

**ANNUAL REPORT
OF THE
AUTOMATION AND TECHNOLOGY COMMITTEE
TO THE ILLINOIS JUDICIAL CONFERENCE**

Hon. Kenneth A. Abraham, Chair

Hon. Adrienne W. Albrecht
Hon. Robert E. Byrne
Hon. Francis J. Dolan

Hon. John K. Greanias
Hon. William G. Schwartz
Hon. Thomas H. Sutton

October 2008

I. STATEMENT ON COMMITTEE CONTINUATION

The Automation and Technology Committee ("Committee") of the Illinois Judicial Conference shall provide consultation, guidance, and recommendations regarding standards, policies, and procedures relating to the use of technology and automation within the judicial branch.

The Committee's charge includes the development of general guidelines which promote the effective and efficient use of technology and automation in the trial courts, including recommendations for statewide standards, protocols, or procedures. The Committee shall analyze and develop recommendations related to rules and statutory changes that will manage the use of technology within the courts. The Committee's work also includes the review and evaluation of technology applications and their impact on the operation and workflow of the court. The Committee also will research and recommend response protocols to resolve security issues which may affect the use of technology.

The Automation and Technology Committee requests that it be continued in the 2009 Conference Year.

II. SUMMARY OF COMMITTEE ACTIVITIES

The Committee completed the analysis and prepared an Impact Statement researching the technology and use of video court/conferencing systems. The Committee analyzed the features, technology and components of video court/conference systems and identified the benefits, detriments and potential use in the trial courts. Recommendations are included identifying amendments to Supreme Court Rules that would govern the use of video conference technology in civil and criminal proceedings.

The Committee also reviewed the Disaster Recovery Guide presented during the 2006 Conference Year. A description of the Committee's activities is summarized below.

A. Video Arraignment/Deposition (Video Court) Project

For Conference Year 2008, the Supreme Court assigned the Automation and Technology Committee to continue its work on the analysis of video court/conference technologies, consistent with the 2007 Conference Year assignment, yielding an Impact Statement with recommendations on proposed changes to Supreme Court Rules that might govern its use in the circuit courts.

The Committee completed its analysis of video/court conference systems, including its effect on Supreme Court Rules and the impact of using such technologies in the trial courts. For the purpose of the Committee's work, video court/conference systems are defined as an interactive video conference technology that allows judicial proceedings (*i.e.*, arraignments, bond calls, first appearances, or remote testimonies) to be conducted with participants in different locations.

The use of video conference technologies appears to be an option of increasing value to

the efficient administration of justice. However, the use of video court systems should be considered against its overall effects on the operation of the larger court system and the fundamental rights of the parties to its equal access and to confront witnesses. Most recently, the improvements in technology and the clarification of means whereby technology and civil rights may coexist have led court systems to, again, review video court/conference systems and their use in the courtroom. The Committee's Impact Statement, which is attached for the Court's consideration, explores the benefits and detriments of video court/conference systems, the state of its use by courts, and the state of the law governing the use of this technology. Recommendations are made proposing changes to Supreme Court Rules relating to the use of video court/conference systems. Should the Court adopt the Committee's recommendations regarding video court/conference systems, statutory provisions may be implicated and require amendments.

Although the Impact Statement differentiates the use of video court/conferencing systems between civil and criminal hearings, general benefits and detriments of this technology include the following.

Benefits:

- Increased efficiency in court operations.
- Reduction in transportation costs
- Flexibility and ease of scheduling witnesses.
- Accelerated resolution of cases.

Detriments:

- Initial cost of video court/conference system is high.
- Recurring cost in operation - maintenance/support.
- Reliability or malfunctions in equipment.
- Security to prevent unauthorized access.
- Rights of parties to confront witnesses.

B. Disaster Recovery Guide - Review

The Committee reviewed the Disaster Recovery Guide presented to the Conference in 2006. Although no changes are recommended at this time, the Committee is requesting a 2009 Conference Year assignment to study the Disaster Recovery Guide with respect to criminal law and compliance with the time sensitive nature of criminal law during a disaster.

III. PROPOSED COMMITTEE ACTIVITIES FOR THE NEXT CONFERENCE YEAR

For the 2009 Conference Year, the Automation and Technology Committee proposes the following projects be assigned.

- ▶ Review of Disaster Recovery Guide with respect to criminal law and criminal law

issues. Such a study would focus on criminal law issues and the time sensitive nature of criminal proceedings during a disaster and alternatives that might avail themselves. In addition, the Committee requests to review the security-related problems to the court system during a disaster.

- ▶ Conceptual analysis identifying the uses of a secure website and how such a technology might be used in the trial courts.

The Committee is receptive to any other assignments from the Court.

IV. RECOMMENDATIONS

The Committee recommends that the Conference forward its Impact Statement to the Court for its consideration.

With respect to civil hearings, the Committee recommends that the Court modify Supreme Court Rules 63 and 206 to include the use of video court/conference systems to take remote testimony, similar to the language used by the federal courts.

In addition, the Committee recommends that the Court adopt a new rule which states:

“The court may, for good cause shown in compelling circumstances and upon appropriate safeguards, permit presentation of testimony in open court by contemporaneous transmission from different locations.”

With respect to criminal hearings, the Committee recommends Supreme Court Rules 401, 402, 411-417, and 605 be modified as proposed below.

Rules 401 - 402:

Supreme Court Rules 401– 402 should be revised to include a paragraph similar to the bond statute or the initial appearance statute so that it specifically “permits a person to appear by video conferencing equipment as set forth in 725 ILCS 5/106D-1” when a defendant is required to appear before it for a hearing on a plea and the defendant has waived the right to be present.

Rules 411 - 417:

Supreme Court Rules 411– 417 should be revised to include a paragraph similar to the bond statute or the initial appearance statute so that it specifically “permits a person to appear by video conferencing equipment as set forth in 725 ILCS 5/106D-1” when a defendant is required to appear before it for a hearing on a discovery issue.

Rule 605:

Supreme Court Rule 605 should be revised to include a paragraph similar to the bond statute or the initial appearance statute so that it specifically “permits a person to appear by video conferencing equipment as set forth in 725 ILCS 5/106D-1” when a defendant is required to

appear before it for a hearing on a plea and the defendant has waived the right to be present.

The Committee recommends that a local technology committee be established in any trial court planning to use video court/conferencing technologies. This group would define the need and use of a video court system and evaluate its use with regard to Illinois statutes and Supreme Court Rules and assist with the creation of any local rules.

The Committee also recommends that consideration be given to the planning, design and aesthetics of the courtroom, which are intended to provide an acceptable audio and video quality during proceedings. Reference materials, available from the Committee's Impact Statement, provide guidance in the planning and use of video court/conference systems.

The Committee recommends that any jurisdiction implementing a video court/conference system adopt local policies and procedures governing the use of such systems, including training, maintenance, upgrades to the system, and a protocol for equipment malfunctions.

