



## Video Links from Prison: Permeability and the Carceral World

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### Abstract

As audio visual communication technologies are installed in prisons, these spaces of incarceration are networked with courtrooms and other non-contiguous spaces, potentially facilitating a process of permeability. Jurisdictions around the world are embracing video conferencing and the technology is becoming a major interface for prisoners' interactions with courts and legal advisers. In this paper, I draw on fieldwork interviews with prisoners from two correction centres in New South Wales, Australia, to understand their subjective and sensorial experiences of using video links as a portal to the outside world. These interviews raised many issues including audio permeability: a soundtrack of incarceration sometimes infiltrates into the prison video studio and then the remote courtroom, framing the prisoner in the context of their detention, intruding on legal process, and affecting prisoners' comprehension and participation.

### Keywords

Audio visual links; video conferencing; acoustics; prisoners; incarceration; spatiality; phenomenology.

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## Introduction

Jurisdictions around the world are embracing audio visual technologies in criminal justice and, increasingly, prisoners appear before courts by video link from spaces of incarceration. In this paper, I explore how video links act as a conduit between conceptually linked but non-contiguous spaces, potentially facilitating a process of permeability between the prison and the outside world. The increasing usage of video link technology for criminal and civil court procedures, legal advice, health assessments and family visits means it is fast becoming a major portal for prisoners' interaction with the outside world.

This paper draws on empirical data gathered during prison fieldwork. Adopting a phenomenological approach to understand how prisoners experience video links, I conducted 31 semi-structured interviews with both male and female prisoners during 2012. The interviews were conducted at two sites. At Dillwynia Correctional Centre, a medium security facility for women within the John Morony Correctional Complex on the outskirts of Sydney New South Wales (NSW), nine female prisoners agreed to speak with me. At the Mid North Coast Correctional Centre, a medium and minimum security facility for male and female prisoners near Kempsey NSW, eight women and 14 men agreed to be interviewed. I spoke with these prisoners about their subjective and embodied experience of using video links to appear in remote courtrooms and to access legal advice. These participants provided phenomenological perspectives, and insights into the multi-sensorial and embodied experiences of using video links, including the sounds of incarceration, the hard architecture of custodial space, and their corporeal engagement with technology. The fieldwork interview quotes used in this paper are verbatim. I have not corrected any perceived grammatical issues as I wish to convey a sense of the prisoners' authentic voices of their experiential accounts. From this fieldwork data, I found that the ambient sound of prison, often loud and intrusive, could filter into the prison video studios. In this paper, my focus is on that auditory dimension: how sounds of incarceration may infiltrate into the prison video studio and then be unintentionally transmitted by audio visual link to the remote courtroom. As the courtroom enters the prison, simultaneously, the prison penetrates the courtroom. While there are benefits for prisoners in using video links, I address some of the limitations of this new conduit between prison and the outside world, particularly the impacts on confidential communication with legal representatives and audio quality issues. I suggest that video links fundamentally modify incarcerating space, simultaneously and paradoxically opening up the prison to the courtroom and other sites, as well as closing off opportunities for natural human interaction.

In this paper, I introduce audio visual technologies in the criminal justice system, and the networking of courtrooms with prisons. I then examine what this means in terms of courtroom appearances from the space of incarceration, adopting a phenomenological perspective that privileges sensorial experiences including sound. Finally, my fieldwork interview data relating to the soundtrack of incarceration, confidentiality and audio faults are analysed to give voice to prisoners' subjective encounters with communication technologies.

## Background

Video conferencing and related digital communication technologies are being diffused throughout many criminal courtrooms, police stations and prisons around Australia and the developed world. Other common law jurisdictions, notably the United States (US) and United Kingdom (UK), have implemented various video conferencing systems (Lederer 2004: 640; Mulcahy 2008: 467; Rowden 2011: 8-17; Rowden et al. 2013: 19; Wallace 2011: 5). Considerable resources are being devoted to the development of technology-augmented legal processes, primarily focusing on efficiency and expediency improvements throughout the justice sector, economic rationalisation of governmental departments and services, and increased security. However, several scholars note that there has been limited research into the impacts of video links on the subjective experience of prisoners (Forell, Laufer and Digiusto

2011: 2; Grunseit, Forell and McCarron 2008: 36; Johnson and Wiggins 2006: 225; Kluss 2008: 50; Poulin 2004: 1158; Rowden 2011: 6, 31-2, 336).

For prisoners, the major benefits of video links include avoiding lengthy and uncomfortable journeys on prison transport trucks and the associated degrading strip-searches, disruptions to prison life, and the loss of perceived 'luxuries', such as food and toiletries bought during weekly 'buy-ups'. All the prisoners I interviewed appreciated video links as a means to minimise these issues, especially as many were incarcerated hundreds of kilometres away from the site of their legal procedures.<sup>1</sup> For minor mentions and less substantive legal proceedings, the technology offers speed and considerable convenience for prisoners who may prefer video links to spending a day (or longer) being transported to and from court. NSW barrister Susan Kluss recognises the significant benefits of video link appearances in 'mechanical' mentions, such as brief administrative and interlocutory appearances, but it is the 'blanket use' of the technology for substantial criminal procedures that concerns her as a practitioner (2008: 50).

