

NIJ's Research on Videoconferencing at Post-Arrest Release Hearings

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Panel Overview

- What is NIJ's VTC project?
- What do we learn from project site visits?
- How have jurisdictions responded to challenges?

Arizona's Rules of Criminal Procedure

Michigan's Proposed Criteria and Standards

- Audience discussion

Project Background

Videoconferencing technologies at other CJS stages demonstrate reduced transportation costs, increased prisoner security, expedited case processing, and reallocation of staff resources to agency priorities.

Integration of remote technology into court processes is generally limited to court interpretation services, witness testimony, etc.

Videoconferencing at the pretrial stage can reduce jail overcrowding and courthouse burden, and increase defendant time at liberty to maintain community ties and prepare for hearings.

Project Objective

Objective: Identify protocols that improve practices and maximize return on investment using videoconferencing to expedite post-arraignment release from custody for defendants who were arraigned and are being held in jail awaiting trial.



Research Questions

1. What are the working standards for conducting and recording videoconferences, archiving and making files accessible, and accommodating defendant, court, and jail needs and restrictions?
2. How do the defendant, victim/witness, jail, and court respond to the videoconferencing protocol?
3. How are processes (access to counsel, court interpreters), short-term outcomes (release decision), and long-term outcomes (failure to appear) affected?
4. What is the impact in terms of jail days, court hearing continuations, failure to appear unit follow-ups, law enforcement warrant service, etc.?
5. What are the cost implications of implementation and maintenance?

Project Design

Phase 1: Blueprint

Compile information on past and current videoconferencing applications via interviews and court/jail observation to identify key concerns and solutions (court rules) for protocol.

Phase 2: Field Test

Conduct implementation and assessment studies in two pilot sites (one rural), and modify protocol per field experience over a relatively short period via qualitative and quantitative data collection and analysis.

Phase 3: Evaluation

Submit final protocol to multiple new sites for self-implementation and support an objective cost-efficiency study over an extended period.

Project Resources

NIJ's Expert Workgroup:

Court technology and practicing experts who represent judges, prosecutors, public defenders, court administrators, court interpreters, pretrial release services and jail sheriffs. Tasks are to advise on blueprint development, operational protocol field testing, and implementation evaluation, and participate in meetings.

Federal Colleagues and Invited Stakeholders:

- BJA, BJS, SJI, and OVC
- American Bail Coalition, APPA, Association of Prosecuting Attorneys, IACP, NACDL, NAPSA, NLADA, National Sheriffs Association

Phase 1 Tasks

FY2013 Contract:

Selected ICF International to assist NIJ on Phase 1.

NIJ Expert Workgroup Meetings:

Meet to review project plans and work products with Federal and other stakeholders observers.

Information Collection from Jurisdictions:

Calls for information on past/current practices, and site visits to observe remote technology in court and detention settings.

Work Products:

Compile information resources and summarize findings; and,
Document protocol elements, principles, and recommendations.

Site Visits

- Purpose
 - Review Videoconferencing Protocol Options and Considerations
- Objectives
 - Conduct in-person meetings with court, jail, and other local agencies;
 - Observe pretrial release hearings; and,
 - Observe inmate management in pretrial detention jail facilities.

Montgomery County, Pennsylvania

- Locations

- Montgomery County, Pennsylvania

- Montgomery County Courthouse
 - Montgomery County Correctional Facility
 - Montgomery County Court 38-1-20 (Magisterial Court)



VTC Observation Protocol

1. Equipment
 - a. Setup Process
 - b. Equipment Information
 - c. Frame of Reference



VTC Observation Protocol

2. Audio
 - a. Judge
 - b. Defendant
 - c. Prosecutor
 - d. Bailiff
 - e. Others



VTC Observation Protocol

3. Visual
 - a. View (Panoramic?)
 - b. Describe What You Can see

4. Defendant
 - a. Where is defendant counsel?
 - b. Who is with defendant?
 - c. How does defendant communicate with attorney?



VTC Observation Protocol

5. VTC versus Traditional
 - a. What are the differences?
 - Does technology help or hinder the process?
 - b. Technology related problems or issues?