2008 REPORT

IMPACT
STATEMENT

2008 REPORT

VIDEO COURT/CONFERENCE IMPACT STATEMENT 2008



ILLINOIS JUDICIAL CONFERENCE
AUTOMATION AND TECHNOLOGY COMMITTEE
Revision: July 17, 2008

Video Court/Conference System - Impact Statement

Table of Contents

1	Statement of Purpose/Committee Charge	4
2	Introduction	5
3	Analysis of Video Court/Conference Systems	6
	3.1 Summary of Impact Statement	6
4	Legislation, Case Law, Supreme Court Rules, and Use of Video Court/Conferencing .	11
	4.1 Civil Hearings	11
	4.1.1 Overview of Law and Use of Video Court/Conference Systems	11
	4.1.2 Statutes and Federal Rules Applicable to Video Court/ Conference Systems	13
	4.1.3 Supreme Court Rules Applicable to Video Court/Conference Systems .	14
	4.2 Criminal Hearings	15
	4.2.1 Overview of Law and Use of Video Court/Conference Systems	15
	4.2.2 Statutes Applicable to Video Court/Conference Systems	21
	4.2.3 Supreme Court Rules Applicable to Video Court/Conference Systems .	21
5	Technology - Video Court/Conference Systems	23
	5.1 Components and Standards of Video Court/Conference Systems	23
	5.2 Considerations for a Video Court/Conferencing System	24
	5.3 Costs	25
6	Proposals and Recommendations for Use in Illinois	26
	6.1 Civil Hearings:	
	6.1.1 Proposed New Rules - Civil	26
	6.1.2 Proposed Revisions to Existing Rules - Civil	26
	6.2 Criminal Hearings:	
	6.2.1 Statutory Implications - Criminal	26
	6.2.2 Proposed Revisions to Existing Rules - Criminal	26
	6.3 Local Committee - Technology Review	27
	6.4 Review Attached Material - for Design Issues	27
	6.5 Adoption of Local Policies and Procedures	27
7	Relevant Rules, Policies, and General Orders from Other States	28
	7.1 Existing Rules and Statutes - By State	28
8	Acknowledgment	30

2008 REPORT

81

9 Reference Material 31

Response to Video Conference Survey to Illinois Circuit Courts A

The Third Branch - Advantages of Videoconferencing Grow With Use, Vol. 38, Number 8 - August 2006. B

Videoconferencing - National Center for State Courts Briefing Paper C

Bridging the Distance - Implementing Videoconferencing in Wisconsin - 2005 D
The Planning & Policy Advisory Committee Videoconferencing Subcommittee
Wisconsin Supreme Court

The Technology of Videoconferencing - National Center for State Courts CTC4 Session - 1994 E

TeleJustice - Videoconferencing for the 21st Century - National Center for State Courts CTC5 Session - 1997 F

Courtroom Audio, Video and Videoconferencing - National Center for State Courts CTC5 Session - 1997 G

Planning Rooms for Videoconferencing H
aclearn.net website - Janet Factsheet

Videoconferencing Standards I
aclearn.net website - Janet Factsheet

Videoconferencing Safety J
aclearn.net website - Janet Factsheet

International Telecommunications Union - H.323 Definition K
Webopedia website

International Telecommunications Union - H.320 Definition L
Wikipedia website

Note: Please advise the Administrative Office if you would like a copy of the Reference Material listed on this page.

Video Court/Conference System - Impact Statement

1. STATEMENT OF PURPOSE AND COMMITTEE'S CHARGE

Committee's Statement of Purpose.

The Automation and Technology Committee shall provide consultation, guidance, and recommendations regarding standards, policies and procedures relating to the use of technology and automation within the judicial branch.

Committee's Charge and Conference Year 2008 Projects.

The Committee shall develop general guidelines which promote the effective and efficient use of technology and automation in the trial courts including recommendations for statewide standards, protocols, or procedures. The Committee shall analyze and develop recommendations related to rules and statutory changes that will manage the use of technology within the courts. The Committee's work also includes the review and evaluation of technology applications and their impact on the operation and workflow of the court. The Committee also will research and recommend response protocols to resolve security issues which may affect the use of technology.

Assignments - 2008 Conference Year

Continue work on the Video Court/Conference Impact Statement consistent with the 2007 Conference Year assignment.

Undertake any such other projects or initiatives that are consistent with the Committee charge.

Assignments - 2007 Conference Year

Video Arraignment/Deposition Technologies:

The Automation and Technology Committee was assigned to analyze and evaluate the use of video arraignment and video conferencing technologies and their impact on court proceedings. This research is to yield an impact statement and, if necessary, propose rule amendments as needed to conduct court hearings from remote locations.

Disaster Recovery Guide:

The Committee was assigned to review the Disaster Recovery Guide for revisions.

Video Court/Conference System - Impact Statement

2. INTRODUCTION

The Illinois Judicial Conference Automation and Technology Committee was assigned to analyze and evaluate the use of video arraignment and video conferencing technologies and their impact on court proceedings. In this Impact Statement, a ‘video court/conferencing system’ is defined as an interactive video conference technology that allows judicial proceedings to be conducted with participants in different locations, such as arraignments, bond calls, first appearances, or remote witness testimonies.

Video court/conference systems would appear to be an option of increased value to the efficient administration of justice. Through its sponsorship of the Courtroom 21 project at the College of William and Mary and the biannual Court Technology Conference, the National Center for State Courts has long promoted videoconferencing as a tool to assist trial courts.

The use of video court/conferencing systems, however, should be considered against its real and potential overall effects on the operation of the larger court system and the fundamental rights of the parties to its equal access and to confront witnesses. Courts have been reticent to adopt this technology for a number of reasons including clarity of video and audio signals as well as concerns over deprivation of the civil rights of criminal defendants. Over recent years, the advances of technology and the clarification of means whereby technology and civil rights may coexist have led many court systems to again review video court/conferencing systems and their use in the courtroom.

This Impact Statement explores the benefits and detriments of video court/conferencing systems, the state of its use by other court systems and the state of the law governing its use. Recommendations are made regarding proposed changes to Supreme Court Rules.

Video Court/Conference System - Impact Statement

3. ANALYSIS OF VIDEO COURT/CONFERENCE SYSTEMS

3.1 Summary of Impact Statement

This Impact Statement identifies the use and impact of video court/conference systems, while differentiating civil hearings from criminal hearings. General benefits and detriments to the use of video court conference systems would apply to the overall use of this technology in court proceedings.

Benefits to the use of a video court/conferencing system include:

- ▶ Increased efficiency in court operations.
- ▶ Reduction in transportation costs.
- ▶ Flexibility and ease in scheduling witnesses.
- ▶ Accelerated resolution of cases.

Detriments to the use of a video court/conferencing system include:

- ▶ Initial expenses to a video court/conferencing system are high.
- ▶ Recurring costs in operation - maintenance.
- ▶ Equipment reliability and malfunctions.
- ▶ Security to prevent unauthorized access.
- ▶ Rights of parties to confront witnesses.

Civil Hearings

Although video court/conferencing systems appear to be regularly used in criminal hearings, i.e., bond hearings, the use in civil hearings has been less frequent. A video court/conference session may occur most frequently in the civil proceedings listed below and may provide efficiencies to the court by addressing health or financial obstacles of parties, geography or travel challenges, and timing or short notice issues.

- Motion practice.
- Settlement proceedings.
- Facilitating the presence of a party at trial, such as an aged, disabled, or an out-of-state plaintiff (who was able to be present for opening or closing arguments).
- Witness testimony.
- Oral arguments in appellate court proceedings.

The Code of Civil Procedure provides for the use of video conferencing technologies, in accordance with Supreme Court Rules, as indicated in Section 2-620 (735 ILCS 5/2-620) governing motion practice and Section 2-1004 (735 ILCS 5/2-1004) governing pre-trials.

The Uniform Interstate Family Support Act (UIFSA), 750 ILCS 22/316(f), provides that a party or witness, which resides in another state, can testify or be deposed by telephone, audiovisual, or other electronic means.

The Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), 750 ILCS 36/111, similarly provides for the admission of testimony of witnesses by telephone, audiovisual, or other electronic means.

The Federal Rules of Civil Procedure, Rule 43(a), allow the judge discretion in accepting remote testimony.

‘The court may, for good cause shown in compelling circumstances and upon appropriate safeguards, permit presentation of testimony in open court by contemporaneous transmission from a different location.’ FRCP 43(a).