None of the prisoners I interviewed had used the 'family video contact' facility that has the potential to provide prisoners with a means of maintaining relationships. This scheme targets Aboriginal prisoners with the aim of supporting familial connections when physical visits to the correction centre may be difficult due to financial hardship and geographical distance. Family video contact usage is growing gradually, with 192 sessions noted in the most recent annual report (Department of Police and Justice 2014: 82). These positive aspects of video technology are tempered by tensions. Firstly, many prisoners expressed a desire to be physically immersed in the courtroom for substantive procedures. Secondly, the benefits of avoiding the disruptions caused by prison transport may be negated by prisoners having to spend lengthy periods in prison holding cells while awaiting video sessions (Plotnikoff and Woolfson 1999).

NSW leads the way in Australia with audio visual links operating in '411 courts, correctional centres and other justice agency sites' (Department of Police and Justice 2014: 105) for civil and criminal proceedings. Audio visual link (AVL) is defined by s. 3(1) of the *Evidence (Audio and Audio Visual Links) Act 1998* (NSW) (hereafter 'the Act') to mean 'facilities (including closed-circuit television) that enable audio and visual communication between persons at different places'. There is now a displaceable presumption in favour of video link appearance for many criminal law procedures so that both adults and children appear by AVL, unless the court directs otherwise or the proceedings are 'physical appearance proceedings'. Such proceedings are defined in s.3(1) as any trial or hearing, any inquiry into a person's fitness to stand trial, and certain bail proceedings. During the 2013-14 year, Corrective Services NSW facilitated 38,996 court and parole appearances by video link so that 57.4 per cent of court appearances and 100 per cent of all parole hearings were conducted by AVL (Department of Police and Justice 2014: 82). The use of AVL by Legal Aid has risen over the last decade from 938 times in 2003-04 to approximately 20,000 (Legal Aid Commission of New South Wales 2014: 57). The legislative changes evidence a major conceptual shift as criminal justice seemingly abandons the long-standing presumption in favour of the physical presence of the accused person in court for most bail, committal, sentencing and appeal procedures. The legislation effectively consummates an intimate technological linkage between courtrooms and prisons.

### **Conflating courtrooms and prisons**

Through these legislative provisions, prisons are now networked and conceptually linked to remote courtrooms, necessitating a critical analysis of the changing site and space of legal adjudication. The relationship between the prisoner and the courtroom has changed in the shift to the interfaced site and virtuality, with the inmate now often appearing from prison, remote from the physical site of justice. The NSW legislation has effected an interesting spatial construction that designates the non-judicial space of prison to be a part of the NSW court. Pursuant to s. 5C of the Act, any premises where video link is used for giving evidence or making

submissions under the Act is considered to be part of the NSW court that is sitting at a courtroom. New links between spaces of incarceration and the outside world are thereby forged by video conferencing systems.

However, during video linked court appearances, prisoners are immersed within the oppressive auditory and visual aesthetics of incarceration, instead of within a dignified courtroom alongside the other parties to the proceedings. Video links between courtrooms and prisons create, I argue, new links between non-contiguous spaces; and, simultaneously, new zones of demarcation between the prisoner – who appears from the space of incarceration – and the other parties to the proceedings – the judiciary, court officers, lawyers, witnesses, media, family members and the general public. A new hierarchy is born based on physical presence versus the remote appearance of those deemed ineligible to be brought before the actual court. Video link technology may be a conduit between the prison and the outside world, yet the technology may, perhaps, connect spaces a little too closely. I argue that, with video links, the custody dock is increasingly located within and fortified by prison walls, and prisoners appear in court secured and encased on screens. The traditional *symbolic* isolation of the defendant in a courtroom dock is now a *literal* expulsion from the courtroom, with appearance from behind prison walls. Video links effect a conflation of the custody dock with the space of prosecution and punishment, compromising the perceived impartiality of proceedings (Mulcahy 2011: 72; Wallace and Rowden 2009: 658). Interestingly, much existing scholarship explores video links as a *courtroom* technology, whereas I invert this idea to suggest that video links need to be explored as an emergent *prison* technology. As discussed in the section below, this is because the essential qualities of a prison differ significantly from a courtroom.

### **The space of incarceration**

As video conferencing studios are fitted and retro-fitted into spaces of incarceration, embedding the technology into prison infrastructure, it is important to reflect upon the nature of these architectural sites. Prisons are non-neutral and closed environments where people are punished by the loss of liberty (Naylor 2014: 84). The common purpose of a prison is for isolation, segregation and concealment of perceived transgressors from society (Foucault 1995: 298). The institution itself provides a complete autonomous universe (Larson 2010: 144) or archipelago (Foucault 1995: 9) within a compressed and cellular space. Prison space is a highly controlled environment, the antithesis of a 'poetic' or felicitous space (Bachelard 1994: xxxvi), yet embedded with phenomenological qualities that impact upon the embodied experience of prisoners who use video technology within the carceral world to interact with remote courtrooms.

