sup> Crime and Disorder Act 1998 (UK), s 57 amended by the Coroners and Justice Act 2009 (UK), s 106(5); Baksi C, *Solicitors raise confidentiality concerns in virtual court pilot* (The Law Gazette) <http://www.lawgazette.co.uk/news/solicitors-raise-confidentiality-concerns-virtual-court-pilot> viewed 24 September 2009. On 16 December 2009, the pilot became compulsory in all pilot areas: Baksi C, “*Chaos*” predicted over virtual court pilot (The Law Gazette) <http://www.lawgazette.co.uk/news/chaos-predicted-over-virtual-court-pilot> viewed 15 December 2009.

<sup>23</sup> Tim Godwin (Chair, London Criminal Justice Board) in: *The Virtual Court* [promotional DVD] (Criminal Justice Board UK, 2009).

<sup>24</sup> BBC News, *Solicitors boycott virtual courts* (BBC News), [http://news.bbc.co.uk/2/hi/uk\\_news/8177567.stm](http://news.bbc.co.uk/2/hi/uk_news/8177567.stm) viewed 2 September 2009; Baksi C, *Solicitors raise confidentiality concerns in virtual court pilot* (The Law Gazette) <http://www.lawgazette.co.uk/news/solicitors-raise-confidentiality-concerns-virtual-court-pilot> viewed 24 September 2009.

In Australia, the capacity to sentence by videolink was introduced as part of broader initiatives to allow the use of videoconferencing to conduct bail and remand hearings with defendants in correctional facilities. While not always explicit, the power to sentence by videolink nevertheless exists. It can be exercised by judicial officers in a variety of situations, as evident from a comparative analysis of the legislation.

#### ***A. Enabling Legislation for Sentencing by Videolink in Australia***

There is considerable variation in the legislation that enables the use of videolink for sentencing, but there are also many commonalities, as Table 1 below illustrates. In a number of jurisdictions, the power to use videolink to sentence is most explicitly defined in the case of defendants who are in custody—either on remand or serving a custodial sentence. This may reflect the fact that the capacity to use videolinks to enable court appearances by defendants in custody was a major focus of recent technology roll-outs in those jurisdictions.

Some jurisdictions have specific powers that permit sentencing by videolink for all defendants; however, in others, courts considering this option must rely on more general provisions that enable the use of videolink in certain circumstances, also illustrated in Table 1.

### ***1 Specific Powers to Sentence by Videolink***

Courts in New South Wales and Victoria have specific powers to sentence defendants<sup>25</sup> in custody via videolink. While the NSW legislation creates a presumption in favour of sentencing via videolink for defendants in custody,<sup>26</sup> Victorian defendants will

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<sup>25</sup> “Defendants” in this discussion, refers only to adult defendants. Some states also have specific legislation dealing with videolink for child defendants. See: *Evidence Act 1958 (Vic)*, ss 42O & P; *Juvenile Justice Act 1992 (QLD)*, s 159.

<sup>26</sup> *Evidence (Audio and Audio Visual Links) Act 1998 (NSW)*, s 3A. Definition of “physical appearance proceedings” in *Evidence (Audio and Audio Visual Links) Act 1998 (NSW)*, s 3; *Evidence (Audio and Audio Visual Links) Act 1998 (NSW)*, s 5BB.

normally be expected to appear in person for sentencing.<sup>27</sup> In both States, these presumptive positions can be reversed by direction of the court.<sup>28</sup> Like NSW, the South Australian legislation creates a presumption for dealing with certain types of matters involving defendants in custody by videolink,<sup>29</sup> but, the status of sentencing hearings within this regime is uncertain.<sup>30</sup> Western Australia has taken a midway approach: although all accused persons—whether in custody or not—are generally required to be present for sentencing; “presence” includes appearance by videolink,<sup>31</sup> and videolink may be used for sentencing.<sup>32</sup>

All Queensland courts and the Tasmanian Magistrates’ Court can sentence any defendant—whether in custody or not—by videolink, although there is no presumption either in favour or against its use.<sup>33</sup> Northern Territory courts and the Tasmanian Supreme Court<sup>34</sup> have no specific power to sentence by videolink.

The Queensland power can only be exercised by the consent of the parties;<sup>35</sup> there is no independent discretion vested in the court. Victorian courts also generally require the consent of all parties to order a videolink in a sentencing hearing, with the court only able to exercise an independent discretion where it finds that “exceptional circumstances” exist.<sup>36</sup>

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<sup>27</sup> *Evidence (Miscellaneous Provisions) Act 1958* (Vic), s 42K(2); *Evidence (Audio and Audio Visual Links) Act 1998* (NSW), s 5BB.

<sup>28</sup> *Evidence (Miscellaneous Provisions) Act 1958* (Vic), s 42K(M)(1); *Evidence (Audio and Audio Visual Links) Act 1998* (NSW), s 5BB.

<sup>29</sup> *Evidence Act 1929* (SA), s 591Q(5)(b)(c)(d).

<sup>30</sup> In South Australia, where defendants are generally expected to appear in person, they may elect to appear by videolink if the court consents: *Evidence Act 1929* (SA), s 591Q(5)(a)(i)-(iii). Sentencing hearings are not specifically identified as among the type of matters for which a personal appearance is required, however it is possible that they could fall within the broad provision in s 591Q (5)(c) requiring a personal appearance where “the court is of the opinion that there are good reasons in the circumstances of the particular case for requiring the defendant’s personal attendance and directs accordingly.”

<sup>31</sup> *Criminal Procedure Act 2004* (WA), s 88.

<sup>32</sup> *Sentencing Act 1995* (WA), s 14A(1).

<sup>33</sup> *Penalties and Sentences Act 1992* (QLD), s 15A, *Justice Rules 2003* (Tas), r 68.

<sup>34</sup> Supreme Court of Tasmania, *Videoconferencing Guidelines* (Supreme Court of Tasmania) [http://www.supremecourt.tas.gov.au/about\\_us/courtroom\\_technology/video\\_conferencing\\_guidelines](http://www.supremecourt.tas.gov.au/about_us/courtroom_technology/video_conferencing_guidelines) viewed 12 March 2010. The use of audio-visual links for other proceedings, such as remands, appears to rest within the court’s inherent powers.

<sup>35</sup> *Penalties and Sentences Act 1992* (QLD), s 15A.

<sup>36</sup> *Evidence Act 1958* (Vic), s 42E(1).

Both the Western Australian discretion to order a videolink and NSW discretion to depart from the use of videolink, can be exercised either of the court's own volition, or an application by a party to the proceeding.<sup>37</sup>

Little legislative guidance is provided for courts exercising these discretions, other than criteria such as 'in the interests of justice',<sup>38</sup> 'the reasonable availability and practicability' of videolink use,<sup>39</sup> and any factors that are relevant in the circumstances of the case or specified in the rules of court.<sup>40</sup> Case authority suggests that relevant considerations can include the fact that an accused is unrepresented, that the hearing may involved a volume of documentary material, or that the defendant will be required to give evidence and be cross-examined.<sup>41</sup> In South Australia, the parties must be provided with an opportunity to object to the use of videolink,<sup>42</sup> and both Victorian and South Australian courts are specifically directed to take account of any views expressed by the alleged victim of the offence.<sup>43</sup>

## **2 General Powers to Sentence by Videolink**

Again, there is considerable variation between the more general powers that may enable the use of videolink for sentencing. To sentence a defendant who is not in custody, courts in New South Wales, Victoria, Queensland, South Australia and Tasmania could rely on provisions that allow the use of videolink to take evidence and make submissions, for example, to enable remote submissions by a legal representative or a self-represented accused. These powers are generally exercisable either on the court's own initiative or on

<sup>37</sup> *Sentencing Act 1995* (WA), s 14A(1), *Evidence (Audio and Audio Visual Links) Act 1998* (NSW), s 5BB(3).