Although the ability to use video taped evidence depositions in civil proceedings might replace the need and benefit of video court/conference technologies, there may be circumstances that could be satisfied using such technologies. Factors such as timeliness, security and finances may encourage the use of video conference technologies, in particular for domestic violence, child custody or child support hearings.

With respect to civil hearings, the Automation and Technology Committee recommends that the Court modify Supreme Court Rules 63 and 206 to include the use of video court/conference systems to take remote testimony.

In addition, the Automation and Technology Committee recommends that the Court adopt a new Rule which states:

“The court may, for good cause shown in compelling circumstances and upon appropriate safeguards, permit presentation of testimony in open court by contemporaneous transmission from a different location.”

Criminal Hearings

The use of video court conference systems in criminal hearings appears more frequent in general and specifically in the Illinois trial courts. The following are benefits and detriments to the use of video conference technologies in criminal proceedings.

Benefits in criminal hearings.

- Reduction in travel costs and time for judges, reducing cross-venue (county) hearings.
- Reduction in transportation costs for prisoners.
- Reduce the discomfort to a defendant being transported.
- Improve security to a courthouse and parties by use of video conference technologies.
- Improved efficiency in not waiting for the transfer of prisoners to the courtroom.

Detriments in criminal hearings.

- Initial cost and upkeep of video court/conference system.
- Inability of a defendant to privately meet with counsel.
- Depersonalizing the court proceedings.

In August 2007, the legislature amended the statute “Defendant’s Appearance by Closed Circuit Television and Video Conference” (725 ILCS 5/106D-1) to specify when video conference technologies could be used and set forth the following proceedings:

- the initial appearance before a judge on a criminal complaint, at which bail will be set;
- the waiver of a preliminary hearing;
- the arraignment on an information or indictment at which a plea of not guilty will be entered;
- the presentation of a jury waiver;
- any status hearing;
- any hearing conducted under the Sexually Violent Persons Commitment Act at which no witness testimony will be taken; and
- at any hearing conducted under the Sexually Violent Persons Commitment Act at which no witness testimony will be taken.

The statute also allows other court appearances to be held by video conference if a waiver by the defendant is secured. (725 ILCS 5/106D-1(c)). The following is a list of statutes and Supreme Court Rules applicable to video court/conferencing systems.

Illinois Statutes

- 725 ILCS 5/103-6: requires that a jury waiver be in open court.
- 725 ILCS 5/106B-5: provides that a victim in a criminal assault, who is under the age of 18 or is moderately, severely, or profoundly mentally retarded, may testify via closed circuit television, if certain identified criteria are met.
- 725 ILCS 5/106D-1: allows for the appearance of a defendant via closed circuit television and video conference at certain enumerated proceedings and waiver of right to be physically present at any criminal proceedings.
- 725 ILCS 5/110-5.1(c): permits a person who is required to appear for bond setting to appear by video conferencing.

Illinois Supreme Court Rules

- Supreme Court Rule 401: requires a waiver of counsel to be in open court;
- Supreme Court Rule 402: requires a defendant to appear personally in open court to enter a plea of guilty or stipulation;
- Supreme Court Rule 402A: requires that a defendant appear personally in open court to admit or stipulate to a violation of probation;
- Supreme Court Rule 403: requires that a person under 18 shall not be permitted to enter a plea of guilty or to waive a trial by jury, unless he is represented by counsel in open court;

- Supreme Court Rule 416(e): provides that a defendant does not have a right to be present during depositions relating to a capital case;
- Supreme Court Rule 45(d): provides for and prescribes the types of electronic recording equipment that may be used in the circuit courts;
- Supreme Court Rule 63(a)(7): provides that the taking of photographs, broadcasting or televising of court proceedings is permitted only to the extent authorized by order of the Supreme Court. These terms are defined to include the audio or video transmissions or recordings made by telephones, personal data transmissions or recordings made by telephones, personal data assistants, laptop computers, and other wired or wireless data transmissions and recording devices;
- Supreme Court Rule 63: provides for the transmission of data for purposes of a security system.

With respect to criminal hearings, the Automation and Technology Committee recommends Supreme Court Rules 401, 402, 411 - 417, and 605 be modified as proposed below.

Supreme Court Rules

Rules 401 - 402:

Supreme Court Rules 401– 402 should be revised to include a paragraph similar to the bond statute or the initial appearance statute so that it specifically “permits a person to appear by video conferencing equipment as set forth in 725 ILCS 5/106D-1” when a defendant is required to appear before it for a hearing on a plea and the defendant has waived the right to be present.

Rules 411 - 417:

Supreme Court Rule 411– 417 should be revised to include a paragraph similar to the bond statute or the initial appearance statute so that it specifically “permits a person to appear by video conferencing equipment as set forth in 725 ILCS 5/106D-1” when a defendant is required to appear before it for a hearing on a discovery issue.

Rule 605:

Supreme Court Rules 605 should be revised to include a paragraph similar to the bond statute or the initial appearance statute so that it specifically “permits a person to appear by video conferencing equipment as set forth in 725 ILCS 5/106D-1” when a defendant is required to appear before it for a hearing on a plea and the defendant has waived the right to be present.

Should the Court adopt the Committee’s recommendations regarding video court/conference systems, statutory provisions may be implicated and require amendments.

The Automation and Technology Committee recommends that a local technology committee be established in any trial court planning to use video court/conferencing technologies. This group would assess the need and use of a video court system and evaluate its use with regard to Illinois statutes, Supreme Court Rules, and the need for local rules.

The Automation and Technology Committee also recommends that consideration be given to the planning, design and aesthetics of the courtroom, which are intended to provide an acceptable audio and video quality during proceedings. Reference materials, available from the Committee's Impact Statement, provide guidance in the planning and use of video court/conference systems.

The Automation and Technology Committee further recommends that any jurisdiction implementing a video court/conference system adopt local policies and procedures governing the use of such systems, including training, maintenance, upgrades to the system, and steps to address equipment malfunctions.

Video Court/Conference System - Impact Statement

4. LEGISLATION, CASE LAW AND SUPREME COURT RULES

4.1 Civil Hearings

4.1.1 Overview of Law and Use of Video Court/Conference Systems

Video court/conferencing is an interactive technology that allows judicial proceedings to be conducted with participants in different locations. Audio and visual images are simultaneously transmitted, so that all participants are able to hear and see each other in real time. This is to be distinguished from the use of videos (e.g., evidence deposition which proceeds as a conventional deposition, but the record of the deposition is initially made on videotape rather than via a stenographic transcript; and, demonstrative evidence: assembled before trial, recording it on videotape and then showing the videotape to the trier of fact as in a “Day in the Life” of a plaintiff with catastrophic permanent injuries. These types of videos are widely accepted in judicial proceedings. Although video court/conferencing systems are in regular use in some aspects of criminal proceedings, such as bond hearings, its use in civil hearings has been less frequent.

Some statutes authorize court proceedings to proceed via video conferencing while other proceedings depend upon stipulation of all parties and the court. The experience in other civil and criminal applications, however, appears to support the position that through evolving technology the quality and reliability of video court/conferencing systems are increasing exponentially while the cost continues to decrease. Also, its use enhances the efficiency of judicial proceedings.

Some current uses of video court/conferencing systems in civil proceedings include:

- Motion practice
- Settlement proceedings
- Facilitating the presence of a party at trial (e.g., an aged and disabled out-of-state plaintiff who was able to be “present” for opening and closing arguments)
- Witness testimony at trial (e.g., shareholders from multiple other states in a class action suit, medical experts from locations remote to the site of trial)
- Oral arguments in appellate court proceedings

These uses usually satisfy needs caused by one or more of the following: short notice, geographic distance, travel arrangements, health problems, financial burden and other inconveniences.

Looking forward, the use of video court/conferencing systems will accelerate at a pace driven by technology, recognition and use by members of the bar, and the Court's continued commitment to offer the most efficient administration of justice.