The philosophy of phenomenology provides a useful approach in examining spatiality. Phenomenology presents a way of understanding and describing the meaning of human experience in the world, privileging subjectivity, the significance of 'lived body' sensation, and human experience as knowledge. Phenomenologist Maurice Merleau-Ponty argues that we experience and perceive the world with our whole body, not just the eye (Merleau-Ponty 1962, 1964). Every 'experience of architecture' according to Pallasmaa 'is multi-sensory; qualities of space, matter and scale are measured equally by the eye, ear, nose, skin, tongue, skeleton and muscle', providing a 'sense of being in the world' (2012: 45). The world around us is 'sense-luscious' (Ackerman 1995: xv): it presents a multiplicity of sensorial experiences that, in every way, structure our perception, subconscious, consciousness and behaviour.

In considering this approach, it is pertinent to then ask, what is the phenomenological experience of incarcerating space? For most members of society, the carceral world is a conceptual and opaque space of punishment, rarely seen other than through the media and film. Prison 'innards' are increasingly obscured and their dynamics seldom revealed (Crewe 2009: 1, 4, 9). As punishment regimes are now removed from public sight, the prison system is the most

hidden part of the justice process (Foucault 1995: 9). I argue that video link technology, in mediating the appearance of the prisoner from a remote prison video studio, adds an additional element of concealment in an increasingly invisible justice process. The invisibility of contemporary prisons is explored by Hancock and Jewkes (2011), who note that the prison, once a highly visible and ostentatious ‘flamboyant proclamation’ of punishment, is now camouflaged and disguised to blend in with the surroundings (Hancock and Jewkes 2011: 618). Certainly, the two correction centres I visited were discretely located within semi-rural or rural landscapes.<sup>2</sup>

The world of criminal detention is a realm of biometric screening and razor wire, functional but oppressive penal architecture, detention-grade furnishings, sterile zones, and a series of heavy security doors. Prisons are an evocative form of architecture embedded with qualitative attributes that create specific phenomenological experiences and human responses (Bollnow 2011: 18-19), assert ‘intrinsic pains’ (Crewe 2009: 1, 4, 9), and inherently exert spatial control on bodies, within the aesthetics of state control, to achieve docility of inmates (Hancock and Jewkes 2011: 613-614, 616, 624). Hancock and Jewkes interrogate the compressed and cellular built environment of prison and its impact on behaviour through sensorial deprivation. They describe the aesthetics or ‘anaesthetics’ of incarceration that blunt the senses, constructing and reinforcing criminality (Hancock and Jewkes 2011: 616-617). It is ‘the fabric of the buildings’ that determines behaviour and identity (Hancock and Jewkes 2011: 626). Carceral space constructs an environment of surveillance and control creating docile bodies, and feelings of inferiority and disempowerment (Goffman 1961: 7). Certainly, prisons provide the paradigm example for the study of the extremes of power and powerlessness.

Of course, courtrooms are also hierarchical spaces that encode state power and authority in their separationist designs and semiotics (Hanson 1996; Mohr 2005), challenging the adversarial system’s ideal of equality before the law (Carlen 1976: 49). Contemporary courtrooms increasingly seek to spatially contain risk (Simon 2013: 78-79). Enclosed custody docks are becoming more common in some jurisdictions, exaggerating the spatial demarcations in criminal process in spite of the use of transparent glass (Tait 2011; *R v Baladjam & Ors* [No 41] [2008] NSWSC 1462; *R v Benbrika & Ors (Ruling No. 12)* [2007] VSC 524; *R v Farr* (1994) 74 A Crim R 405). Nevertheless in comparison with carceral space, I argue that courtroom spaces exude neutrality, transparency and permeability in their openness and accessibility to the public. There is a clear distinction between open, civic and dignified courtroom space, versus the closed conditions of incarcerating space.

In the ‘formal and ritualistic social setting’ of a courtroom (Carlen 1976: 50), we find architecture embedded with legal authority, and gravity made manifest through the formal and ordered design, solid materials and French mottos (Mohr 2005). There is an aesthetic and sensory dimension that ‘suffuses our engagement with everything about us’, affecting us profoundly, including our experience of legal space (Manderson 2000: 4, 23, 27). While the prison video studio may be a legislated conceptual extension of the courtroom, it remains in an enclosed, non-public site that is not at all like a court. There are no aesthetic markers or signifiers denoting a serious legal encounter. Behind the seat where the prisoner sits in front of the camera, there is no coat of arms, merely a paper notice identifying the name of the correction centre. As Hillman finds, the ‘coercive environment’ (2007: 62) of incarceration is ‘hardly a replication of a courtroom’ (2007: 61), nor reflective of the gravitas (Ashdown and Menzel 2002: 106; Bermant and Woods 1994-1995: 67). The prison video studios are drab, functional and sparsely furnished, and lack dignified courtroom ambience. While these two disparate spaces are conceptually linked by audio visual technologies, the prison video studio is ‘phenomenologically at odds with the social space’ of the physical courtroom in which the prisoner’s legal proceedings actually takes place (Rowden 2011: 253).