Arizona's Experience



New Rule 1.6

Rules of Criminal Procedure

“Interactive Audiovisual Systems”



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Arizona's Experience

Constitutional case law concerning **Due Process** and the **Confrontation Clause** presented a test:

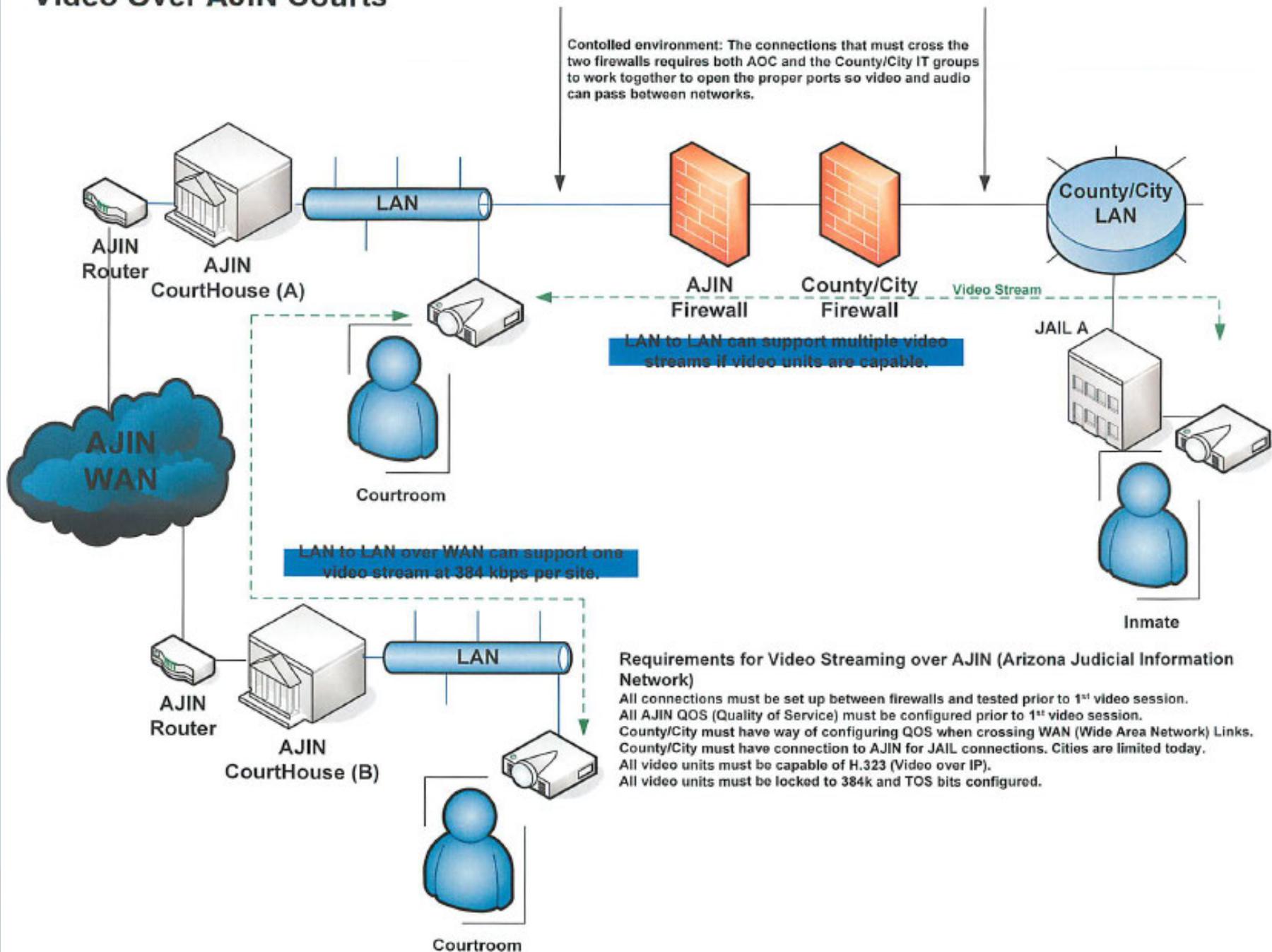


Would the accused's physical absence from the courtroom and his appearance at a particular proceeding by video, impact his ability to defend against the charge?

Arizona's Experience

“Any interactive audiovisual system must meet or exceed minimum operational guidelines adopted by the Administrative Office of the Courts.”