Benefits of video conferencing:

- Increased efficiency
- Reduced transportation costs
- Ease of scheduling witnesses
- Accelerated resolution of cases

Detriments of video conferencing:

- Initial expense and recurring maintenance costs
- Quality of video image and audio
- Equipment reliability
- Security to prevent unauthorized access
- Rights of parties to confront witnesses

The use of video court/conferencing technology should not be ignored for purposes of settlement conferences. When there is a party or an insurance adjuster who is unable to physically attend the pretrial, video conferencing technology may aid in bridging the gap between the motivation provided by physical presence of the key parties and the absence of such motivation when the only communication available is by telephone. In other words, it is far easier to say “no” on the telephone than when there is eye-to-eye contact.

Traditionally, testimony has been presented exclusively by witnesses located in the courtroom, with the trier of fact having the opportunity to hear and observe the demeanor of the witness, *In re C.M., B.M. and E.M.*, 319 Ill.App.3d 344; 744 N.E.2d 916; 2001 Ill. App. LEXIS 59; 253 Ill. Dec. 183 (Ill.App. 1st Dist. 2001). That opportunity has been deemed so significant that it has become a mantra for the explanation given by higher courts for the deference to which the trial court’s findings of fact are entitled, *In re Marriage of Ricketts*, 329 Ill.App.3d 173, 768 N.E.2d 834, 263 Ill.Dec. 753 (Ill.App. 2d Dist, 2002). The deference given to the trial court is nowhere greater than in matters involving children, where the trial court is considered peculiarly well suited to observe and make credibility judgments.

However, the traditional notions of trial conduct are now being challenged by three simultaneous considerations: technology, mobility, and efficiency. We now live in a society that is so mobile that parents and children often find themselves hundreds, or even thousands of miles apart. For a party, particularly in family law litigation, to present in person testimony from all of the witnesses having relevant information is often impractical, if not impossible. Furthermore, with regards to video and audio conferencing, the cost has plummeted as the quality has increased exponentially.

For most civil proceedings, the ability to use video taped evidence depositions eliminates the need for the admission and use of remote testimony. However, there are three important factors which may make the use of evidence depositions unsatisfactory. They are time, security and finances. In those circumstances, the court may want to entertain the admission of remote testimony.

In particular, two family law issues have presented logistical difficulties and evoked parochial tendencies by the courts: child custody and child support. The presence of children on milk cartons and emotionally wrenching news magazine productions resulted, in part, from a legal free-for-all system in which almost every state and country was susceptible to the pleas of its current resident that their court needed to step in to protect their child or children. Avoidance of child support obligations was all too frequently accomplished by moving across state lines; where enforcement was difficult or practically impossible.

Child custody and support decisions, particularly the determination of which State has jurisdiction, are time sensitive. The need for children to attain and maintain security is so powerful that the Supreme Court has imposed time deadlines on both trial and appellate courts. Further, the legislature has provided for accelerated temporary hearings in most matters involving children. In addition, distances between parties provide one party with strategic and financial advantages that can be ameliorated by the use of remote testimony.

Also, in the gray area between civil and criminal proceedings presented by the Domestic Violence Act, there may be security reasons why the courts should allow remotely generated testimony. Frequently, the perpetrator sees court hearings over the issuance of civil orders of protection as an opportunity to attack the victim as she or he enters or leaves for court. Allowing the victims to testify from the Sheriff's office or some other remote locations may enhance law enforcement's ability to provide for their protection.

4.1.2 Statutes and Federal Rule Applicable to Video Court/Conference Systems

Code of Civil Procedure

As a general rule, when it comes to court appearances, the Code of Civil Procedure defers to the Supreme Court Rules. Hence, Section 2-620 (735 ILCS 5/2-620), governing motion practice, and Section 2-1004, (735 ILCS 5/2-1004) governing pre-trials provide that each shall be conducted according to Rules.

Family Law Statutes:

UIFSA:

The most recent version of UIFSA, as enacted in Illinois, provides in Section 316(f):

“In a proceeding under this [Act], a tribunal of this State shall permit a party or witness residing in another State to be deposed or to testify under penalty of perjury by telephone, audiovisual means, or other electronic means at a designated tribunal or other location in that State. A tribunal of this State shall cooperate with tribunals of other States in designating an appropriate location for the deposition or testimony. 750 ILCS 22/316(f)

UCCJEA:

Similarly, the UCCJEA also provides for the admission of testimony by audio/video transmission in Section 111:

Section 111. Taking Testimony In Another State.

(a) In addition to other procedures available to a party, a party to a child-custody proceeding may offer testimony of witnesses who are located in another state, including testimony of the parties and the child, by deposition or other means allowable in this State for testimony taken in another state. The court on its own motion may order that the testimony of a person be taken in another state and may prescribe the manner in which and the terms upon which the testimony is taken.

(b) A court of this State may permit an individual residing in another state to be deposed or to testify by telephone, audiovisual means, or other electronic means before a designated court or at another location in that state. A court of this State shall cooperate with courts of other states in designating an appropriate location for the deposition or testimony.

(c) Documentary evidence transmitted from another state to a court of this State by technological means that do not produce an original writing may not be excluded from evidence on an objection based on the means of transmission.

750 ILCS 36/111

Federal Rules of Civil Procedure:

The Federal Rules allow the trial judge discretion whether to allow testimony to be received by remote testimony in Rule 43(a). It provides:

Rule 43. Taking of Testimony

(a) Form.

In every trial, the testimony of witnesses shall be taken in open court, unless a federal law, these rules, the Federal Rules of Evidence, or other rules adopted by the Supreme Court provide otherwise. The court may, for good cause shown in compelling circumstances and upon appropriate safeguards, permit presentation of testimony in open court by contemporaneous transmission from a different location. FRCP 43(a)

The last sentence was added in December, 1996, Legal Information Institute, Cornell University Law School, *Federal Rules of Civil Procedure*, 2004. The committee comments, though, make it clear that live testimony in the courtroom is the preferred practice, to be abrogated only upon appropriate circumstances.

4.1.3 Supreme Court Rules Applicable to Video Court/Conferencing Systems

There are no Supreme Court Rules dealing directly with the use and admission of remote testimony during trial. However, there is substantial authority in the rules for the allowance of appearances for motions and pretrial conferences by remote means; and there are extensive authority and direction with regards to the use of evidence depositions, which is a form of remote testimony.

Rule 185 Telephone Conferences.

Arguably, Supreme Court Rule 185 would apply to audio/video transmissions as well as telephone conferences.

Rule 206 Method of Taking Depositions on Oral Examination.

Supreme Court Rule 206 contains specific requirements with regard to both the use of audio/video recordings and the use of evidence depositions. It even allows in subparagraph (h) for participation in and taking of depositions by remote electronic means.

4.2 Criminal Hearings

4.2.1 Overview of Law and Use of Video Court/Conference Systems

A courtroom is more than a location with seats for a judge, jury, witnesses, defendant, prosecutor, defense counsel and public observers; the setting the courtroom provides is an important element in the constitutional conception of trial, contributing a dignity essential to the integrity of the trial process. (**People v. Stroud**, 208 Ill.2d 398, 804 N.E.2d 510, 281 Ill.Dec. 545 (2004) citing **Estes v Texas**, 1965, 381 US 532.) So is there a place in our criminal justice courtrooms for the use of video court/conferencing systems?