## Permeable space

Prisons are a prime example of what Goffman terms 'total institutions': that is, enclosed places where blocks of 'like-situated' people reside and lead formally structured lives, isolated from the broader community (Goffman 1961: xiii, 7). Goffman suggests that part of this institutional structure is the control of communication and information systems (1961: 8-9), and the perpetuation of barriers between 'inside' and the outside 'home world' (1961: 12-14). Do video links challenge this distinction? Several scholars contest the notion that prisons are as isolated and impenetrable as Goffman proposes. In considering a proposed 'justice campus' in Midwestern US, Schept (2013) argues that the boundaries between the inside and outside worlds of the 'carceral habitus' may be conceptually porous, and prisons are interfaces between non-contiguous spaces, people and issues. The justice campus was envisaged to address the overcrowding of mass incarceration and provide a place of rehabilitation, education and healing. As such, it would connect and collapse barriers between local discourse, and societal, political and economic forces (Schept 2013: 72, 76-7). Crewe examines the flow of cultural, social and legal currents into prisons whose walls are 'porous and permeable' and which cannot, he suggests, be insulated from external forces (Crewe 2009: 5). Equally, he notes that the outside world is not insulated from the prison: there are flows both in and out of incarcerating institutions.

The notion of the contemporary American prison being a 'total institution', according to Goffman's definition, is also questioned by Farrington. He finds that they are 'somewhat-less-than-total' or 'not-so-total' (Farrington 1992: 7). Analysing these institutions in a broad social context, he identifies a range of networked connections and relationships. He finds that prison environments are 'enclosed within an identifiable-yet-permeable membrane of structures, mechanisms and policies' which provide an imperfect separation between the inside and outside worlds of prison (Farrington 1992: 6-7). Audio video technologies may be considered as a conduit between conceptually linked but non-contiguous locations. Perhaps with video conferencing, the correctional centre is not so totally cut-off from society as Goffman's definition may suggest. Video links may be seen as adding a layer of permeability to the space of the correctional centre, opening up opportunities for a greater level of human interaction than provided by the ubiquitous prison telephone. This is pertinent when considering prisoners' access to legal advice through video link, and the maintenance of family relationships through video family visits.

Clearly, the video link is emerging as a central portal for prisoners' connections with those outside the prison walls. However, any push for prisoners' interactions with the outside world to be mediated, if not limited, to telephone and video link communication<sup>3</sup> will inevitably lead to an associated reduction in personal visits to prisons by family members and lawyers. Such a shift would affect the independent scrutiny of prisons, prisoners and their conditions, reinforcing the impermeable nature of prison. As Quirk et al. find in examining psychiatric wards, permeable institutions are 'less prone to the development of abusive practices due to the transparency of the organization' (2006: 2114). This is a concern as face-to-face legal consultations in NSW are increasingly being replaced by video links. As noted above, in the 2002-03 year, video links were used 938 times for legal aid (Legal Aid Commission of New South Wales 2005: 23). Over a decade later, figures jumped by approximately 2000 per cent to almost 20,000 sessions in the 2013-14 year (Legal Aid Commission of New South Wales 2014: 57). Face-to-face family visits with prisoners still occur regularly in NSW, with only a small number of video visits, as discussed above. Recently in the US, *The Dallas Morning News* reported that video conferencing company Securus Technologies sought to totally ban face-to-face jail visits in favour of their user-pays video conferencing calls. Dallas County rejected the proposal, finding it both inhumane and inappropriate to profit from the families of accused people (Watkins 2014).

### Soundtrack of incarceration

In exploring whether video conferencing systems between prisons and courts create new links between spaces of incarceration and the outside world, my focus in this paper is centred on the sense of sound. In the following sections, I consider video links as an agent of permeability, the issues of audio bleed into and out of the video studios, and the associated problems with privacy and confidentiality. As discussed in the introduction, this paper draws on the experiential accounts of prisoners who used video links to appear in remote courtrooms and to access legal advice.

The walls of the prison video studios I visited were covered in foam acoustic tiles, and one might expect the studios to be soundproof. In one small video studio, these panels had been picked at by inmates over a period of time – fingers digging in anxiety or boredom? – so that chunks of foam were missing. Interview data suggested that the acoustic tiles were ineffectual in baffling the sounds emanating from the nearby cells and hard surfaces of the correction centre. The problem of audio bleed in and out of the prison video studios arose during several interviews. I was asking F12, a remand prisoner at Sydney's Dillwynia Correction Centre, about how her appearance by video link affected her. She responded:

I was very distracted because somebody was going off next door. I don't know whether it was a joking thing or what, but they raised their voice and they bashed on the wall – did you hear all that?

The woman had been in a video studio adjacent to the holding cell where other prisoners were awaiting their video link sessions. For my interviews, I was using a room on the other side of the holding cell, and had heard some thumping sounds against a wall and loud verbal exchanges. She continued:

Well I could hear all that in my room while they [the court] were talking, and I didn't know whether the judge could hear it or what, but it was really distracting, and at one stage I actually looked 'cause it sounded like someone was throwing someone up against the wall, so I didn't know if there was a fight going on in there or what was happening.

The sound bleed disturbed the prisoner's focus on her legal proceedings, and made her anxious that the sounds and something of the disturbing atmosphere were being transmitted from the prison to the remote courtroom:

And I thought: oh this is lovely isn't it you know; I'm at court and there's a brawl going on behind me. (F12: 50 years old, non-Aboriginal woman)

This woman had to contend with the disturbing and audible incident occurring in the adjacent room while appearing in a distressing bail hearing by video link. Speaking with me directly after her hearing, she was extremely emotional about her video-mediated encounter, describing it as a 'surreal' and disconnecting screen-watching experience.