<sup>38</sup> *Evidence (Miscellaneous Provisions) Act 1958* (Vic), s 42K(M)(1); *Evidence (Audio and Audio Visual Links) Act 1998* (NSW), s 5BB.

<sup>39</sup> *Evidence (Miscellaneous Provisions) Act 1958* (Vic), s 42K(M)(1)(b); *Evidence (Audio and Audio Visual Links) Act 1998* (NSW), s 5BB(2); *Sentencing Act 1995* (WA), s 14A(2).

<sup>40</sup> *Evidence (Audio and Audio Visual Links) Act 1998* (NSW), s 5BB(4).

<sup>41</sup> *R v Potter* [2006] NSWSC 117, [11]-[13].

<sup>42</sup> *Evidence Act 1929* (SA), s 591Q(6).

<sup>43</sup> *Evidence (Miscellaneous Provisions) Act 1958* (Vic), s 42K(M)(8); *Evidence Act 1929* (SA), s 591Q(7) & (8). In South Australia the prosecution must object to the use of videolink when requested to do so by the victim or the victim's family, although it appears that this obligation is confined to those situations where there is no general rule that the defendant must appear in-person.

application by a party.<sup>44</sup> However, there is one authority that these types of provisions are facilitative only; they do not permit the use of videolink for a specific purpose unless a court has already been granted a specific statutory power.<sup>45</sup>

Similar powers in Queensland and the Northern Territory that specifically allow remote “appearances” appear sufficient to enable remote participation by an accused for the purposes of sentencing,<sup>46</sup> particularly as the Northern Territory legislation provides that the requirement that a person be present is satisfied by videolink attendance.<sup>47</sup> Although the point has not been decided, judicial opinion has questioned the use of such a provision to allow a Magistrate sitting in a court to sentence an offender videolinked from another location.<sup>48</sup>

In NSW, factors relevant to the exercise of the discretion to order a videolink include the availability of the videolink, convenience, fairness, and the person’s willingness to participate by that method.<sup>49</sup> Where its use is opposed, the court must also decide whether the videolink is in the interests of the administration of justice.<sup>50</sup> Fairness and convenience are relevant considerations in the Northern Territory,<sup>51</sup> and the link must also meet certain technical standards.<sup>52</sup> In Victoria, the court must consider whether the proposed videolink meets any prescribed technical standards, and can also impose additional technical

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<sup>44</sup> *Evidence (Audio and Audio Visual Links) Act 1998* (NSW), s 5B(1); *Evidence Act 1958* (Vic), s 42E; *Evidence Act 1929* (SA), s 591Q(1); *Evidence (Audio and Audio Visual Links) Act 1999* (Tas), s 6(1).

<sup>45</sup> *Kerrison v Buxton* [2000] TASSC 135 (26 September 2000) per Slicer J at [20].

<sup>46</sup> *Evidence Act 1977* (QLD), s 39R; *Evidence Act 1939* (NT), s 49E(5).

<sup>47</sup> *Evidence Act 1939* (NT), s 49E(5).

<sup>48</sup> *Tolson v Burgoyne* [2003] NTSC 46 (9 May 2003) per Martin CJ at [12]. However, according to interview data collected in the course of this research, videolink is used on occasion to link a judicial officer to a courtroom where the defendant and his lawyer are physically located, for the purpose of handing down a sentence.

<sup>49</sup> *Evidence (Audio and Audio Visual Links) Act 1998* (NSW), s 5B(2).

<sup>50</sup> *Evidence (Audio and Audio Visual Links) Act 1998* (NSW), s 5B(3).

<sup>51</sup> *Evidence Act 1939* (NT), s 49E(1)-(3).

<sup>52</sup> *Evidence Act 1939* (NT), ss 49F-H: The videolink must be configured in such a way so that all “appropriate” persons at either end of the link can see and hear each other.”

requirements of its own.<sup>53</sup> In Queensland, the making of such an order is subject to any rules of court; however, rules relating to the use of the technology in criminal proceedings do not appear to have imposed any limitations on this power.<sup>54</sup>

### **B. Comparative Analysis of Australian Legislation on Sentencing by Videolink**

A key determinant differentiating Australian State and Territory legislative provisions is the custodial status of the accused. Table 1 compares the current legislation:

**Table 1: Legislative differences between the states and territories in Australia**

SENTENCING BY VIDEOLINK: ACCUSED IN CUSTODY							
	New South Wales	Victoria	Queensland	Western Australia	South Australia	Northern Territory	Tasmania
<b>Legislation</b>	Evidence (Audio and Audio Visual Links) Act 1998 (NSW), s 3	<i>Evidence (Miscellaneous Provisions) Act 1958</i> (VIC) ss 42K(2), M; ss42O, P <i>Evidence Act 1958</i> (VIC).	<i>Penalties and Sentences Act 1992</i> (QLD) s15A; <i>Juvenile Justice Act 1992</i> (QLD) s 159.	<i>Criminal Procedure Act 2004</i> (WA) ss 88, 141; <i>Sentencing Act 1995</i> (WA) s 14A	<i>Evidence Act 1929</i> (SA) s 591Q (3)-(7).	Sentencing Act (NT) s, 117, <i>Evidence Act 1939</i> (NT) s 49E.	Magistrates Court - <i>Justice Rules 2003</i> (Tas) r68; <i>Evidence (Audio and Audio Visual Links) Act 1999</i> (Tas) s6(1)
<b>Default position</b>	Audiovisual link	In person	In person	In person	Audiovisual link	In person	None
<b>Power exercised</b>	(To order appearance in person) - on application of party/court's initiative	Adults: on application of party or, in exceptional circumstances, court's initiative  Children: by consent  Exceptional circumstances: on court's initiative	By consent  Children: must be legally represented	On application of party/court's initiative	Not specified	On application of party/court's initiative	Not specified
<b>Test</b>	In the interests of the administration of justice	Consistent with interests of justice  Reasonably practical		Interests of justice  Reasonable availability	Facilities must be available	Availability of necessary facilities  Convenience  Fairness  Appropriate persons must be able to see	Evidence (Audio and Audio Visual Links) Act 1999  Reasonable availability  Convenience

<sup>53</sup> All "appropriate persons" at either end of the videolink must be able to see and hear each other. The videolink must also comply with any requirements perceived by rules of court in relation to the form of the link, the equipment, or class of equipment used to establish it, the layout of the cameras, the standard or speed of transmission, the quality of the communication, any other matter relating to the link, and any requirements of the presiding judge or magistrate: *Evidence Act 1958* (Vic), s 42G.