Some ways in which video conference technology will enhance the criminal court system and benefit those who use it may include the following:

- Reduction of transportation costs for judges by reducing cross-venue hearings.
Judges who now travel to other counties to conduct court proceedings will be able to remain in their “home” court while conducting court proceedings in another county. For example, in small counties where they do not have a judge sitting in their county every day, a judge from another county could hold a bail hearing without actually traveling to the smaller county.
- Reduction of transportation costs for people who are incarcerated.
Not only will this benefit the local sheriffs’ departments who transport prisoners from the county jails but it will greatly benefit the State of Illinois who must transport those inmates incarcerated all over the state in the Illinois Department of Corrections. It would also greatly benefit the U.S. Marshals who transport federal prisoners who are housed in different parts of the United States. However, federal prisoners are infrequently transported to state court for hearings. The more likely benefit to federal prisoners would be that they could participate in state court proceedings that they normally would not have the opportunity to do so.
- Reduction of discomfort to defendants who are transported.
A defendant may avoid the discomfort created by being transport to the courtroom and the wait for their case to be called.

- Reduction of release time for a defendant.
If the defendant is to be released, he can be released quicker by not having to be returned to the jail for release.
- Reduction of security problems and costs.
In all cases, but especially where the defendant is violent, the use of a video court/conferencing system allows for a more secure environment and would reduce security costs necessary to bring a defendant to the courthouse.
- Reduction of court time waiting for transfer of prisoners.
A video court/conference system saves courtroom time by removing any delay in waiting for the appearance of a defendant since the defendant remains in the jail facility waiting for the court to address him via the video conference system.

Conversely, some ways in which a video court / conference system may have a negative impact on the criminal court system include the following:

- Cost of the video court/conferencing system.
Start up and maintenance costs of a video court/conference system will be a drain on the already overburdened criminal court budgets.
- Inability of the defendant to meet personally with his attorney.
If the defendant's attorney is in the courtroom and not with the defendant, a defendant who appears by video conference is unable to meet personally with his attorney to discuss his case either in general terms or specific to the proceedings that he is appearing by video conferencing.
- Depersonalizing the court proceedings.
A video court/conferencing system may depersonalize the court proceedings. One reason family and friends appear in court is to show the defendant their support. With a video court system, the defendant may not be aware that his family and friends are even present. Add this to the fact that the defendant is unable to see and meet personally with his attorney, the defendant may feel that he is not being treated as a human being with the dignity essential to the integrity of the trial process.

In the Illinois Circuit Court Survey of the twenty-three (23) circuits in Illinois (See Reference Material A), the Chief Judges of eleven (11) circuits reported that their criminal courts are presently using a video court/conferencing system.¹ The criminal courts in those circuits reported using video court systems for: (1) Bond hearings; (2) First Appearances; (3) Arraignments; (4) Waivers of Extradition; (5) Probable Cause Hearings; and (6) Felony Presentments.

¹ Cook County, 3rd Circuit, 4th Circuit, 7th Circuit, 9th Circuit, 10th Circuit, 12th Circuit, 15th Circuit, 18th Circuit, 19th Circuit, and 21st Circuit,

These video court/conferencing systems were based on the prior statutory provision of “Defendant’s Appearance by Closed Circuit Television and Video Conference” (725 ILCS 5/106D-1) which did not set out the specific proceedings in which video conferencing could be used. Instead it allowed a defendant to appear by video conference at any pre-trial or post-trial proceeding where “the defendant’s personal appearance was not required by the Constitution of the United States or the Illinois Constitution.”

The defendant’s right to be present in the courtroom is not an express right under the United States Constitution, but is implied, arising from the due process clause of the 14th Amendment of the U.S. Constitution. Both the federal and state constitutions afford a criminal defendant the general right to be present, not only at trial, but at all critical stages of the proceedings, from arraignment to sentencing. Critical stage has been recognized as any proceeding where a defendant asserts or waives his constitutional rights. (**People v. Lindsey**, 201 Ill.2d 45, 265 Ill. Dec 616, 772 N. E. 2d 1268 (2002))

As a result, the appellate courts have been required to consider whether video conferencing could be used, for various criminal proceedings including arraignments (**People v. Lindsey** supra), jury waivers (**People v. Lindsey** supra), acceptance of jury verdicts (**People v. Mendez**, 328 Ill. App. 3d 1145, 253 Ill.Dec 319, 745 N.E.2d 93 (3rd Dist, 2001), and guilty pleas (**People v. Stroud**, 208 Ill.2d 398, 804 N.E.2d 510, 281 Ill.Dec. 545 (2004)). This case by case review led to uncertainty and dampened the widespread use of video conferencing pursuant to this statutory provision.

On August 17, 2007, the Illinois legislature amended this statute (725 ILCS 5/106D-1) to provide specifically when video conferencing could be used and set forth the following proceedings:

- the initial appearance before a judge on a criminal complaint, at which bail will be set;²
- the waiver of a preliminary hearing;
- the arraignment on an information or indictment at which a plea of not guilty will be entered;
- the presentation of a jury waiver;
- any status hearing;
- any hearing conducted under the Sexually Violent Persons Commitment Act at which no witness testimony will be taken; and
- at any hearing conducted under the Sexually Violent Persons Commitment Act at which no witness testimony will be taken.

² Note: The statute on “Person Arrested” specifically provides that “a charge may be filed against such person by way of a two-way closed circuit television system, except that a hearing to deny bail to the defendant may not be conducted by way of closed circuit television.” (725 ILCS 5/109-1(a))

2008 REPORT

This amendment also allows other court appearances to be held by video conferencing “upon waiver of any right the person in custody or confinement may have to be present physically.” (725 ILCS 5/106D-1(c)). This means that a waiver by a defendant could allow video conferencing at a proceeding to enter a guilty plea, to waive counsel, to return a verdict, etc. Consequently, these new statutory provisions greatly expand the possible use of video conferencing far beyond those indicated in the Illinois Circuit Court Survey (Reference Material A)

But even this extensive list of statutorily permitted uses under this Illinois statute limits the potential value of a video court/conferencing system in criminal cases when compared to how it is used in other states. For example, in Wisconsin, video conferencing in criminal cases may be used in all the following proceedings:

- initial appearances;
- waiver of preliminary hearings, competency hearings or jury trial;
- motions for extension of time;
- arraignment if the defendant intends to plead not guilty or refuse to plead;
- setting, review and modification of bail and other conditions of release;
- motions for severance or consolidation;
- motions for testing of physical evidence or for protective orders;
- motions directed to the sufficiency of the complaint or the affidavits supporting the issuance of a warrant for arrest or search warrant;
- motions in limine;
- motions to postpone;
- providing victims who are incarcerated to attend court proceedings;
- permit an interpreter to act in any criminal proceeding other than a trial by telephone or live audio/visual means;
- all hearings in which oral testimony is to be presented in an action or special proceeding commenced by a prisoner shall be conducted by telephone, interactive audio/video transmission without removing the prisoner from the facility³.

In addition, New Hampshire allows the use of video conferencing in criminal cases to take the testimony of a scientist, laboratory scientist or technical specialist from the forensic laboratory of the state police or similar expert of the defendant. However, the testimony is limited to expert testimony or to the results of, and matters relating to, tests conducted at the forensic laboratory of the state police.

Any consideration to expand the Illinois statute to include the video conferencing uses in other states must be viewed in light of the Illinois caselaw in two important areas. The first is the defendant’s right to be present at all “critical stages.” There appears to be no violation of a criminal defendant’s due process rights if he appears via closed circuit television in a non-critical stage. The second issue is the statutory requirement that the defendant be present “in open court” for certain proceedings.