While LaBelle examines the silence of solitary confinement (2010: 71), my experience of non-solitary confinement areas suggests that prisons are anything but quiet. As prisoner M08 (54 years old, non-Aboriginal man) told me, 'there's always noise going on'. The ambient sound of prison can be disturbing. For example, *The Daily Mail* reported on 22 April 2014 that Robert Stevens absconded from HMP Leyhill prison, UK, to escape the rap and hip hop music being played 'day and night' in his prison wing (Glanfield 2014). *The Guardian* reported on 5 July 2014 that recently imprisoned celebrity Rolf Harris could expect fellow inmates in the healthcare section at a UK prison to be left unmedicated and 'to scream and shout' throughout the night

(Allison 2014). While undertaking my prison fieldwork, I was aware of the ambient noise, but it was only later, when transcribing my audio recorded interviews with prisoners, that I fully appreciated the soundtrack of incarceration. Just as the heavy boots, jangling keys and disembodied directives by loudspeaker penetrated my audio recordings, a soundtrack of yelling, profanities, and slamming doors would infiltrate the video studio and permeate into the remote courtroom proceedings. Seemingly, the notion of acoustic design has little currency in prison construction: 'Prisons are hard, tough places, and they sound like it' (Evans 1995: 76).

To navigate the echoing corridors of a prison from, for example, cell to holding cell, to video studio and back again, necessarily entails the clanging of the heavy security doors that separate the inherently compartmentalised building. Ambient prison sounds are not soft or calming but abrasive and disquieting. If music is a structured and rhythmic form of noise, noise without such form may be a weapon (Manderson 2000: 191). Hard prison structures and surfaces reflect sound, leading to an uncomfortable level of excessive reverberation, 'the noise of life, of many people living together' amplified within an enclosed space (dBx Acoustics 2013). Such acoustic conditions may intensify stress and antisocial behaviour (Evans 1995: 76) so that, as discussed above, the 'fabric of buildings' impacts behaviour (Hancock and Jewkes 2011: 626). From a phenomenological perspective, 'sound permeates and penetrates' the body (Ihde 2007: 45). We can refuse to watch, taste or touch but sounds and smells tend to infuse into our being. The auditory sense can only be effectively denied with earplugs.

A female prisoner told me about her most recent video link experience:

The only problem was the judge was asking what all the noise was, they could hear doors slamming in the background, the doors are real heavy at the gaols ... so they could hear the doors slamming, but I just piped up and told him it was the gaol. (F08: 23 years old non-Aboriginal woman)

Such audio bleed obviously distracts prisoners when they are in the conceptual space of the courtroom in prison. The prison soundtrack of banging doors is also being transmitted to and permeating remote courtrooms, opening up the courts to the prisoners' incarcerated reality. Not only do prisoners find the noise distressing but it also seems that the remote judicial officers find the prison sounds intrusive. The quote above suggests that noise may interrupt proceedings and militate against the court's quiet consideration of matters at hand. As well as banging doors, other prisoners mentioned the sounds of loud voices and brawling. M02 told me:

When I'm talking in the video link ... it does bother you 'cause ... [the court] can hear it, they can hear all the screaming and yelling that's going on in these holding cells 'cause it's just there. (M02: 23 years old, Aboriginal man)

As to what the impact of this soundtrack of incarceration may have on judicial officers, and how it may affect their perceptions of a person appearing from a noisy prison, is beyond the frame of this current paper.<sup>4</sup> Based on the data from the prisoner interviews, however, it is evident that prisoners are immersed during court appearance within the oppressive auditory and visual aesthetics of incarceration and, as discussed above, there is an aesthetic disjuncture between the courtroom setting and the prison video studio. Rowden suggests that 'defendants in the live videolink [sic] are often doubly trapped: framed within the screen and judged in context of their confinement' (2011: 316). The prisoners' incarcerated status is both visible and audible by video link, conceivably compromising the presumption of innocence. Video links generate heightened demarcations in criminal proceedings that weaken the ideal of equality before the law. As an example, prisoners appearing by video link wearing prison garb construct a potent image of criminality and 'otherness' (Ash 2009; Bauman 2000; Jewkes 2010). Prison attire is contrary to the 'cloak of innocence': that is, 'to view a defendant in clothing, conspicuously of a penal institution, adds to the prosecution's arsenal in a subtle manner' (Mukai 1971: 392; see



also *R v Hawi & ors (No 5)* [2011] NSWSC 1651; *Tasmania v Seabourne* [2010] TASSC 35). Within the prison video studio, defendants are enmeshed in a 'web of symbols' (Manderson 2000: 27), judged and constructed by the law's gaze (29), and perhaps by the law's ear.

