MEMORANDUM

To: Kathleen Casey-Gamez, Senior Policy Analyst, Texas Indigent Defense Commission
From: Nicolas Sawyer, Third-Year Law Student, University of Texas School of Law
Re: Summary of Research on the Influence of Telepresence in Decision-Making
Date: July 21, 2020

Articles (Alphabetical Order by Title)

- Charm City Televised & Dehumanized: How CCTV Bail Reviews Violate Due Process
- Criminal Justice and Videoconferencing Technology: The Remote Defendant
- Private Attorney-Client Communications and the Effect of Videoconferencing in the Courtroom
- Court Appearances in Criminal Proceedings Through Telepresence: Identifying Research and Practice Needs to Preserve Fairness While Leveraging New Technology
- Defendants on video – conveyor belt justice or a revolution in access?
- Effects of Videoconferencing on Perception in the Courtroom
- Efficiency and Cost: The Impact of Videoconferenced Hearings on Bail Decisions
- Impacts of the COVID-19 Pandemic for Capital Defense Teams
- Making Decisions From a Distance: The Impact of Technological Mediation on Riskiness and Dehumanization
- Private Attorney-Client Communications and the Effect of Videoconferencing in the Courtroom
- Research on Videoconferencing at Post-Arraignment Release Hearings: Phase I Final Report
- The effect of mediation on impression formation: A comparison of face-to-face and video-mediated conditions
- Challenges in Virtual Collaboration: Videoconferencing, Audioconferencing, and Computer-Mediated Communications

Summaries


- This article discusses the constitutionality of Closed-Circuit Television (CCTV) bail hearings that take place in district and circuit courts in Baltimore City.
- First, the article details the importance of pretrial release for trial outcomes and how lengthy pretrial incarceration disproportionately affects both the poor and African-American population.
- The article then argues that CCTV in Baltimore city violates a defendant’s right to be physically present within a courtroom, his Sixth Amendment right to confront the witnesses against him, and his Sixth Amendment right to counsel.
- The article concludes that these constitutional violations, when combined, deprive defendants of their liberty without the due process of law.


- This article evaluates the implications of using technology in having defendants appear through videoconferencing and argues against the practice. It brings to bear the literature from other fields, particularly communications and social psychology.
- That body of literature suggests that videoconferencing may have a negative impact on the way defendants are perceived by those in court as well as the representation the defendant receives and the way in which the defendant experiences the criminal justice system.
- The author argues that courts should not extend their reliance on videoconferencing further and instead must undertake studies to explore the impact of the technology in criminal proceedings.
- In addition, the author advocates that the courts take steps to ameliorate the negative impact of videoconferencing through design of videoconferencing systems and training of those who participate in videoconference proceedings.
- Finally, the author suggests that courts with videoconferencing equipment make it available for communication between incarcerated defendants and their attorneys, fostering better representation.

“Court Appearances in Criminal Proceedings Through Telepresence: Identifying Research and Practice Needs to Preserve Fairness While Leveraging New Technology,” Camille
Research Triangle Institute (RTI) researchers conducted an extensive academic and legal literature review of research on the use of telepresence technology in criminal cases.

Potential advantages include improved safety, cost reduction, increased court efficiency, reduced detention time for defendants, expanded access to the criminal justice system, and reduced trauma for victims.

Potential disadvantages include legal and constitutional considerations, impact on perceptions of the legal process, issues of credibility, impact on outcomes, technical issues, data storage and security, and impact on the attorney-client relationship.

A working group of experts in this field was convened and 24 specific research and development needs related to the use of telepresence were brainstormed around three main topics: The need for a better understanding of the impact of telepresence; technology on court outcomes and actors; and potential areas of expansion for telepresence technology.

“A defendants on video – conveyor belt justice or a revolution in access?” Penelope Gibbs, Transform Justice (2017).

A report on the use of live video link in the UK that draws on a public survey of practitioners’ experience of defendants’ video hearings, whether as magistrates, probation officers, lawyers, intermediaries or other; eight in-depth telephone interviews with some of the survey respondents; and a round table discussion with a range of participants, including lawyers, magistrates, and academics.

Most respondent defense attorneys expressed concerns that their clients cannot communicate their best evidence on a video screen, and thus that justice outcomes may be prejudiced.

Defense attorneys also relate numerous technical problems which cause delay to them and their clients, which particularly impact those who have difficulty speaking English, are unrepresented, are older, and are children under 18.

Support for expanded or continued video use comes from a minority of senior judges, of lawyers and of police and crime commissioners because they feel that virtual justice saves time and money.