³ *Bridging the Distance Implementing Videoconferencing in Wisconsin*, Wisconsin Supreme Court Policy and Planning Advisory Committee (2005)

In addition, the definition of critical stage (in terms of appearance in court) has been impacted by the statutes set forth in the proceeding section. (Section 4.2.2) Some specifically require that certain stages of a criminal proceeding shall be in “open court” or specifically provide that the defendant’s right to be present can be met by appearance on closed circuit TV. In addition, the Supreme Court has required that certain criminal proceedings be held “in open court.” (Section 4.2.3)

However, the right to be present at a critical stage has been held to not be absolute. Even where a defendant has the general right to be present at a critical stage, his absence from such a proceeding will not always be a violation of his constitutional rights. The courts have decided that it is a violation only if the record demonstrates that defendant’s absence caused the proceeding to be unfair or if his absence resulted in a denial of an underlying substantial right. (**People v. Lindsey**, supra)

In **Lindsey**, the Supreme Court set forth the issues that were to be used in determining whether the defendant’s due process rights were violated by his absence at these critical stages of the criminal proceeding. These factors included the following:

- Whether the court needed to assess the defendant's demeanor;
- Whether the defendant's sixth amendment right to confront witnesses was implicated because there were witnesses to confront at the proceedings;
- Whether a defendant had the opportunity to consult privately with counsel prior to the proceedings; and
- Whether during the proceeding a defendant's ability to communicate freely with counsel was impaired because counsel was required to leave the courtroom to contact the defendant by telephone in order to consult privately with counsel.

In **Lindsey**, the Supreme Court also addressed the issue of whether the statutory provisions which require an appearance in “open court” required that defendant be physically present in the courtroom. More importantly, the Court considered whether the presence requirement could be satisfied by a closed circuit television appearance. In doing so, the Supreme Court held that

“a strict construction of the “open court” language found in sections 103-6 and 113-1 as excluding closed circuit television appearances is not warranted. Construing the provisions of sections 103-6 and 113-1 in pari materia with section 106D-1, we discern the legislature's intent to interpret the “open court” language broadly to include appearances by closed circuit television. See In re Application for Judgment & Sale of Delinquent Properties for the Tax Year 1989, 167 Ill.2d 161, 171-72, 212 Ill.Dec. 215, 656 N.E.2d 1049 (1995) (Revenue**1280 ***628 Act and section 16 are in pari materia and may be construed together to determine the intent of the legislature). Consequently, we find that defendant's appearance by closed circuit television at his arraignment and jury waiver satisfied the statutory requirement that he “be called into open court” for arraignment and waive his right to trial by jury “in open court.”

2008 REPORT

Does this interpretation of the statutory language of “being in open court” mean that all of the statutes that use this language can be satisfied by closed circuit television appearances? More importantly does it also include the Supreme Court Rules which use similar language? Would all of the previously mentioned potential uses of a video court/conference system in criminal cases in other states be acceptable if the court considers the factors set forth in **Lindsey** and determines that the defendant’s due process rights were not violated by his absence from the court room?

The answer is probably no! The Illinois Supreme Court’s position is that, notwithstanding the holding in **Lindsey**, some criminal proceedings constitutionally require the defendant to appear personally in court. In **Stroud**, the court held that “a defendant’s physical presence at a guilty plea proceeding is constitutionally required unless he consents to having the plea taken by closed-circuit television. (**People v. Stroud**, supra)

The **Stroud** Court also explained that the procedure for a defendant to make such a waiver could be done as part of the video conferencing. It stated that “it would normally satisfy constitutional considerations for the defendant to waive his physical appearance in court by stating so on the record while participating through closed-circuit television.” However, the court specifically instructed the trial judges that an admonishment of the defendant’s right to be physically present in court should be given at the beginning of the guilty plea proceedings as part of the admonitions required by Supreme Court Rule 402 unless the defendant has previously given his written consent to the closed circuit procedure.” (**People v. Stroud**, supra)

There is one other consideration which has nothing to do with the constitutional rights of the defendant. Supreme Court Rule 63(a)(7) provides that the taking of photographs, broadcasting or televising of court proceedings is permitted only to the extent authorized by order of the Supreme Court. These terms are defined to include the audio or video transmissions of recordings made by telephones, personal data transmissions, personal data assistants, laptop computers, and other wired or wireless data transmissions and recording devices. Consequently, although the legislature has provided for the use of video conferencing by statute (725 ILCS 5/106D), the Supreme Court has not specifically done so.

Several court decisions have dealt with this issue of what happens when a state statute and a Supreme Court Rule are in conflict. They have held that the Supreme Court Rule trumps the statute. The statute is a legislative infringement on the powers of the judiciary and thus void (**People v. Colclasure**, 200 Ill.App.3d 1038, 558 N.E.2d 705 (5th Dist.,1990) with regard to peremptory challenges; **People v. Jackson**, 69 Ill. 2d 252, 13 Ill.Dec.667, 371 N.E.2d 602 (1977) with regard to allowing opposing counsel the right to conduct voir dire examination of prospective jurors).

However, these court decisions are based on whether the conflict between the statute and Supreme Court Rule is procedural or substantive. If procedural, the Supreme Court Rule controls, but if substantive, the statute would control. The use of video conferencing in the courts would appear to be procedural and therefore the statute would be an infringement on the Court's power. However, the statute and Supreme Court Rule on video conferencing effects a constitutional right of the defendant to be physically present which would appear to effect a substantive right of the defendant.

Finally, this issue has been made more confusing by the fact that this apparent conflict between the video conferencing statute and the Supreme Court Rule on televising court proceedings has never been addressed even though the state statute has been on review before the Supreme Court several times.

4.2.2 Statutes Applicable to Video Court/Conference Systems

- 725 ILCS 5/103-6 requires that a jury waiver be in open court.
- 725 ILCS 5/106B-5 provides that a victim in a criminal assault, who is under the age of 18 or is moderately, severely, or profoundly mentally retarded, may testify via closed circuit television, if certain identified criteria are met.
- 725 ILCS 5/106D-1 allows for the appearance of a defendant via closed circuit television and video conference at certain enumerated proceedings and waiver of right to be physically present at any criminal proceedings.
- 725 ILCS 5/110-5.1(c) permits a person who is required to appear for bond setting to appear by video conferencing.

4.2.3 Supreme Court Rules Applicable to Video Court/Conference Systems

- Supreme Court Rule 401 requires a waiver of counsel to be in open court;
- Supreme Court Rule 402, requires a defendant to appear personally in open court to enter a plea of guilty or stipulation;
- Supreme Court Rule 402A requires that a defendant appear personally in open court to admit or stipulate to a violation of probation;
- Supreme Court Rule 403 requires that a person under 18 shall not be permitted to enter a plea of guilty or to waive a trial by jury, unless he is represented by counsel in open court;
- Supreme Court Rule 416(e), which provides that a defendant does not have a right to be present during depositions relating to a capital case;
- Supreme Court Rule 45 (d) provides for and prescribes the types of electronic recording equipment that may be used in the circuit courts;

2008 REPORT

- Supreme Court Rule 63(a)(7) provides that the taking of photographs, broadcasting or televising of court proceedings is permitted only to the extent authorized by order of the Supreme Court. These terms are defined to include the audio or video transmissions of recordings made by telephones, personal data transmissions, personal data assistants, laptop computers, and other wired or wireless data transmissions and recording devices;
- Supreme Court Rule 63 provides for the transmission of data for purposes of a security system.

Video Court/Conference System - Impact Statement

5. TECHNOLOGY - VIDEO COURT/CONFERENCING SYSTEMS

5.1 Components and Standards of Video Court / Conference Systems

The following are the suggested components and standards for a video court/conference system.

Industry Standards:

All video court/conference systems should be in compliance with the protocols adopted by the International Telecommunications Union (ITU). The ITU has three standards defined for video conferencing systems.

ITU H.320:

The H.320 standard is public switched telephone networks or video conferencing over integrated services digital networks (ISDN) or dedicated networks such as T-1 and satellite-based networks.