Sound fills spaces and delineates territory (Bollnow 2011; Clare 2013: 185). It inhabits and produces an environment (Cubitt 1998: 103), and presents a way to construct, perceive and make sense of that world (Parker 2011: 964-5). In effect, there is a 'phenomenology of acoustic experience' and Ihde explores the notion of 'auditory spatial orientation' and how we locate ourselves in space referencing sound (Ihde 2007: 15, 194). The acoustic space of a traditional courtroom is cavernous and resounding in authority (Manderson 2000: 42), creating a particular aesthetic effect and evoking respect through the control of sound (Parker 2011: 973, 977). Parker (2011) examines the 'acoustics of jurisprudence', focussing on the courtroom soundscape of the International Criminal Tribunal for Rwanda, which was filled with soundproofed spaces and audio technologies. He asserts that there are specific auditory dimensions of legal process, architecture and human experience (Parker 2011: 963), suggesting an almost sacred aura in the courtroom (Parker 2011: 974). When audio technologies are inserted into that space, the sounds of the legal environment change from sacred to bureaucratic (Parker 2011: 967, 974). In a similar vein, I argue that penetrating sounds of incarceration generate a specific 'auditory atmosphere, an auditory aura' (Ihde 2007: 195) as a backdrop to a prisoner's video linked court appearance. My interviews suggest the sonic world of the prison may permeate and occupy the video studio during a prisoner's court appearance. Any prison sounds transmitted to the remote courtroom provide the auditory dimensions of the prisoner's carceral environment, which are at odds with the more 'sacred' auditory aura of the courtroom. For pre-trial prisoners especially, the soundscape of incarceration may frame and construct perceptions of them: although still presumed innocent, yet so obviously inhabiting a noisy, chaotic and anti-social situation.

### **Privacy and confidentiality**

While sounds of the prison may permeate into the video studio, confidential conversations within the video studios may potentially be overheard. The quality of soundproofing and the security of the video link were questioned by some of the prisoners I interviewed. The replacement of private face-to-face communication with legal advisers was of concern to several prisoners and clearly impacted on their ability to discuss matters fully and frankly. F01 (mid-40 years old, non-Aboriginal woman) was concerned about whether the audio visual link could somehow be 'intercepted in the middle' and was not sure 'who else can listen to what we're doing and saying'. Similarly, another asked 'How are you supposed to talk privately to your solicitor if you're video linked?' (F09: 52 years old, non-Aboriginal woman).

M13 treated the technology with suspicion and was concerned about who might hear the conversation. Regarding a serious charge, he told me:

I did actually say to me mouthpiece: is there anyone else in the room with yah 'cause we're not talking about a break and enter, you know what I mean, we're talking about the rest of me life in gaol. He says: there's no one in the room, I say: you know I'm paying you a lot of money, I hope there isn't; and I still didn't go into any details. (M13: 40 years old, non-Aboriginal man)

He felt there was no privacy and was concerned about his conversations being on the internet and 'out in the airwaves' where it might be picked up by someone. F02 felt that the video studios were not sufficiently soundproofed from the nearby prison officers, and that she could not talk with her lawyer 'one to one'. She said 'there's nowhere you can speak with your lawyer without them [prison officers] listening which is not good you know' (F02: 54 years old, non-Aboriginal woman). She felt the video conferencing impacted on the quality of legal

representation, and restricted what she could say to her lawyer 'because you're listened to'. For F07 she was only concerned if prison officers could listen to her family court matters:

It's just ... family court ... seems a bit more personal than just normal court, like everyone's done crimes before, but when it comes to your babies, that's more personal. (F07: 32 years old, Aboriginal woman)

M03 (28 years old, Aboriginal man) was not convinced about the quality of soundproofing between the video studio and the prison officers' room, and that made him feel uneasy. M10 felt the prison officers were sometimes eavesdropping or being 'sticky beaks' during his video link sessions, and expressed disempowerment and resignation to the situation: 'We're the little people, we're like ... even smaller than the tadpoles of the ocean' (M10: 31 years old, Aboriginal man).

The traditional whispered communication in court between legal representatives and accused persons is becoming a thing of the past for many legal procedures in NSW. Instead, prisoners appearing by video link may use the on-desk telephone handset to talk with their remote lawyers during court proceedings. I asked the prisoners how they would rate this form of communication. F08 said it was: 'OK, unless you don't want the prosecution to hear something you want to tell your barrister' (F08: 23 years old, non-Aboriginal woman).

F11 (40 years old, non-Aboriginal woman) also reported that her legal representative was sitting right next to the prosecution in the remote courtroom. He advised her that he could not say too much to her during the court procedure but he did telephone her after the video link session. Another man, M11 (24 years old, non-Aboriginal man) was not confident about using the on-desk handset on the basis that someone might be able to read his lips. Other prisoners were less suspicious and more confident of the video link system. M01 (21 years old, non-Aboriginal man) felt he could speak confidentially with his solicitor using the on-desk handset. F13 (30 years old, non-Aboriginal woman) thought that 'the foam all around' provided sufficient privacy.

Of course, prisoners may also directly address the remote court by video link. My fieldwork indicated that many prisoners were reticent to do so and most thought they should remain silent. F07 told me that, during video link appearances: 'I usually just sit there and just sit there, motionless' (F07: 32 years old, Aboriginal woman). Other prisoners were more assertive and could confidently use the video link portal to communicate with the remote courtroom. F11 did not hesitate to have input in her legal procedures. She told me:

This is my life, this is my life, and I'm not going to have somebody sit there and say something different about something that I know and they don't. (F11: 40 years old, non-Aboriginal woman)

Similarly, F05 provided insights into the impact of being segregated from the remote courtroom proceedings, and the ability to participate:

Some people might think that ... because they don't have a right to go into the courthouse ... they've just got to be appearing in court on a screen and they might think that ... they don't have the right to communicate in court.