<sup>54</sup> *Criminal Practice Rules 1999 (QLD)*, s 53.

						and hear	Fairness
<b>Relevant factors</b>	Circumstances of the case; specified in rules of court	Children: effect on child's ability to comprehend proceeding and communicate with (and give instructions or express wishes to) legal representative.					
<b>SENTENCING BY VIDEO OR AUDIO VISUAL LINK: ACCUSED NOT IN CUSTODY</b>							
<b>Legislation</b>	Evidence (Audio and Audio Visual Links) Act 1998 (NSW), s5B	<i>Evidence Act 1958</i> (Vic) s 42E	<i>Penalties and Sentences Act 1992</i> (QLD) s15A; <i>Juvenile Justice Act 1992</i> (QLD) s 159.	<i>Criminal Procedure Act 2004</i> (WA) ss 88, 141; <i>Sentencing Act 1995</i> (WA) s 14A	<i>Evidence Act 1929</i> (SA) s 591Q (1).	<i>Sentencing Act (NT s, 117, Evidence Act 1939</i> (NT) s 49E.	Magistrates Court - <i>Justice Rules 2003</i> (Tas) r68; <i>Evidence (Audio and Audio Visual Links) Act 1999</i> (Tas) s6(1)
<b>Applies to</b>	Taking evidence Making submissions	Taking evidence Making submissions	Sentencing	Sentencing	Taking evidence Making submissions	Appearances Taking evidence Making submissions	<i>Evidence (Audio and Audio Visual Links) Act 1999</i>  Taking evidence Making submissions
<b>Discretion exercised</b>	On application of a party or of court's own volition.		By consent  Children: must be legally represented	On application of party/court's initiative	Not specified	On application of party/court's initiative	Not specified
Test	Availability Fairness Convenience Person will participate (Where link opposed) Interests of the administration of justice			Interests of justice Reasonable availability	Facilities must be available	Availability of necessary facilities Convenience Fairness	<i>Evidence (Audio and Audio Visual Links) Act 1999</i>  Reasonable availability Convenience Fairness

In sum, as illustrated above, the lack of uniformity in the legislation is striking, and the feature common to all these provisions is the considerable amount of discretion vested in the courts. Little is known about how broad criteria such as convenience, fairness, and the interests of justice are applied in practice in relation to videolinked sentencing. Little is also known about the nature and scope of remote sentencing in Australia and its impact on the sentencing process and participants. In the next section, unique findings from an Australian

empirical study about uses of videoconferencing in the justice system are presented, and a number of themes that emerged pertinent to sentencing by videolink are analysed.



#### ***IV SENTENCING BY VIDEO LINK: AN EMPIRICAL STUDY***

Views about sentencing by videolink in Australia were elicited during interviews conducted in the course of a larger project. *The Gateways to Justice* project aims to improve understanding of environmental and behavioural factors involved in the use of videolinks to allow remote participation in court processes generally.

##### ***Method and Approach***

Stakeholders, primarily from the two States whose justice departments were industry partners in *The Gateways to Justice* project (Victoria and Western Australia), were invited to participate in interviews about videoconferencing. The interview sample was selected to canvass a wide spectrum of views on the use of videolinks in court processes, including use for sentencing. Additional participants were identified by means of a snowball sampling process. Participants were selected for their exposure to, understanding of, and experience with remote court participation in their day-to-day work; qualifying them as “expert interviewees.”<sup>55</sup>

Interviews were conducted with 56 stakeholders, including judicial officers (34%), expert witnesses (23%), remote room support officers (14%),<sup>56</sup> court technology experts

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<sup>55</sup> Meuser M & Nagel U ‘Expert Inneninterviews: vielfach, erprobt, wenig, bedacht. Ein Beitrag zur qualitativen Methodendiskussion’ in D. Garz and K. Kraimer (ed), *Qualitativ-empirische Sozialforschung. Opladen: Westdeutscher Verlag* (1991) 441-68 as discussed in Flick U, *An introduction to qualitative research* (SAGE, London, 2002) pp 89-90. As interviewees were self-selected, they may generally have held strong opinions about videolinks, and perhaps saw this invitation as a good opportunity to register those opinions in a formal setting. A further potential limitation of interview data is their reliance on an interviewee’s memory and conscious awareness of influences. See: Goodman-Delahunty J & Sporer S L, “Unconscious influences in sentencing decisions: a research review of psychological sources of disparity.” (2010) 42(1) *Aust J Forensic Sci* 19-36. Regardless, interviews provided a useful means of ascertaining how individuals feel about, perceive, or react to “a particular environment or situation”: Zeisel J, *Inquiry by design: environment/behavior/neuroscience in architecture, interiors, landscape, and planning*. (New York, W W Norton & Company, 2006) p 227. Collections of interviews remain a particularly rich form of qualitative data in terms of their ability as a set to contain a wide variety of often-conflicting views from multiple perspectives.

<sup>56</sup> This group included support personnel who sit in with an adult witness, or defendant (38%); or, a child witness (63%), hereafter referred to collectively as “remote room support officers”.

(11%), lawyers (7%),<sup>57</sup> architects who specialise in courthouse design (5%), and court administrators (4%).<sup>58</sup>

Interviews lasted 30-90 minutes, and were conducted at a location nominated by the interviewee.<sup>59</sup> The interviews were semi-structured to ensure similar coverage; however, they were often quite “dialogic”<sup>60</sup> as interviewees initiated topic changes and both the researchers’ and interviewees’ positions were adjusted through an “interactive negotiation”<sup>61</sup> to identify the issues. Interviews were conducted by the first two authors between October 2008 and February 2010.<sup>62</sup> The interviews were recorded by portable digital audio recorder, anonymised, and transcribed for analysis.

All interviews were coded for content and common themes. Interview responses pertinent to sentencing are reported below. For this exercise, responses were scanned to elicit data about the way videolinks were being used in the sentencing process, and general attitudes of stakeholders towards its use. They were then analysed in more detail to encode specific advantages and disadvantages that interviewees associated with videolink use. The following discussion attempts to present the full range of stakeholder views, allowing for contradictory voices, opinions and experiences.

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<sup>57</sup> Many judicial officers discussed their experiences using videolinks while they were practicing lawyers or prosecutors.

<sup>58</sup> The interviewee sample consisted of 59% males, 41% females; with representation of Australian states and territories as follows: New South Wales (9%); Victoria (41%); Western Australia (38%); Northern Territory (2%) and (11%) were members of the Australian Federal Police.

<sup>59</sup> The majority (91%) were conducted in-person, with 9% conducted by telephone or Skype.

<sup>60</sup> “Interviews conducted in an interactive, dialogic manner that requires self-disclosure on the part of the researcher encourage reciprocity”: Lather P A, *Getting smart: feminist research and pedagogy with/in the postmodern* (Routledge, New York, 1991) p 60.

<sup>61</sup> Russell G M & Kelly N H, *Research as Interacting Dialogic Processes: Implications for Reflexivity* (Forum Qualitative Sozialforschung / Forum: Qualitative Social Research) <http://www.qualitative-research.net/index.php/fqs/article/view/831/1807> viewed 23 March 2010.

<sup>62</sup> The authors are members of a multidisciplinary research team investigating the use of videoconferencing in Australian courts. Interviews were conducted by Anne Wallace and Emma Rowden. Quotes and references to interviewees were anonymised in compliance with Human Research Ethics Committee requirements.

## V RESULTS OF THE STAKEHOLDER INTERVIEWS

Results of the stakeholder interviews are presented in three sections. Firstly, we present findings about the nature and scope of uses of videolinked sentencing in Australia, with illustrative examples. Next, comments in support of videolinked sentencing and its perceived benefits are classified and reported. Finally, the comments representative of the two major considerations in opposition to sentencing by videolink are documented, namely pragmatic issues and the capacity of the technology to achieve sentencing goals and objectives.

### *A. The Nature and Scope of Uses of Videolink Technology in Sentencing*

Overall, the interview responses revealed that videoconferencing was used to sentence defendants in a variety of different ways. For example, when a defendant in custody was sentenced by videolink, most typically the defendant was the “remote participant” linked to a physical courtroom. However, some judicial officers made use of the technology to appear remotely and hand down a sentence to a defendant who was physically present in a courtroom at another location.

On occasion, videolink was used to join a defendant’s legal representative to the sentencing hearing. For example, a three-way link could connect a defendant in prison to the court, as well as link in the defendant’s lawyer from their office.<sup>63</sup> In one jurisdiction, drug and alcohol, psychiatric and probation assessments relevant to the sentencing process were frequently conducted by videolink to prison and other facilities.<sup>64</sup> Reported cases also indicated instances where videolink was used at sentencing hearings to admit expert

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<sup>63</sup> This was generally for the convenience of the lawyer and to save travel time and costs. Statistics provided by one prison in Victoria for a 12-month period indicated that one third of the time, prison videolink facilities were used to connect to legal offices.

