

## **Working Group Outline Videoconferencing and Videotaped Testimony**

Federal bankruptcy, district, and appellate courts are currently using videoconferencing to conduct court proceedings, administrative meetings, and training. Video conferencing permits live, two-way audio and video transmission between a court and a remote site. With it, court proceedings can be conducted without the presence of all participants in a single courtroom or location.

In the appellate courts, videoconferencing arguably reduces travel time for parties, attorneys, and judges to attend oral arguments, rehearings, en banc hearings, settlement conferences, Appellate 34(f) decisions on the briefs, and mediation sessions, and increases scheduling flexibility. It also may improve the quality of motions proceedings in circuits where those proceedings are handled by teleconferencing. Similar benefits are thought to accrue to the bankruptcy courts. In the district courts, videoconferencing provides a less expensive and more convenient way to hear expert and non-local witnesses, and provides a perhaps less threatening way for children to testify. It also can minimize security breaches, cost, and frivolous claims associated with testimony by prisoners.

Videotapes of many events are also used in court proceedings, including depositions of experts, children, multiple minor witnesses, and unavailable witnesses; interrogations, confessions, and actual crimes; a “Day in the Life” of an injured plaintiff; and reenactments of various events using real people. Videotaped evidence, particularly videotaped interrogations, confessions, depositions, and testimony raises some issues similar to those surrounding videoconferencing.

Drawing on the morning’s demonstrations, this group will consider how empirical research can inform the debate over the desirability and direction of the use of videoconferencing and videotaped evidence in the courts. The group will attempt to translate into empirical questions the normative issues inherent in the debate, and identify the social and behavioral science theories on which the research might be based. Finally, the group will suggest priorities for research in the coming years.

We hope the group’s report on Friday will address the following:

1. What issues related to the use of videoconferencing by the courts are the most important? Does this differ for different types of court proceedings (e.g., civil versus criminal, trial versus pretrial, trial versus appellate courts)? Does it depend on your point of view (i.e., society as a whole? courts? litigants? attorneys?)
2. Are the important questions susceptible to empirical study? If so, what are the corresponding empirical questions and on what social or behavioral science theory can the research be based? (The group may want to select just a few of the more important topics to consider in more detail here.)
3. What factors (economic, political, etc.) are likely to constrain the empirical research that can be conducted?

### **To Get the Group Started:**

We've identified a number of questions related to videoconferencing that you may want to use as a start. Please do not let our thinking constrain yours.

- Are jurors and judges more or less likely to attend to, comprehend, and remember a remote witness's testimony, compared to a live witness? What factors affect jurors' and judges' attention, comprehension and memory of such testimony (e.g., familiarity with technology, camera angle, disruption to or facilitation of court process)?
- Do jurors and judges perceive remote witnesses as more or less credible than in-court witnesses? What are the mediating factors?
- Compared to in-court witnesses, are remote witnesses more nervous or less responsive to nonverbal/verbal cues of the jurors, judge, and attorney? How does this affect the clarity of their testimony? How does it affect jurors' and judges' comprehension of the testimony and judgments of the witness's credibility? Can negative effects be minimized with enhanced technology?
- Does testifying remotely make it more difficult to control outside influences on the witness (i.e., the attorneys and the judge may not know who else is in the room or what documents and notes are available and in use)? Can sufficient safeguards be put into place?
- How does testifying remotely affect a witness's perception of the importance of the court proceeding and of testifying accurately and honestly? Does testifying remotely affect the veracity of a witness's testimony?
- How does the use of remote witnesses affect jurors', attorneys', and parties' perceptions of the fairness and sanctity of the court process? How do these judgments depend on the type of proceeding (e.g., pretrial versus trial, trial versus appellate, criminal versus civil) and the number and type of participants appearing remotely?
- How does a judge appearing remotely affect jurors', attorneys', and parties' perception of the fairness and sanctity of the court process? Do these judgments depend on the type of proceeding (e.g., pretrial versus trial, trial versus appellate, criminal versus civil)? How does this affect the quality of the proceeding?
- How virtual is too virtual? The technology now exists so that the judge, attorneys, witnesses, and jurors could all appear remotely. At what juncture does the number of remote appearances call into question the fairness and sanctity of the court process? Is this related to whether the people appearing remotely are witnesses, attorneys, jurors, or the judge?