F05 did assert her right to participate, and was surprised by the response:

I spoke up ... and that's when everyone kind of like looked (laughs), the whole courthouse went quiet and like looked, everyone like just dropped everything

and looked at the TV screen ... and then I just felt like... a bit like a monster or some kind of animal that just spoke ... and it was like everybody's eyes went big like: Oh my God she's talking on TV, like I don't have a right, you know. (F05: 33 years old, Aboriginal woman)

F05's account highlights how intimidating video link appearances may be for some prisoners. Video links may offer a connection to the outside world, but perhaps only very assertive prisoners have the confidence to fully engage with the technology. These insights highlight the problems of conflating the space of legal consultation and the space of the custody dock with the space of state prosecution, punishment and power. The majority of the prisoners I met were on remand – that is, pre-trial – requiring legal advice as well as assistance to resolve family and housing crises. While these critical matters can be handled by video link or telephone, many prisoners voiced their preference for face-to-face human interaction.

### **Audio faults and participation**

As well as the audio bleed in and out of the video studio, prisoners have to deal with frequent audio faults in the link to the outside world. F01 experienced 'a high buzzing sound' making it difficult for her to hear. Prisoners often experience a lack of audio or video which causes much stress. For example, F05 said it was:

Head wracking... I ...didn't know if they could hear me ... because I couldn't see them but they could see me and hear me and I could hear them but couldn't see them and it was very, very, yeah head wracking. I done me head in. I didn't like it at all. It stressed me out, and umm, yeah, I got quite annoyed. (F05: 33 years old, Aboriginal woman)

F07 talked about equipment failure and, as she was shunted between video rooms, how that made her feel:

Their signal was just cut and they were trying to ring Grafton courts and no one was picking up and so they took me into ... another video place to try that one, and then that wasn't working in there, it was like it wasn't meant to be, it was freaky and then ... they got it on, so I had to go back into the other room ... and it was an experience (laughs). (F07: 32 years old, Aboriginal woman)

The quality of audio transmission into the prison video studio is sometimes compromised and of poor quality. Audio delay or lag was an issue for some prisoners. F02 (54 years old, non-Aboriginal woman) told me the 'tiny' video studio had bad audio that was 'delayed like Skype'. For F07, the poor audio quality impacted on her comprehension of proceedings:

It wasn't too bad, but like I'd rather be there you know, 'cause I couldn't hear very much of what was going on either, yeah and they talk big words and stuff, and I don't understand, and they didn't explain nothing to me. (F07: 32 years old, Aboriginal woman)

On many occasions it seems that the audio transmissions drop out completely. A number of prisoners, such as F05 above, reported not being able to hear or see the remote courtroom. M05 said that this had occurred: 'A couple of times, like ... I can't see them but I can hear them, or I can see them but I can't hear them'. I asked him who notices these technical problems and he said that he did not know. During one video link session, the sound cut out three times in a row, and each time he asked the magistrate to repeat what had been said. Eventually he gave up in frustration, waiving his rights to be present (virtually) and told the magistrate: 'Look I can't hear, just do it without me' (M05: 21 years old, non-Aboriginal man). F11 felt humiliated by the

lack of audio: 'I must've looked like a real idiot on the screen to them 'cause I'm going like this, (gestures to ear), like I can't hear' (F11: 40 years old, non-Aboriginal woman). For other prisoners, the audio visual link experience was a good one. Such prisoners found that the benefits of video links, such as its convenience and the ability to avoid the discomforts of prison transport and disruptions to daily life, outweighed any technical glitches. For example, F09 told me: 'It was fine, I could hear OK. I could see what I had to see' (F09: 52 years old, non-Aboriginal woman).

As a general rule, a party to proceedings has a right to be present in court, and an accused has a right to be present at his/her trial (*Lawrence v R* [1933] AC 699; *R v McHardie and Danielson* (1983) 2 NSWLR 733 at 739). However, the introduction of communication technologies into courts, prisons and detention centres means that 'appearance before a court' is fulfilled by video link appearance (Section 3A of the Act; *Mansell v Mignacca-Randazzo* (2013) 228 A Crim R 73; *Tran v Minister for Immigration (no 2)* [2004] FMCA 425). Nevertheless, video links should enable prisoners to at least hear and see remote courtroom proceedings. Seemingly, the prisoner's 'right of confrontation' is reflected in s. 20A of the Act, which requires that persons in the courtroom or remote site must be able to 'see and hear' evidence. However, there are legislative and common law exceptions to this principle. Any right for a prisoner to see and hear is contingent, and the court must balance the rights of the accused to fairness, against the rights of all parties (*R v Ngo* (2003) NSWLR 55). Indeed, in *R v Camberwell Green Youth Court and Ors* [2003] All ER (D) 32, the Queen's Bench Divisional Court held that live video links did not breach the right to a fair trial under Article 6 of the *European Convention on Human Rights* provided the defendant's lawyer could hear and see. Ideally, the NSW video link technology should also enable prisoners to comprehend and participate in court procedures, as well as effectively communication with their legal representative and the judge or magistrate.