<sup>64</sup> Statistics provided by one prison in Victoria for a 12-month period indicated that such links occurred on an average of nearly three times per month.

evidence, such as testimony from a psychiatrist or psychologist.<sup>65</sup> At times, videoconferencing technology was applied to provide greater public access to the sentencing process, for example, by linking a sentencing hearing in a metropolitan court to a court in another location where the victim or family members were situated.

Magistrates, rather than judges, were much more likely to sentence by videolink. According to our sample, sentencing by videolink occurred more frequently in the case of summary (driving and other motor vehicle offences, less serious assaults, minor thefts), than in more serious, or indictable, offences. However, some judicial officers sentenced via videolink for more serious offences where a defendant, usually in custody, requested it, or where it was necessary to protect the defendant. Nonetheless, some judicial officers were reluctant to sentence for serious matters by videolink under any circumstances, because of the severity of the punishment imposed, as reflected in the following comment:

I think it's more appropriate if you're sentencing on a serious matter, and someone's going to get a period of imprisonment, that they appear in court in person (Judicial Officer, WA).  
However, another judicial officer indicated that while they respected some colleagues' preference to "look the accused in the eyes" when sentencing, "where it's convenient to do it otherwise, I say I don't hesitate to jump in and do it otherwise" (Judicial Officer, WA).

Interviewees generally perceived videolinks as a useful mechanism to improve efficiency in court proceedings—particularly where distance was an issue. In Western Australia, interviewees made the point that the vast distances and very remote regions covered by the courts were major factors driving its use. The Chief Justice of Western Australia has publicly acknowledged that videolinks have become an indispensable part of the way the justice

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<sup>65</sup> See, for example: *R v Burke* [2000] NSWSC 356 at [10]; *Director General NSW Department of Agriculture v Temmingh* [2003] NSWSC 247 at [28].

system operates in that state, including its use for sentencing.<sup>66</sup> A Northern Territory prosecutor in our study confirmed a similar position in that jurisdiction. In Victoria, although distances are not as great, the desire to avoid additional travel was also a consideration.

While distance and travel were reported as important factors in support of the use of videolinked sentencing, the view that a sentencing proceeding was, to some extent, a more procedural or formal type of matter in which in-person appearances were not strictly necessary, appeared to correlate most strongly with examples given of videolinked sentences for summary offences.

However, other judicial officers emphasized the need to engage with the defendant and the broader public during the sentencing process:

[I]f you want someone to leave the Court with a sense of why they got the sentence they got, what's expected of them and to understand it, you need to have communicated, not just spoken at someone. ... So it's an engagement. It's an exchange of views and ideas and information ultimately of course with the Judge passing the sentence with everyone understanding that that's what it's about. (Judicial Officer, WA).

So, while the impetus to use videolink to sentence may stem from the desire to save time and achieve efficiency, for many judicial officers the sentencing procedure was more than a perfunctory formality or administrative necessity. Both the duration of the prison sentence imposed and the type of defendant were considerations that influenced the perceived appropriateness of videolink to sentence. In the following sections, the benefits of videolinked sentencing identified by the stakeholders are summarized, as are reservations expressed about this innovation in court.

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<sup>66</sup> Chief Justice Wayne Martin, 'Sentencing by video link: the Western Australian experience' (Paper presented at the Judicial College of Australia and ANU Sentencing Conference, Canberra, 6-7 February 2010).

## ***B. Considerations in Support of Sentencing by Videolink***

Unlike the United Kingdom, sentencing by videolink has not been the subject of a specific government initiative in Australia. Nonetheless, our findings reflected support for its use, on various grounds. Stakeholders identified several benefits of videolinked sentencing for the court and court personnel, for defendants, and for members of the general public.

### ***1 Increased Efficiency for Courts and Court Personnel***

Clear consensus emerged across the interviews that sentencing by videolink was primarily regarded as a way to conserve court resources (generally judicial time), and to minimise the burden and risks of travel. Most commonly, this rationale was applied where a prisoner, already in custody, was facing sentence for another offence that was unlikely to result in a change of his or her custodial status. In those circumstances, sentencing by videolink to the prison was viewed as a more efficient, cost-effective and less time-consuming operation than in-person proceedings.

Savings in travel and associated time were also a consideration for judicial officers. For example, magistrates who had heard a case on circuit and reserved their decision fairly routinely used a videolink to the court where the case had been heard to hand down their decision from their metropolitan base court, rather than travel back to the country location. In these situations, the magistrates were linked to the courtroom in which the other court participants (defendant, his/her lawyer, prosecution, victim, supporting family members, etc.) were physically assembled.

### ***2 Minimizing Negative Disruption to Prisoners***

Sentencing of offenders via a videolink connection to prisons was routinely justified by reference to the alleged reluctance of prisoners to attend court in person because of

disadvantages incurred as a result of disruption to their prison routine, including loss of privileges. Eliminating waiting time in holding cells was cited as a benefit to defendants by reducing tension and boredom.<sup>67</sup> When the release of a defendant was the outcome of the sentencing order, arrangements to release the defendant from prison were expedited following a videolinked sentencing to a prison.<sup>68</sup>

### ***3 Improved Public Access to Sentencing Proceedings***

The use of videolinks to enable members of the affected community or the public to view a sentencing hearing was cited as a means to improve public access to the courts. One interviewee described the effect of using a videolink for a victim's family as follows:

[I]t is really valuable for people or rural clients who are often disenfranchised in that ... often sentences are brought back to Melbourne ... the family have been very grateful to have had that opportunity because the family resided four hours away from where the sentence was being held, that they felt very much part of the process. It was something, it was a really positive experience for them (Remote Room Support Officer, VIC).

### ***4 Minimizing Community Conflict and Increased Public Safety***

The potential to use remote sentencing to minimise the risk of conflict between different community groups with an interest in the sentencing outcome was also cited as a benefit of this process. One judicial officer, referred to a colleague's case that involved significant tensions between regional Aboriginal populations:

And when he came to sentence, he did that in Perth, I understand ... videolinks simultaneously to both Broome and Derby ... so that the two camps could again see what the outcome was ... without coming into a situation of conflict (Judicial Officer, WA).

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<sup>67</sup> This view was expressed by nine judicial officers, two court administrators and one remote room court officer.

Using videoconference was perceived as a way of reducing security and other risks of associated with inmate movement to and from correction facilities.<sup>69</sup>

### *C. Considerations in Opposition to Sentencing by Videolink*

Two primary themes emerged in responses of stakeholders in opposition to sentencing by videolink. Firstly, several interviewees mentioned practical difficulties with the quality and configuration of the technology. Secondly, fundamental doubts were expressed about the efficacy of communication technologies to accomplish particular aspects of sentencing procedure.

#### **1 Technology: Quality, Availability and Training**

The poor quality and unpredictable availability of the technology emerged as a key concern among stakeholders. One judicial officer commented:

I think the quality is very poor, very disparate—so there’s no consistency there and the technology varies from one place to another (Judicial Officer, WA).

Even in States where distances and the strain on public resources were less pressing concerns, the demand for videolinks outstripped their availability.<sup>70</sup> The overwhelming message was “we need more facilities,” both in terms of codecs<sup>71</sup> and videolink suites.

Judges’ associates or other judicial support staff often have to set up the videolink connection and/or oversee videolinks. The adequacy of training for these court staff and the impact of these additional duties on their workload were raised by stakeholders as practical issues in implementing this technology. Court technology managers viewed a high turnover

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<sup>69</sup> This view was expressed by two judicial officers and two court administrators.