Video Over AJIN Courts



Arizona's Experience

7

Specific Requirements

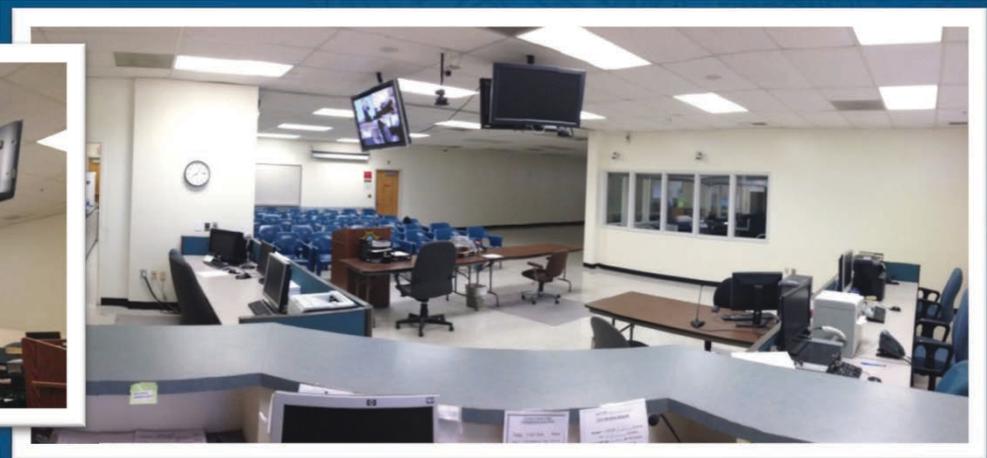


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Arizona's Experience

Requirements:

1. Court and parties all must be able to view and converse with each other simultaneously



Arizona's Experience

Requirements:

2. Full record of the proceedings must still be made as provided in other statutes and rules.



Arizona's Experience

Requirements:

3. Provisions must be made allowing for confidential communications between defendant and defense counsel before, during and immediately after the proceeding.



Arizona's Experience

Requirements:

4. Victims must have a means to view and participate in the proceedings.



Arizona's Experience

Requirements:

5. Victims' rights laws must be complied with (including victim impact statements being interpreted).



**VICTIMS'
RIGHTS**
Putting Victims
First

Arizona's Experience

Requirements:

6. The public must have a means to view the proceedings.



Arizona's Experience

Requirements:

7. Provisions must be made for the use of interpreter services when necessary for non-English speakers and hearing-impaired defendants (and victims), with the interpreter present with the defendant and both appearing simultaneously.



Arizona's Experience

Absent **extraordinary circumstances** and the **parties' consent**, appearance by videoconference is **precluded** for trials, contested probation violation hearings, felony sentencing hearings, and felony probation disposition hearings.



Arizona's Experience

The Court is the one with discretion to allow appearance by an interactive audiovisual system at: initial appearances, arraignments in misdemeanor cases; not-guilty plea arraignments in felony cases; hearings on motions to continue; hearings on uncontested motions; pretrial or status conferences; misdemeanor changes of plea; and informal conferences.

Michigan's Experience with Interactive Video Technology (IVT)



Si quaeris peninsulam amoenam circumspice



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- Much like other states that have experimented with interactive video technology, Michigan's experience has been mixed.
- We clearly have had more Learning Experiences than Successes, but during the past 20 years we have learned many lessons and our video processes are more mature as a result.

Michigan's Decentralized Court System

- Supreme Court
- Appeals Court
- Circuit Court (57)
- District Court (98)
- Probate Court (78)
- Municipal Court (4)



"If you seek a pleasant peninsula, look about you."



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Early IVT Experimentation

- Pilot Projects began in 1990 with Michigan Supreme Court approval (AO 1990-1)
- Initial focus on criminal preliminary examination hearings in the District Courts
- Often primitive connections via ISDN
- Expanded use authorized in AO 2001-4 for involuntary commitments, child protective proceedings, juvenile proceedings
- Early SCAO standards allowed use of ISDN, T-1, Fiber Optics, Microwave
- Required transmission speed of 384 KBS and minimum frame refresh of 30 frames per second

IVT Authorization via Michigan Court Rule (MCR)

- MCR 3.210 – Circuit Court; Domestic Relation Cases
 - hearings and trials
- MCR 3.904 – Circuit Court; Delinquency Proceedings
 - post dispositional reviews and limited dispositional hearings
- MCR 3.904 – Circuit Court; Child Protective Proceedings
 - preliminary hearings and review hearings
- MCR 5.738a – Probate Court
 - involuntary treatment, continuing MH treatment, guardianships in MH facilities



IVT Authorization for Adult Criminal Proceedings

- MCR 6.006(A) – Circuit/District Court; Criminal
 - initial arraignments
 - pretrial conferences
 - Pleas
 - sentencing for misdemeanor offenses
 - show cause hearings
 - waivers and adjournments of extradition
 - referrals for forensic determination of competency
 - waivers and adjournments of preliminary examinations.