During my fieldwork at the Mid North Coast Correction Centre, I had the opportunity to observe court proceedings and, with permission, I joined a male prisoner for his legal procedure. I sat at the back of the 'court' room – a utilitarian space furnished with a simple desk and two chairs that faced a video camera and screens – while the prisoner sat at the desk. One screen showed the view of the prison video studio while the other screen was split into four views of the distant courtroom – the judge, an empty witness stand, the bar table and a section of the public gallery. I could see the judge and lawyers interacting and responses from some women in the public gallery but, as there was no audio being transmitted to the prison video studio, I assumed that whatever was happening in the far courtroom had nothing to do with the prisoner. He sat, passively, looking at the screens. After some time, the judge turned to address the camera, facing the prisoner directly, silently mouthing words. The prisoner finally had the courage to say: 'I can't hear', and it was then that the judge realised that he had the mute button activated. The judge apologised and, luckily for the prisoner, granted bail. The prisoner and I exchanged glances with the sudden realisation that his whole proceedings had been acted out in silence, without his comprehension or participation.

Of course the possibility of completely silencing a video-linked prisoner is now a reality with the courtroom mute button. The *Sydney Morning Herald* reported in 2012 that a NSW Supreme Court judge switched off the sound of an unrepresented prisoner who launched a 'tirade' (Bibby 2012). Such a situation not only highlights the ability of video conferencing technologies to physically absent the prisoner, but also emphasises the ease with which prisoners may be utterly silenced with the flick of a switch. It is no wonder that many prisoners expressed a feeling of isolation and alienation. During a video link appearance, M13 (40 years old, non-Aboriginal man) said he felt:

Disconnected ... and so that was just an added disconnection part, I was already in a cell on me own disconnected from the whole prison system, let alone the

world, and ... so the video link was just another [disconnect] ... I didn't feel connected to anything.

## Conclusion

Video conferencing creates a conduit between conceptually linked but non-contiguous spaces, enabling space and distance to collapse: as the courtroom enters the prison, simultaneously the prison enters the courtroom. Through use of video links a new portal has emerged for prisoners, reducing the need for long distance truck travel and, for minor hearings and mentions, presenting a sensible and more efficient option. While this new prison technology offers the possibility for permeability to the outside world, it paradoxically provides, however, a greater disconnection from humanity. Of concern is the spatial collapse between the non-judicial space of prison and the spaces of courtroom and legal consultation. Given the phenomenological and aesthetic variances between the real courtroom and its legislated extension in prison, I suggest that the conceptual court space located in prison is an imperfect space for the administration and adjudication of *substantive* legal procedures. The bland prison video studio is no replication of court space. Video links effect an unhealthy conflation of the site of state prosecution and punishment with the site of legal adjudication and legal consultation, compromising the impartiality of legal process and lawyer-client confidentiality.

The sounds that may filter into the prison video studios and permeate the remote courtroom create an auditory aura, highlighting the prisoner's detained status, opening up the distant courtroom to the realities of prison, and framing the prisoner within the context of detention. Intrusive prison sounds distract and distress some prisoners, compromising their comprehension of and participation in their legal proceedings. Technical problems affect audio quality, militating against prisoners' abilities to discuss confidential matters with legal representatives, and impacting upon their comprehension and participation. Audio may be totally severed either through unintentional glitches or, more disturbingly, through the intentional muting of the prisoner. The silencing and absenting of prisoners by video link reinforce the utter impermeability of incarcerating institutions. The technological gateway between the inside and the outside of the prison may be sealed shut effortlessly, totally expelling the prisoner from the remote human world and leaving him/her secured and silent on a screen.

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<sup>1</sup> Eighteen of the 31 prisoners I interviewed were on remand, and 22 were at the Mid North Coast Correction Centre approximately 420 kilometres from Sydney.

<sup>2</sup> Paradoxically, new 'gated' residential communities flaunt their carcerality to society (Hancock and Jewkes 2011: 618).

<sup>3</sup> Limited computer access for educational programs and legal information is available in NSW correctional centres. There are calls for this access to be increased to ensure inmates remain connected with the outside world, and maintain technological skills essential on their release from custody (Branstetter 2015; Becker 2011; Coote 2014; Nedim 2015).

<sup>4</sup> Elsewhere in my research I explore how audio visual links may construct a new typology of criminality. See, for example, McKay (2012).



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**Legislation**

*Evidence (Audio and Audio Visual Links) Act 1998* (New South Wales)

**Convention**

European Convention on Human Rights

**Case Law**

*Lawrence v R* [1933] AC 699

*Mansell v Mignacca-Randazzo* (2013) 228 A Crim R 73

*R v Baladjam & Ors* [No 41] [2008] NSWSC 1462

*R v Benbrika & Ors (Ruling No. 12)* [2007] VSC 524

*R v Camberwell Green Youth Court and Ors* [2003] All ER (D) 32

*R v Farr* (1994) 74 A Crim R 405

*R v Hawi & ors (No 5)* [2011] NSWSC 1651

*R v McHardie and Danielson* (1983) 2 NSWLR 733

*R v Ngo* (2003) NSWLR 55; [2003] NSWCCA 82

*Tasmania v Seabourne* [2010] TASSC 35

*Tran v Minister for Immigration (no 2)* [2004] FMCA 425