<sup>70</sup> This view was expressed by a court administrator, a remote room support officer and an expert witness.

<sup>71</sup> “Codec” stands for coder-decoder, and refers to technological equipment that enables both audio and visual information, or data, to be transferred from one location to another. The codec enables input from a camera and microphone at one location to be sent to a screen and speaker in another location.



among judicial support staff as a factor that exacerbated this problem. A lack of skills and confidence may explain complaints from interviewees about the reluctance of court staff to be proactive in using the technology, for example, to alter a set-up to correct minor technical problems. One interviewee commented:

[I]t's a little bit frustrating that the operators tend to think, as long as I've got the call up and everyone can hear each other, it's all good and ... you can understand that ... there's so much functionality that's not used (Court Technology Officer, VIC).

Another echoed these views, stating:

Court staff don't know that they really are there with the controls (Judicial Officer, WA).

Some judicial officers identified their own need for training. One suggested that while familiarity with the technology was important, and generally achieved on the job, it might be useful for judicial officers to receive some training as to the operation and potential capacity of the technology in facilitating alternative arrangements for particular cases. Other judicial officers felt more able to take charge of the technology and, with the support from court staff, arrange configurations to improve interactions between participants. One judicial officer described doing this in a videolinked hearing involving a child:

You'd start a conversation, you'd say ... "Right, now you can see me, I'm the Magistrate, my name's ——" etcetera. And then you'd say "Now, I'm just going to get the video to pan around the courtroom, we're going to stop at people and you'll be able to see who's here and you'll be able to see your mum up the back and we'll just stop on her and she can wave to you or whatever else. And you can see that your mum's here in Court". And if she couldn't be seen on the video, you'd move her forward and ... get the mother sitting behind the lawyer, too, so that while you pan onto the mother, and the mother can be seen, or mother and father, uncle, aunty, granny or whatever. Get them to sit behind the lawyer so it has the lawyers on the screen too (Judicial Officer, WA).

## ***2 Potential for Errors of Identity***

A few interviewees raised the potential for mistaken identity to occur when defendants were dealt with via a prison videolink. One judicial officer commented:

For instance when we go to a prison to do a link up I might have four people at one prison ... You've got to make sure you've got the right person and you've got to be really careful because you know people will answer to any name sometimes, particularly Aboriginal people ... You'll sit there and go "Oh you know is your name Jack Smith". They'll go "Oh yeah" ... later ... you realise you were talking to the wrong person (Judicial Officer, WA).

### **3 Loss of Impact and/or Understanding**

Some interviewees thought that a sentence had less impact on defendants when administered remotely. Others expressed concern that a loss of non-verbal cues on a videolink could diminish opportunities to clarify a defendant's understanding of the sentence, particularly in the case of accused who might already be disadvantaged in that respect. One judicial officer explained:

It's a real concern in my view to sentence over a video because you've obviously just got someone on the other end who's going to be nodding and appear to be compliant and understanding ... But it's very difficult to ensure that the person has understood what's going on and you haven't got the person there to at least feel some vibe ... It's difficult enough when you're dealing with people who come from an Aboriginal background to ensure that they are understanding when you're in Court ... let alone if they are somewhere else (Judicial Officer, WA).

### **4 Effect on Lawyers' Access to Clients**

For defendants who are sentenced by videolink from a correctional facility, the opportunity to communicate with their lawyer, before or after the sentencing process can be very important, both to provide instructions and to clarify the nature of the sentence and its implications. Most, but not all, enabling legislation provide that a court must supply facilities to ensure that there is a capacity for confidential communications between lawyer and client.<sup>72</sup>

Our findings revealed that where defendants are sentenced via videolink from prison, their lawyers are often at the court or another location, such as a videoconferencing facility in their office or firm. Prison rules applicable to initiation of telephone contact generally entail

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<sup>72</sup> Evidence (Audio and Audio Visual Links) Act 1998 (NSW) s5BC; *Evidence (Miscellaneous Provisions) Act 1958* (Vic), s 42S; *Evidence Act 1929* (SA), s59IR.

a delay in a defendant's access to his or her lawyer after sentence is handed down. Most typically, the prisoner must phone the lawyer's office to arrange a call from the lawyer to client at another time when they can use an interview room to have that conversation in private. As a consequence, in one correctional facility, the non-legally-trained prison officer assigned to sit in the remote videolink room with the defendant, was frequently the first to explain to the defendant what had transpired in court and what it meant:

One of us sits in there for all ... the criminal matters—because it affects their status—we sit in on. We take notes ... Remand dates, stuff like that we, we record for our own benefit. Because prisoners do ask — they don't always pay much attention to what's going on in their matter. So we always make sure that we have a remand date or an adjournment date, that we can say "It's going out to this date. Do you want me to write it down?" or "This happened — " or a lot of them might not understand the legalese (Remote Room Support Officer, VIC).

This is an onerous responsibility for a prison employee who is not necessarily prepared or trained for such an important task.

### ***5 Increased Severity of the Sentence***

The contention that sentencing by videolink might result in a harsher penalty for the defendant emerged in a joint interview with two lawyers who stated:

It's easier for a Magistrate to switch off if they can't see you in person ... When someone's in front of you, and they're a real person, it's a lot harder to send them to gaol, I think (Lawyer, WA).

### ***6 Capacity to Involve Others***

Some stakeholders had concerns about the impact of the technology on a judicial officer's ability to engage with others—the families of the victim or defendant and the broader community—in the sentencing process. Current configurations of videolink facilities do not allow interactions beyond conversations between the judge, those at the bar table and those in the remote space. Thus, when the judge or magistrate is the one appearing remotely, they

then cannot readily converse with other persons in the courtroom. As one judicial officer explained:

[Y]ou want not just that individual that you're sentencing but family members present, or carers ... *en masse* on a screen as well ... Very important in sentencing children is knowing the family—immediate, extended and just carers. ... it's very important to get that sense of support—whether it exists or not, and who actually makes up that group (Judicial Officer, WA).

Another judicial officer was concerned about the capacity to achieve a broader involvement with the community as such engagement pertained to the role of the judge as dispensing justice in the context of commonly-held values. They commented that sentencing was really about:

... saying to people there are limits, there are community limits ... there are bounds beyond which you really should not go ... and you can say that to a person in a small room who's looking into a video screen and have potentially some impact I suppose. But if you've got somebody sitting in the Court surrounded by other people where you're saying that, then it does appear to be more of a reflection of what people in a community think about something (Judicial Officer, WA).

### ***7 Disinhibited Behaviour in the Remote Environment***

The potential for remote participants, including defendants, to be less inhibited in their behaviour was mentioned frequently by stakeholders.<sup>73</sup> Several interviewees noted that defendants on videolink were more likely to behave inappropriately than those in court. One lawyer reported an instance where the sight of the Magistrate on the TV screen evoked laughter from the defendant, and described other experiences of remote participants “joking around” and appearing to not “be taking it seriously”, or giving inappropriate responses:

... there's a bit of a tendency to say “see you later” like you're hanging up on a phone call” (Lawyer, WA).

This tendency was ascribed by some to the apparent informality of the remote experience:

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<sup>73</sup> These comments are interesting in light of guidance about “court etiquette” on the *Northern Territory Magistrates Court* website that makes explicit that the same standards of behaviour apply to persons who are present at the remote site as if they were present at the Court building: Northern Territory Magistrates Court, *Understanding Court Orders* [http://www.nt.gov.au/justice/ntmc/court\\_etiquette.shtml](http://www.nt.gov.au/justice/ntmc/court_etiquette.shtml) viewed 25 May 2010.