ITU H.323:

The H.323 standard defines requirements for transporting multimedia applications over local area networks (LANs) or older implementations of voice-over-IP networks (VoIP).

ITU H.324:

The H.324 standard defines transmission over the Plain Old Telephone System (POTS), including video calls on 3G mobile phones.

Traditional video conference systems were ISDN-based systems that supported the ITU H.320 standards. However, more recently, IP-based video conferencing systems have emerged as the common technology, which supports the use of the Internet and broadband or DSL high-speed connections, as defined by the ITU H.324 standard.

The IP-based video conferencing systems continue to be an attractive technology that expands functionality, uses readily available technology, and is very reasonable in cost. As well, IP-based systems are compatible with personal computer-based video conferencing systems, including webcam devices and enterprise meeting online software systems, which are emerging as a very reasonable and feature rich video conference system.

Dedicated Connection - from courtroom to remote location:

Many telecommunication technologies exist that could be used in a video court/conferencing system to connect a courtroom to a remote location. However, it is recommended this connection (T-1, ISDN, LAN connection, etc.) be dedicated to the video court/conference function. Other technologies, such as microwave, DSL, or

broadband circuits exist, however, these connection methods should be tested using the actual video court/conference system to confirm the responsiveness and functionality of the system.

Security:

It is strongly recommended that security be a key component of any video court/conferencing system, such that assurances exist for the use of such a system are exclusive to the parties involved in the video conference.

Direct data circuits (private dedicated circuits) between the courtroom(s) and the remote jail do not need security as long as this circuit is exclusively used for video court sessions and administered by the counties. A device such as a firewall should be used to encrypt a network circuit in the event the video court/conference connection is not private or dedicated to the video court function.

Bandwidth:

The manufacturer of a video court/conferencing system should be able to provide specific bandwidth requirements for their system. The bandwidth requirements are also dependent upon the features of the video court system, such as the use of evidence presentation components, the ability to join multiple remote locations, and the available bandwidth for the system, i.e., a microwave link on a cloudy day or a very fast data circuit but a slow codec processor has varying available bandwidth.

Hardware:

- ▶ The codec is the hardware or software system that digitally compresses the audio and video in a video conference, coding and decoding the transmission between the parties. Compatibility between different video conferencing systems is dependant upon the standard supported and the codec's ability to decode and code a uniform transmission.
- ▶ The video conference camera should be of a quality to capture and transmit a clear picture. The camera picture may also be impacted by the lighting in a room. Although not a requirement, a pan/tilt/zoom camera allows the picture to be adjusted for the audience.
- ▶ A TV/Monitor(s), which will present both the courtroom and the remote location, should be sized according to the courtroom or room. LCD or plasma monitors are recommended.
- ▶ Use of an uninterruptible power supply is recommended to maintain connections for momentary power outages.

5.2 Considerations for a Video Court/Conferencing System

The following are guidelines to consider in the use of a video court/conference system, which are intended to aid its effectiveness.

Considerations:

- ▶ Clarity of the audio and video is critical to the successful use and effectiveness of a video court/conferencing system.
- ▶ Implementing a highly secure video court/conferencing system to insure confidential communication and transmission of a signal and access to it.
- ▶ Placement of the video court equipment, such as the TV screens, for effective visibility is important.
- ▶ Consideration should be given to the needs of all users and full compliance with ADA requirements is recommended.
- ▶ The setup and configuration of the video conference equipment should consider the layout of the room and the audio requirements, which might include the need for sound-baffling to avoid feedback and inaudible sessions.
- ▶ Recognizing that the configuration of the video court/conferencing system and furniture is dependent on the space and use of the system (courtroom, conference room, jail, etc.), the system should provide flexibility and allow for reconfiguration of the space.
- ▶ Training is a key aspect of any video court/conferencing system to educate users on the proper operation, procedures, and use of the equipment. Training should also include support and protocols for equipment malfunctions.
- ▶ Because of the rapid changes in technology in video conference systems, it is important to monitor the industry and new technologies.
- ▶ Consideration should be given to the compatibility of a video conferencing system with other entities, i.e. local law enforcement, state judicial branch, or organizations that might provide video conferencing services.

5.3 Costs

The cost of a video court/conference system will vary relative to the features, specifications, and scale of the system. For example, the number of courtrooms or remote locations to be available in a video conference session or the connection type used to connect the courthouse to the remote location will impact the cost of the system.

There are generally two types of costs associated with a video court/conference system, namely, the initial one-time cost and the recurring costs. Initial costs represent the purchase price of a system (hardware and software), its installation, testing and training on the use of the system. Recurring costs of a video conferencing system include the maintenance contract for maintenance or support costs. Maintenance might include adjustments to the video conference system (low audio level, etc.), break fix of any component in the system, software updates to the system, or online diagnosis or support. Recurring costs would also include the use of the telecommunication connection, i.e. T-1 or ISDN circuit leased from a vendor.

Video Court/Conference System - Impact Statement

6. PROPOSALS AND RECOMMENDATIONS FOR USE IN ILLINOIS

6.1 Civil Hearings:

6.1.1 Proposed New Rules - Civil

Currently, a Supreme Court Rule does not exist to address the location of witnesses who testify before a court in a hearing. The Automation and Technology Committee recommends that such a rule be adopted in order to clarify when such testimony may be taken and under what circumstances. The Federal Rule, modified to incorporate the safeguards contained in SCR 206 for the taking of remotely generated testimony through the use of audio video equipment, incorporates both the common law preference for in person testimony and the requirements of modern legislation and society.

In addition, the Committee recommends that the Court adopt a new rule which states:
The court may, for good cause shown in compelling circumstances and upon appropriate safeguards, permit presentation of testimony in open court by contemporaneous transmission from a different location.

6.1.2 Proposed Revisions to Existing Rules - Civil

The Automation and Technology Committee recommends that Supreme Court Rule 63 be amended to allow for the use of video court/conferencing technology in open court under guidelines approved by the Court.

6.2 Criminal Hearings:

6.2.1 Statutory Implications - Criminal

Should the Court adopt the Committee's recommendations regarding video court/conference systems, statutory provisions may be implicated and require amendments.

6.2.2 Proposed Revisions to Existing Rules - Criminal

Supreme Court Rules

Rules 401 - 402:

Supreme Court Rules 401– 402 should be revised to include a paragraph similar to the bond statute or the initial appearance statute so that it specifically “permits a person to appear by video conferencing equipment as set forth in 725 ILCS 5/106D-1” when a defendant is required to appear before it for a hearing on a plea and the defendant has waived the right to be present.

Rules 411 - 417:

Supreme Court Rule 411– 417 should be revised to include a paragraph similar to the bond statute or the initial appearance statute so that it specifically “permits a person to appear by video conferencing equipment as set forth in 725 ILCS 5/106D-1” when a defendant is required to appear before it for a hearing on a discovery issue.

Rule 605:

Supreme Court Rule 605 should be revised to include a paragraph similar to the bond statute or the initial appearance statute so that it specifically “permits a person to appear by video conferencing equipment as set forth in 725 ILCS 5/106D-1” when a defendant is required to appear before it for a hearing on a plea and the defendant has waived the right to be present.

6.3 Local Committee - Technology Review

A committee of potential users should be created to assess the need for video technology within the jurisdiction and outside the jurisdiction in the event the video technology involves multiple jurisdictions. This evaluation should include current and future needs. These needs should be evaluated in terms of the applicable Illinois Statutes, Illinois Supreme Court Rules, caselaw, and local rules.

6.4 Review Attached Material - for Design Issues

A jurisdiction committed to the planning for video technology should consider numerous issues within the design phase, in particular, those set forth in the attached reference material, *Bridging the Distance: Implementing Videoconferencing in Wisconsin, 2005*, updated 8/22/06, and prepared by The Planning and Policy Advisory Committee Videoconferencing Subcommittee.