Many prisoners also like video hearings for practical reasons: they avoid disruption, long hours travelling and the risk of having to move prison.

• A sample of 193 participants viewed one of six variations of an eyewitness giving mock testimony, which varied by level of emotion (none, moderate, or high) and frame (waist-up or head only).
• Participants then rated the witness using the Brodsky Witness Credibility Scale and the Reyson Likability Scale.
• A set of analyses was performed revealing an effect of emotion level on both credibility and likability.
• Emotion level was found to influence participant judgments of poise, however, to a lesser degree than judgments of credibility and likability.
• These results suggest that attorneys may want to avoid the use of videoconferencing with certain types of witnesses where testimony may be highly emotional.


• The authors examine the history that led Cook County to conduct bail hearings using the Closed-Circuit Television Procedure (CCTP) and the documented negative impact that the change from live hearings to the CCTP produced for bail outcomes.
• The results of the analysis show that average bond amounts rose substantially following the implementation of the CCTP. The change cannot be attributed to general trends or seasonal variations as none were observed.
• As the graphs and statistical models in the article clearly reveal, the substantial increase in average bond level immediately followed the implementation of the CCTP on June 1, 1999.
• The average bond amount for the offenses that shifted to televised hearings increased by an average of 51% across all of the CCTP cases.
• In separate analyses, increases of between 54% and 90% occurred for six major felonies subjected to the CCTP.


• A declaration submitted to detail the standard of care in conducting remote neuropsychological evaluations for individuals facing potential capital punishment and the inherent limitations of neuropsychological assessments using telehealth in high stakes cases.
• Neuropsychological assessments involve the administration of a clinical interview, self-report questionnaires, and a group of standardized tests. Evaluators are tasked with presenting test stimuli, recording verbal, motor, or written responses, and noting key behavioral observations.
• Situations in the forensic setting that complicate the usual doctor-patient interaction—such as access to only a non-contact visit or inability to evaluate an inmate without
shackles—threaten to invalidate a neuropsychologist’s ability to conduct an appropriate standardized evaluation, which includes measures of IQ and memory.

- The level of accuracy required by neuropsychological exams is directly related to the severity of the consequences if the exam was inaccurate, which is very high in the capital context.
- The use of administering neuropsychological exams through via video conference has been rejected in many contexts out of fear of its unreliability.


- These authors conducted a laboratory experiment where a participant made medical treatment recommendations to another participant, either face-to-face or through video conferencing.
- They examined the influence of mediation on risk and dehumanization in the decisions made.
- Results suggest that participants with interdependent self-construals made riskier and more painful treatment decisions when videoconferencing.
- People with more interdependent self-construals define themselves through their relationships with others, while people with independent self-construals define themselves through their individual achievements and personal attributes.
- Interdependent self-construal participants were less engaged and felt less emotion from their advisee, which may have influenced them to put more weight on factual, probability-based information while video conferencing.


- A review of literature and research related to courtroom videoconferencing’s effect on attorney-client communications.
- Data from the National Center for State Courts (NCSC) suggests videoconferencing is having a negative impact on attorney-client communications where clients have no opportunity for private communications with their attorney when their lawyer is in the courtroom and they are located at a remote location.
- One study found, the vast majority of defense lawyers believe that private attorney/client communications is impossible via video conferencing.
- There are far more cons of videoconferencing than pros. Even studies supporting pros of videoconferencing are distinguishable from the court context.

• A report proposing a research plan for studying the use of videoconferencing as a contract to Inner-City Fund (ICF) International as funded by the U.S. Department of Justice.

• Challenges identified by practitioners from the expert workgroup and site visit interviews include the need for increased staff training, accommodations for inmates with special needs, storage and data security requirements, use of videoconference data as the official court record.

• The working group identified due process concerns around ensuring adequate access to counsel and adequate access to court documents and records and procedures to address malfunctions and system failures.

• Potential benefits to the use of videoconferencing include less travel time, lower cost, increased security of court staff, and increased overall efficiency of procedural hearings.


• The current study paired participants up to perform a simple mind-reading task, during which participants, either face-to-face or via video-mediated technologies, were instructed to try and guess the color that their partner was imaging in their mind.

• After completing the task, participants filled in a questionnaire which was designed to assess perceptions of how much they liked and how intelligent they believed their partner in the task to be.

• Research results indicate that participants were regarded as significantly less likeable and intelligent in the video-mediated condition when compared to face-to-face.

• This is probably a consequence of the attenuation of visual signals, in particular eye gaze, which has been shown to be important in impression formation.