I guess that's perhaps an issue ... sitting in a remote—being away from the Court—it sort of, it does reduce the formality of the process (Lawyer, WA).

One judicial officer spoke of the need to remind remote participants of their presence in court:

... people need to understand whether they're actually on the video, that they know that their image and whatever they do is actually being seen by people and they don't think, oh well because someone else is talking the video's not on me anymore, you know so, I can do what I otherwise would do if I think I'm in private ... they think they're not actually connected with the courtroom (Judicial Officer, WA).

Stakeholders raised concerns that the actions of a disinhibited defendant could have an unintentional and adverse impact on the outcome of their case. A judicial officer commented that a disinhibited remote defendant was more likely to respond to a severe sentence with violence, stating: "it seems they feel like there is a greater liberty to go ballistic on the other end of a video camera than if they're in Court" (Judicial Officer, WA). However, this view was controverted by a prison remote room support officer who oversees videolinks, who reported that, in their experience, defendants:

... respect what we do, and they need it, so therefore they tend to not, to create any more dramas in here than they need to, or than they would or should (Remote Room Support Officer, VIC).

This view was supported by a judicial officer who commented that:

I think maybe because they see you, and they see you robed, and they see you're in an obvious Courtroom setting ... they tend to behave as if they were present in the Courtroom. And I've never had any difficulty in dealing with people. I suppose if there was going to be a person who was going to be fractious, or you had any sort of advance warning, you might be careful. But no, generally speaking, no. No problem whatsoever. (Judicial Officer, WA).

## **VI DISCUSSION OF INTERVIEW FINDINGS**

Issues raised by stakeholders and suggestions as to how they might be addressed are discussed below with reference to broader theories and concepts related to remote participation in court processes.

### ***A. Overview***

No stakeholder expressed the view that sentencing by videolink was never appropriate and should be prohibited. Equally, none were prepared to provide an unqualified endorsement of this practice. The general consensus was that sentences for major offences were best administered in-person. Interviewees expressed less reluctance to use videolink to sentence in cases involving summary offences. Magistrates, who deal primarily with less severe criminal offences, had fewer concerns about sentencing by videolink than did judges who typically deal with more severe criminal offences and penalties. For some interviewees, sentencing to a term of imprisonment by videolink was not acceptable under any circumstances, notwithstanding improvements that might be made—technological or otherwise—to the nature of the interaction achievable via videolink. Others who did not have an absolute view nonetheless preferred to administer sentences of this nature in person rather than by videolink. One saw no difficulty with it where it was convenient.

Views on the uses of videolink to sentence were often correlated with opinions about the level of interpersonal interaction and community engagement in sentencing. In sentencing for more serious offences, concerns were expressed that (a) the defendant needed to somehow be confronted in the courtroom; and (b) the principle of open justice requires that the public be able to witness this process. Most interviewees doubted that these objectives could be achieved as effectively when the sentence was delivered remotely. The task of balancing these considerations against those of efficiency and access was one that stakeholders recommended be determined on a case-by-case basis.

### ***B. Major Themes that Emerged in the Stakeholder Interviews***

While the stakeholder sample in this study was not representative of all Australian States and Territories, interviewees provided detailed and thoughtful responses on a range of particular issues and concerns. These are summarised below.

### **1 *The Physical Sentencing Environment***

Several concerns raised about the use of videolinks to sentence pertained to the potential impact of the remote environment upon the behaviour of the remote participant. These included concerns about disinhibited behaviour by remote defendants, fears that judicial officers might be more disposed to impose harsher sentences and a perception that a sentence delivered in this fashion had less impact. Essentially, these concerns centered on differences between the physical environment of the courtroom and the physical environment provided for the remote participant.

People adjust their behaviour to be appropriate to different social settings. The physical environment can be an important indicator or cue as to the type of “behaviour setting” one is in, and the types of behaviour that are socially acceptable within it.<sup>74</sup> The ability to maintain front and back regions, that is, to control the transition between one’s onstage and backstage behaviours, is critical to a person’s “impression management.”<sup>75</sup> Much like a radio station with its “on air” sign, the difference between the stage (on air) and backstage (off air) of the remote videolink space is the flick of a switch, or the answering of a phone call. The transition between backstage and frontstage for the remote participant is transformed from a physical process to a mental one.

Responses from interviewees suggested that the defendant who sits in the environment of the typical remote room may well have more difficulty in maintaining a sense

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<sup>74</sup> Goffman E, *Presentation of Self in Everyday Life* (Anchor Books, New York, 1959) pp 107-140. ‘Behaviour settings’ refers to the ways in which certain social settings are recognizable and encourage particular behaviours, see Barker R, *Ecological Psychology: Concepts and Methods for Studying the Environment of Human Behavior* (9th ed, Stanford, California, 1968).

<sup>75</sup> Goffman E, *Presentation of Self in Everyday Life* (Anchor Books, New York, 1959) pp 107-140.

that they are in a court space, or to even comprehend the “behaviour setting” in which he or she is participating.<sup>76</sup> Regardless as to whether a defendant wishes to behave appropriately during his or her court appearance, the implication is that the ability to understand and sense what appropriate behaviour might be is diminished by current features of the remote space and the videolink technology.

A defendant who appears remotely is effectively removed from the public and formal court setting. Behavioural cues normally transmitted by the courtroom environment, and the people within it, are muddled by the frame of the remote space and the technology of the videolink.<sup>77</sup> Even the most humbly furnished Magistrates’ courts can have, by way of structural features and finishes, important environmental cues that convey a sense of respect for the participant and indicate the seriousness of the proceedings. By contrast, descriptors readily applicable to most remote spaces are: anonymous, cold, bland, windowless and small.<sup>78</sup> In one study where young witnesses were asked about their experiences in remote spaces, the phrase most often repeated was: “The TV link room was like a cupboard.”<sup>79</sup> The room used by defendants pictured in images released by the UK Virtual Court Pilot fits this description<sup>80</sup> as do many of the formal and informal remote participation sites both in Australia and overseas inspected in the course of this research.<sup>81</sup> A significant disjuncture

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<sup>76</sup> Barker R, *Ecological Psychology: Concepts and Methods for Studying the Environment of Human Behavior* (9th ed, Stanford, California, 1968).

<sup>77</sup> Arguably, within each courtroom exists a dynamic and complex web of spatial hierarchies, relationships, echoes of rituals and structural features that have been established and refined over a long period of time to ensure the setting is appropriate to the gravity of the event. See: Mulcahy L, *Legal Architecture: Justice, Due Process and the Place of Law* (Routledge, London, forthcoming)

<sup>78</sup> Rowden E, Wallace A, Hanson M & Goodman-Delahunty J, ‘Gateways to Justice: improving the experience of remote witnesses in court processes’ (Paper presented at the Third Justice Environments Conference, Sydney, 21 May 2010).

<sup>79</sup> Plotnikoff J & Woolfson R, *In Their Own Words: The experiences of 50 young witnesses in criminal proceedings. Policy Practice Research Series*. (National Society for the Prevention of Cruelty to Children, London, 2004) 38.

<sup>80</sup> Kent Criminal Justice Board, *An Introduction to Virtual Courts* (Kent Criminal Justice Board, video downloaded from website at <http://lcjb.cjsonline.gov.uk/Kent/2867.html> viewed 7 May 2010).