IVT Authorization for Prelim Exam Witness Testimony

- MCR 6.006(B) – District Court; Criminal
 - Defendant in the Courtroom - Preliminary Examinations
 - IVT for expert witness
 - IVT for other witnesses, upon showing of good cause



IVT Authorization for Other Proceedings

- MCR 6.006(C) – Circuit/District Court; Criminal
- Defendant in the Courtroom
 - evidentiary hearings, competency hearings, sentencings, probation revocation proceedings, and proceedings to revoke a sentence that does not entail an adjudication of guilt
 - with the consent of the parties, **trials**

Proposed MCR 8.124 Videoconferencing (Excerpt)

- Criteria for Videoconferencing
 1. IVT equipment capabilities
 2. Whether any undue prejudice would result
 3. The convenience of the parties/witness and the cost of producing the witness
 4. Whether the procedure would allow for full and effective cross-examination
 5. Whether the dignity, solemnity, and decorum of the courtroom would tend to impress upon the witness the duty to testify truthfully.

Proposed MCR 8.124

Videoconferencing (Excerpt)

6. Whether a physical liberty or other fundamental interest is at stake
7. Whether the court can sufficiently control the proceedings at the remote location
8. Whether the use of IVT presents the person at a remote location in a diminished or distorted sense that negatively reflects upon the individual
9. Whether the use of IVT diminishes or detracts from the dignity, solemnity, and formality of the proceeding and undermines the integrity, fairness, or effectiveness of the proceeding
10. Whether the person appearing by IVT presents a significant security risk to transport and be present physically in the courtroom



Proposed MCR 8.124

Videoconferencing (Excerpt)

11. Whether the parties or witnesses have waived personal appearance or stipulated to IVT
12. The proximity of the IVT request date to the proposed appearance date
13. Any other factors that the court may determine to be relevant



Proposed Standards For Michigan Courts

1. IVT capability at 30fps and 4CIF video quality
2. Either over the air or direct in-line court recording
3. Participants shall be able to see, hear, and communicate
4. Participants shall be able to see, hear, and otherwise observe physical evidence or exhibits presented
5. Video and sound quality shall allow participants to observe the demeanor and nonverbal communications of other participants
6. Courtroom camera shall have the capability to scan the courtroom

Proposed Standards For Michigan Courts

7. In criminal matters, counsel for a defendant shall have the option to be physically present with the client at the remote location. Parties and counsel at remote locations shall be able to mute the microphone system.
8. In criminal matters, if the defendant and counsel are not in each other's physical presence, they shall be able to have private, confidential communication during the proceeding.
9. If applicable, there shall be a means by which documents can be transmitted between the courtroom and the remote location.

Audience Discussion



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Discussion Issues

1. Conducting and recording videoconferences

- Consent of parties to avoid “confrontation clause” issues?
- Equipment – is it intuitive/user friendly?
- Standard video vs HD?
- Transmission quality?
- Is system secure?
- Can non-verbal communication be adequately viewed?



Discussion Issues

2. Storing, archiving and making transcripts, audio and video recordings accessible

- Are backup systems in place to ensure system integrity?
- Is access by authorized users only?
- Are there methods to securely transmit recordings?

Discussion Issues

3. Accommodating defendant, court, and jail needs/ restrictions

- Access to counsel
- Victim/witness involvement
- Non-English and ASL interpretation
- Quality communication and interpersonal interaction
- Sufficient courtroom and jail facility resources and equipment
- Inmate security
- Public access to hearings



Discussion Issues

4. Implementing the videoconferencing system
 - System administration and maintenance (e.g., help desk)
 - As courts experience greater demand for technology, internal staff capabilities must expand to provide operational expertise
 - Remote help desks are insufficient when system crashes and court needs to be in session
 - In-house and/or contracted vendor capabilities and costs
 - Many courts (either state or locally funded) may find proposed video standards to be cost prohibitive



Discussion Issues

5. Court Technology Framework – Developed by COSCA/NACM Joint Technology Committee