6.5 Adoption of Local Policies and Procedures.

A jurisdiction adopting video technology should adopt appropriate policies and procedures. These policies and procedures should include those issues related to the use of the video technology, training, maintenance schedules, periodic reviews to determine whether the use of the technology remains viable, and the need to update equipment.

Video Court/Conference System - Impact Statement

7. RELEVANT RULES, POLICIES, AND GENERAL ORDERS FROM OTHER STATES.

7.1 Existing Rules and Statutes - By State

Below is a list of some existing State rules and statutes concerning the application of video court/conferencing systems. Although many refer to criminal proceedings, they are often used as authority in civil hearings.

Alabama

Alabama Code §§ 15-26-1 - 15-26-6. Audio-video Communication for Criminal Pre-trial Proceeding.

California

California Penal Code § 977.2. Incarcerated defendant; initial appearance and arraignment; two-way electronic communications; presence of counsel.

California Penal Code § 3043.25. Videoconferencing in lieu of personal appearance.

Kansas

Kansas Statutes § 22-2082. Release prior to trial; conditions of release.

Kansas Statutes § 22-3205. Arraignment.

Kansas Statutes § 22-3208. Pleadings and Motions.

Kansas Statutes § 38-1632. Detention hearing; waiver; notice; procedure; removal from custody of parent; audiovisual communications.

Kansas Statutes § 38-1633. Pretrial hearings.

Montana

Montana Code § 41-5-332. Custody - hearing for probable cause.

Montana Code § 46-7-101. Appearance of arrested person - use of two-way electronic audio-visual communication.

Montana Code §46-9-201. Who may admit bail.

Montana Code §46-9-206. Setting bail - appearance or use of two-way electronic audio-video communication.

Montana Code § 46-10-202. Presentation of evidence.

Montana Code § 46-12-201. Manner of conducting arraignment - use of two-way electronic audio-video communication - exception.

Montana Code § 46-12-211. Plea agreement procedure - use of two-way electronic audio-video communication.

Montana Code § 46-16-105. Plea of guilty - use of two-way electronic audio-video communication.

Montana Code § 46-16-123. Absence of defendant on receiving verdict or at sentencing.

Montana Code § 46-17-203. (Temporary) Plea of guilty - use of two-way electronic audio-video communication.

Montana Code §46-17-203. (Effective July 1,2006) Plea of guilty - use of two-way electronic audio-video communication.

Montana Code § 46-18-102. Rendering judgment and pronouncing sentence - use of two-way electronic audio-video communication.

Montana Code § 48-18-115. Sentencing hearing - use of two-way electronic audio-video communication.

Montana Code § 46-23-109. Parole hearings and administrative reviews - telephone video conference.

Montana Code § 46-23-218. Authority of board to adopt rule - purpose for training.

Nevada

Nevada Revised Statutes § 171.1975. Use of audiovisual technology to present live testimony at preliminary examination: when permitted; notice by requesting party; opportunity to object; requirements for taking testimony; limitations on subsequent use.

Nevada Revised Statutes § 172.138. Use of audiovisual technology to present live testimony before grand jury: when permitted; requirements for taking and preserving testimony; limitations on subsequent use.

Pennsylvania

Pennsylvania Consolidated Statutes § 8703. Arraignment.

Pennsylvania Consolidated Statutes § 9904. Referral to State intermediate punishment program.

Tennessee

Tennessee Code § 41-21-809. Hearings conducted at jails; use of video communications technology.

Texas

Texas Code of Criminal Procedure, Art. 15.17. Duties of arresting officer and magistrate.

Texas Code of Criminal Procedure, Art. 46B.001. Definitions.

Vermont

Vermont Statutes § 502. Parole interviews and reviews.

Virginia

Virginia Code § 26.1-276.3. Use of telephonic communication systems or electronic video and audio communication to conduct hearing.

In the Federal Court

Fed. R. Civ. P. 43 Taking Testimony

(a) In Open Court

Video Court/Conference System - Impact Statement

8. ACKNOWLEDGMENT

The Automation and Technology Committee is proud to present this Impact Statement on the use of video court/conferencing systems in Illinois' Trial Courts. The Committee extends its appreciation to the Illinois Supreme Court and the Judicial Conference for the assignment of developing such an important document.

The Automation and Technology Committee wishes to thank all of those contributing to this product, in particular the Chief Circuit Judges for the information they provided, the Honorable Grant S. Wegner (former Committee Chairperson) and previous Automation and Technology Committee Members.

2008 Automation and Technology Committee Members:

- Honorable Kenneth A. Abraham Chairperson
- Honorable Adrienne W. Albrecht
- Honorable Robert E. Byrne
- Honorable Francis J. Dolan
- Honorable John K. Greanias
- Honorable William G. Schwartz
- Honorable Thomas H. Sutton

2007 Automation and Technology Committee Members:

- Honorable Grant S. Wegner Chairperson
- Honorable Kenneth A. Abraham
- Honorable Adrienne W. Albrecht
- Honorable Francis J. Dolan
- Honorable James K. Donovan
- Honorable John K. Greanias
- Honorable R. Peter Grometer
- Honorable Thomas H. Sutton

Video Court / Conference System - Impact Statement

9. REFERENCE MATERIAL

Please advise the Administrative Office if you would like a copy of any reference materials.

Response to Video Conference Survey to Illinois Circuit Courts

Survey Purpose: The purpose of this survey is to solicit information regarding specific experiences with the use of video court/conferencing systems in the trial courts.

Survey From: Illinois Judicial Conference - Automation and Technology Committee

Response Date: June 15, 2007

Contact Information: Skip Robertson (217) 785-3906
Administrative Office of the Illinois Courts
JMIS Division
3101 Old Jacksonville Road
Springfield, IL 62704
srobertson@court.state.il.us

Survey Response:

- ▶ Survey Results were from June 2007.
- ▶ Of the twenty-three (23) Illinois circuits, sixteen (16) responded to the Video Court/ Conferencing questionnaire - (70%).

1) Do you use video court/video conferencing systems in the trial courts of your Circuit?
If not, are there any plans for implementation?

If so, in which courts (civil/criminal)?

a. What is the nature of its use?

b. Do you use closed circuit television or data network video court/conferencing systems?

(1) What technology 'connects' the courtroom with the remote video conference location?

(2) What is used to secure the video court connection and who manages it?

c. Do you have a technical contact knowledgeable of your video court/conferencing system?

If so, please provide name and contact information.

d. How is your system funded?

Survey Response:

- ▶ Of those 16 circuits responding, 11 use video court/conference systems in one or multiple counties in their circuit.

- ▶ Ten of the eleven circuits indicated that bond calls or first appearances in criminal courts were the primary use of their video court/conference system.
- ▶ The technologies used to connect courtrooms with the remote video court/conference location was a private network circuit, closed circuit connection, or local area networks.
- ▶ Funding for video court/conferencing systems were primarily local funds from the county, sheriff's office, or States Attorney's office.

2) Are there local rules or a written policy identifying where and when video court/conferencing systems are allowed within the circuit?

If so, please include a copy with your completed questionnaire.

Survey Response:

- ▶ In six of the eleven circuits using video court/conferencing systems, local rules or administrative orders existed to govern the use of the system.

3) What are the detriments and benefits you have encountered using video court/conferencing systems in the trial courts?

Survey Response:

- ▶ Pros
 - Transportation costs reduced.
 - Reduced demand for law enforcement.
 - Improved courtroom decorum/security.
 - More efficiency in scheduling and managing cases.
- ▶ Cons
 - Initial cost of video court/conferencing systems is high.
 - Private conversations between defendant and attorney are more difficult.
 - Equipment malfunctions.