<sup>81</sup> A total of 59 site visits were undertaken in the course of this research (2008-2010) to assess 40 courthouses and 19 formal and informal remote participation sites in Australia and overseas.



was identified between the spatial and tactile experience of most courtrooms and most remote spaces.<sup>82</sup>

A key issue is the way in which the remote space is—or ought to be—conceived. Although legally “an extension of the courtroom”<sup>83</sup>, in practice remote spaces often do not appear as such. There was a tension between the way in which the remote space was being described—as embodied in the legislation<sup>84</sup> and the rhetoric of interviewees—and considerations governing their design and use. In some instances, remote rooms were being used for other purposes and more casual interactions, and less frequently were linked to the more formal courtroom setting. Concerns expressed about the loss of impact and inappropriate behaviour by defendants must be interpreted in light of this fact.

## ***2 Impact of Technology Configuration on Sentencing Participants***

Responses from stakeholders suggested that the placement and operation of screens, cameras and microphones had a major impact on the success of the videolink process. The focus of selecting and installing technology in many courts has been its adequacy for prison videolinks, where the defendant appears for formal bail or remand hearings. Coupled with usual budgetary constraints, the emphasis was usually on obtaining a robust solution; installing equipment that was relatively easy to operate, and providing a reasonably-standard interface in courtrooms across the jurisdiction.<sup>85</sup>

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<sup>82</sup> Rowden E, Wallace A, Hanson M & Goodman-Delahunty J, ‘Gateways to Justice: improving the experience of remote witnesses in court processes’ (Paper presented at the Third Justice Environments Conference, Sydney, 21 May 2010).

<sup>83</sup> For example: Northern Territory Magistrates Court, *Understanding Court Orders*, n 73.

<sup>84</sup> *Evidence (Audio and Audio Visual Links) Act 1998* (NSW) s14(3); *Evidence (Miscellaneous Provisions) Act 1958* (VIC) s 42W; *Evidence Act 1997* (QLD) ss 39I(3), 39U; *District Court of Queensland Act 1967* (QLD) s 110D; *Justices Act 1886* (QLD) 178D; *Supreme Court of Queensland Act 1991* (QLD) s 116D; *Evidence Act 1906* (WA) ss 121(3), 124(3); *Evidence (Audio and Audio Visual Links) Act 1999* (Tas) s 13(3); *Evidence (Miscellaneous Provisions) Act 1991* (ACT) s 24(3); *Evidence Act 1939* (NT) s 49W(3).

<sup>85</sup> These were the opinions expressed by many of the court technology experts.

These considerations generally dictate a configuration for the technology that limits the available views. For example, in Victoria the standard configuration for prison links usually restricts the view provided to the remote defendant to a view of the bar table (prosecutor and defence counsel), and a small picture-in-picture view of the judge. While these standard configurations may be easier to operate, they fail to provide equivalence to other aspects of the physical courtroom experience that may have significance for the defendant.

Defendants who are physically present in a courtroom for a sentencing hearing experience the presence of the lawyers and court staff, the entry of the judge and their acknowledgement by those in attendance in court. They can observe the way the judge and lawyers interact, their body language, and the nature and degree of power exercised by different courtroom participants. They can possibly catch sight of a family member, or a friend. They may see the victim, the victim's family and supporters, in the body of the court, together with members of the media and other members of the public who may be present.

With current videolink configurations, many of these incidental interactions are less immediate, or lost. A defendant who is not in the physical presence of the court, and does not have the benefits of those observations, may feel freer to "arc up" knowing that the immediate effect of a judicial admonition will be mitigated by their remoteness from the court. Alternatively, the defendant may feel less immediately affected by a sentence imposed from that distant place, which may feel less "real."

The judiciary too, may be impacted by this restricted view. A judge appearing remotely to sentence a defendant in a physical courtroom may be less sensitive to the presence of the victim, or defendant's family members, in that courtroom if they are out of view.

These concerns illustrate that when the highly-structured court ritual operates in two discrete locations: the courtroom in the courthouse, and the remote space—whether a prison video room, or another courtroom—both central and incidental parts of the process are fundamentally altered. While the key parts of the sentencing process are more or less maintained over the videolink, some of the more incidental human interactions are not always preserved.

### ***3 Exercising Judicial Discretion to Adapt the Technology to Achieve Sentencing Goals***

Judicial officers considering whether or not to use a videolink to sentence (and for other purposes) have to decide, variously, what is “convenient”, “fair”, required by or consistent with the “interests of justice” or the “interests of the administration of justice”, and when technology is “reasonably available.” Many also have the power to impose conditions on the use of the link, about technical matters such as:

- the form of audio visual or audio link;
- the equipment, or class of equipment, used to establish the link;
- the layout of cameras;
- the standard, or speed, of transmission;
- the quality of communication; and
- any other matter relating to the link.<sup>86</sup>

While some judges are clearly exercising this right to address current deficiencies in the set-up of the technology—either in makeshift terms by moving people around within the courtroom, or by pro-actively altering the configuration prior to proceedings commencing—others appear less empowered to do so. Interviews revealed that several factors contributed to

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<sup>86</sup> *Children, Youth and Families Act 2005* (Vic), s 589; *County Court Act 1958* (Vic), s 78.1(hf); *Evidence Act 1939* (NT), s 49E; *Evidence Act 1958* (Vic), s 42E; *Evidence (Audio and Audio Visual Links) Act 1999* (Tas), s 6(1).

this: a lack of information for judicial officers, having to learn on the job, a lack of adequate training and a high-turnover of judicial staff who oversee and operate the technology.

#### ***4 Acknowledging the Technology with Appropriate Protocols***

Reluctance to adjust communication technologies to fit the particular legal circumstances reflects an underlying approach to courtroom technology that ignores the ways in which the technology alters the courtroom experience. Often, once the link has been activated, there is an assumption that the hearing should simply proceed as normal in accordance with existing rituals and protocols in the physical courtroom space.

Our research suggests that many of the concerns raised by stakeholders could be addressed, or at least substantially mitigated, by re-thinking the rituals and spaces that constitute the courtroom. Rather than ignore the technology, or assume that its presence makes no difference to the fundamental nature of the proceedings, we advocate that courts acknowledge its existence, evaluate its effects, and then consider how those rituals and spaces can be re-configured in ways that enable them to achieve their objectives in a videolinked environment. For instance, a few moments at the commencement of the videolink spent orienting a remote participant to the courtroom space, and to ensure that they have an adequate view of all relevant parties, might go some way to improving their sense of engagement with the courtroom.

An explicit acknowledgement of changes wrought by videolinked communication in the court process, also requires consideration of how the remote participants will gain their knowledge of what will happen, and what is expected of them in the videolink proceeding. For example, without the visual cues available in the physical courtroom, defendants may not know exactly when their matter is before the court, when they are “live” on the screen; and, as noted, may be at risk of behaving inappropriately, or not attending to what is occurring.

### ***5 Providing Public Access and Participation***

The involvement of members of the general public—victims, family, community, media—is a basic assumption of the sentencing process. Many of the rationales for sentencing—general deterrence, retribution, rehabilitation—are directed to community members who were affected by the crime, both in an immediate and a more general sense.

Our findings demonstrate that courts are experimenting with configurations of videolink technology to make it possible to engage with those individuals. Examples include linking a victim and their family in one location, to a sentencing hearing in another; or, enabling an affected community to witness a sentencing hearing conducted elsewhere; or, linking media representatives to a crowded courtroom from another more convenient location.

## **VII IMPLICATIONS FOR PRACTICE AND POLICY**

The following recommendations from our research findings are by no means exhaustive, but offer some practical suggestions to improve the remote sentencing experience. These recommendations address both orientation for the remote participant, and the comfort, formality and configuration of the physical environment of the remote videolink facility.

### ***A. Standardized Preliminary Protocols***

The use of introductory protocols, such as providing a panoramic view of the courtroom, together with a brief identification of courtroom participants and their roles, will help orient the defendant to the formality of the proceeding. While many judicial officers do this already, to varying degrees, the stakeholder interviews indicated that these practices were not currently a consistent and uniform part of videolink court protocol and procedure.

In addition, clear signals to indicate that appearance on videolink is commencing and concluding will provide the remote defendant the virtual equivalent of the opportunity that defendants appearing in-person have to enter the courtroom, orient themselves to their surroundings and prepare to be “onstage” for their matter.

Clear operational protocols are needed to ensure effective liaison between the remote site and the court, to avoid, for example, the mis-identification of defendants, and to ensure that relevant sentencing materials, such as probation reports, are readily available at either end of the videolink as required.

### ***B. The Remote Sentencing Environment***

The significant contribution of design to achieve effective remote participation has been underestimated. A sense of dignity, of solemnity, and of being taken seriously, is the product of the artfully-crafted courtroom space, supporting a carefully-performed ritual. When this space is split across multiple sites, more careful attention to the design of remote spaces is warranted. For legal proceedings, the spaces should be conceived as an extension of the courtroom, and convey a sense of respect for the participant. Any number of design techniques can achieve this, such as high-quality materials, features that promote physical and psychological well-being, generous room proportions, technology that is carefully integrated within the joinery or built fabric of the space, and careful detailing. Where facilities are used for more than one purpose (such as prison links connecting to both courtrooms and solicitors’ offices), the remote space should be designed to transform easily to reflect the behavioural cues of the space to which it is currently linked.

### ***C. Technology***

Improved quality and updated technology—such as more screens, larger displays, faster bandwidth connections that provide higher visual resolution and enhanced audio

quality—can address many concerns raised by stakeholders in regard to the reliability of videolinks and their suitability. The ability to improve transmission of nonverbal cues may overcome some concerns about lack of impact, isolation and disconnectedness. However, an exclusive focus on technological enhancements runs the risk of overlooking the significance of the configuration of the technology on its effectiveness for sentencing.

Examples of adaptations to the configuration of the remote space that will remedy many of the complaints registered by stakeholders include (a) more attention to camera and screen placement to enhance the perception of eye-contact between participants; (b) views that enable better registration of nonverbal cues; (c) further experimentation with multiple audio-visual links that attempt to recapture both overt and incidental social occurrences of the traditional courtroom and courthouse. Combined, these changes might go some way to adequately replicate in-person verbal and nonverbal communication.

#### ***D. Support for the Remote Defendant***

Explicit acknowledgment of the difference between in-person and videolinked sentencing requires overcoming the difficulties of providing legal advice and support that is equivalent to that available to a defendant whose lawyer is physically present with them in court. Just as the defendant requires better orientation to the proceedings at the commencement of the videolink, attention to the needs of the defendant at the conclusion of the sentencing procedure is required. Acceptance of the role of remote room support officers in prisons who provide immediate support—and the formalisation of operational protocols to regulate that role—may facilitate a solution to improve the level of liaison between defendants and their lawyers.

### ***E. Training and Empowerment of Court Staff***

Even where existing technology is capable of more flexible operation, court staff, or remote room support staff, often lack the capacity or the confidence to alter the set-up when requested, or to correct a faulty set-up. Changes might be as simple as using wider or narrower screen shots, changing camera angles, providing different views, or organising multi-party links. Training programs should ensure that judicial officers and their support staff are familiar with commonly-accepted standards and protocols, and understand the potential and capabilities of the technology in their courtrooms so that they are comfortable with the technology they operate, and are empowered to adapt it as required.

### ***F. Inclusion of Members of the Community and the General Public***

Our research indicated that the experience of courtroom rituals and processes in a sentencing hearing should not be designed exclusively for the defendant, the judicial officer and the lawyers involved; sentencing is not a private process. Careful thought needs to be given to the needs of various categories of public participants—such as family members and friends of the defendant, the victim, victim’s family members and friends, the general public and the media.

Court planners should pay regard to the development of newer forms of therapeutic and problem solving courts and indigenous courts that place a strong emphasis on the involvement of the community—family, elders or respected persons—in the sentencing process. How can these participants be accommodated in the remote sentencing process? How can the use of videolinks best be integrated into the practice of drug courts or community courts, where a number of agencies and individuals might be involved in crafting a solution for a particular offender and monitoring its progress?



## VIII CONCLUSIONS

In considering the issues raised by stakeholders about sentencing via videolink, it is important to bear in mind that the introduction of audiovisual technology in court represents the second major technological shift which the law has had to accommodate—the first being that from oral to written modes of communication. The loss of context of the “here and now” has been a progression in the evolution of human communication. With the advent of written communications, people could interact unconstrained by time and place.<sup>87</sup> Writing liberated the judiciary and legal counsel to enhance communication, by making refinements to their submissions and judgments. Far more legal work now occurs outside of the courtroom than in the hearings, including preparation by the judge or magistrate of the decision on sentencing that is ultimately presented to the offender, work that was previously not possible in-person in court or from the bench. The current technological shift to digital forms of communication brings about a similar shift, in that it liberates us from the restraints of travel, time-zones and remote locations.

Videoconferencing is an increasingly common method of communication, whether via Skype or more sophisticated technology.<sup>88</sup> Courts are dealing with lawyers, witnesses and defendants born after 1980 who are part of the “net generation.” These individuals have been exposed to more types of media, express more comfort with media-generated information and multi-tasking, and expect courts to offer high-quality technological services.<sup>89</sup> Our institutions and organizations, including courts, are being restructured by digitally-mediated

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<sup>87</sup> Haldar P, “Return of the Evidencer’s Eye: Rhetoric and the visual technologies of proof” (1999) 8(1) GLR 86-101.

<sup>88</sup> Rideout V.J, Foehr U.G, & Roberts D.F, *Generation M2: Media in the Lives of 8- to 18-Year-Olds* (Henry J. Kaiser Family Foundation) <http://www.kff.org/entmedia/8010.cfm> viewed 10 June 2010; PriMetrics Inc, *Telegeography Report 2009* (2009) Teleography Research: A Division of PriMetrics [www.teleography.com](http://www.teleography.com) viewed 10 June 2010.

<sup>89</sup> Carrier L M, Cheever N, Rosen L D, Benitez S & Chang J, “Multitasking across generations: Multitasking choices and difficulty ratings in three generations of Americans” (2009) 25 (2) *Computers in Human Behaviour* 483-489.

communications and the expectations of this generation. It is timely for this shift to be explicitly acknowledged in legal settings, both in sentencing and other judicial processes. That acknowledgment will facilitate a more critical examination of the implications of these technologies. Careful attention to both the technological environment (quality, set-up and operation) and to the built environment in which it operates might ameliorate many of the preliminary expressed concerns about videolinked sentencing in Australia. Information, training, and explicit attention to operational protocols that govern the way videolinks are managed, and the way that remote participants are informed and oriented to those proceedings, will assist in this transition.

Drawing on these preliminary findings, the authors conclude that the use of videolinks can alter the nature of sentencing proceedings, but that the implementation of meaningful strategies to address this change have lagged, leaving much “up in the air”. Views that technology necessarily degrades the sentencing process or renders it less effective are overly simplistic. While concerns raised by some stakeholders suggest that sentencing is ill-suited to the use of videolinks, attention to the configuration of the technology and participants, as well as the protocols and procedures for videolink will go some way to preserve the essential intent and function of sentencing when it is conducted via videolink. Courts and justice agencies generally, will benefit from keeping a close eye on emerging research on the more general effects of technology-mediated communication, both in the courtroom and elsewhere. Courts of the future may yet find—as in the case of previous technology shifts—that remote technology offers different and in some cases even superior capacities to conduct sentencing, and other types of judicial hearings.