



The Perils of Videoconferencing in Criminal Courtrooms

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In response to increasingly crowded dockets, courts are experimenting with new technologies – especially videoconferencing to allow judges, attorneys, and clients to interact over video feeds without having to meet face to face. This innovation is spreading through the federal and state court systems to streamline legal proceedings and provide accused defendants greater access. Videoconferencing has been used in arraignments, bail, sentencing, and post-conviction hearings. But important questions remain: How does this technology affect critical rights by shifting relationships and communications between attorneys and clients involved in criminal proceedings?

Downsides of Videoconferencing

The right to counsel is grounded in open, trusting, and thorough communication, direct and nuanced, between defense attorneys and clients – yet the spread of videoconferencing could reduce access to such exchanges. Effective communication is crucial to ensuring that defendants perceive their courtroom experiences as impartial, fair, and just.

As courts turn to videoconferencing to manage growing caseloads, critical questions surround the impact on attorney-client relationships and defendant rights. Defenders of videoconferencing argue that defendants avoid judicial delays and get access to a faster, more cost efficient legal process. But critics argue that the use of videoconferencing undercuts the ability of attorneys and clients to communicate in nuanced and private ways, undermining effective representation.

Additional questions also arise. Although there is an increase in the use of electronic technologies throughout the criminal justice system – with the deployment of electronic bracelets, surveillance cameras, and so forth – courtrooms have functioned differently, retaining older face-to-face forms of communication. Beyond constitutional issues, the use of videoconferencing may be viewed as an affront to the very dignity of the courtroom and the decorum of judicial proceedings that judges seek to uphold. Can justice be adequately served if defendants appear remotely but not physically in courtrooms?

Statistics Document an Imperfect System

In 2010, the National Center for State Courts collected data, supported by the State Justice Institute, to provide guidelines to courts and policymakers on the use of videoconferencing and ways to move forward with this technology. Some worrisome findings emerged:

- The great majority of cases are criminal proceedings. Of those criminal cases, 28.8% revealed privacy issues between a defense attorney and their client when they communicated via videoconferencing. More than one in four defendants could not have a private conversation with their defense attorneys in open court, and the relevant state courts made no provisions for private communication.
- More than a third of videoconferencing systems (37%) experienced recurrent equipment failures. These involved wiring, electricity, basic structural features, or combinations thereof. Other shortfalls involved bandwidth, aging equipment, and power interruptions.
- More than a fifth of videoconferencing failures were due to other widespread and chronic problems – such as reluctant “buy in” by judges, clerks, and attorneys; inadequacies in the training of equipment operators; scheduling problems; and outright operator errors.

Promoting Best Practices

To ensure that videoconferencing increases efficiency without treading on defendant rights, attorneys, judges, clerks, technology personnel, and clients must all learn about differences between videoconferencing and traditional face-to-face interactions and gain training in effective methods. Law students also need to learn how to use videoconferencing effectively. A series of additional steps can also be taken:

- Informed consent procedures could not only help protect defendants' rights but also remind administrators, judges, and attorneys of the distinctive issues raised by this new approach.
- A separate camera or phone line should be made available for defendants and their lawyers. Even if it slows things down, judges could clear the courtroom to allow private communications between attorneys and remote defendants.
- Standardized rules would help the defense formulate strategies to overcome any communication difficulties and object to any irregularities in the proceedings.
- Limiting videoconferencing to pre-trial matters, especially administrative matters – which are almost exclusively procedural – would minimize negative aspects while maximizing efficiency. Alternatively, videoconferencing could be limited to civil, not criminal, cases.
- Deploying reliable, updated technology can lessen or eliminate technical difficulties.

Proceed with Caution

As critics note, videoconferencing can become a “perfect storm” for unintended problems. A vulnerable population of defendants, overburdened courtrooms, and a tight fiscal environment can all prompt people to overlook diminutions in defendants' rights for the sake of efficiency. But until the detrimental effects of videoconferencing can be minimized, the use of this technology should be limited. Videoconferencing creates impossible trade-offs for defense attorneys, who must either stay at remote sites to confer freely with clients or appear in court to gain access to judges, clerks, and files at the cost of interacting with clients. Barriers between attorneys and clients will continue to harm representation until videoconferencing procedures are greatly improved. Paraphrasing a comment once made by Justice Brennan, if we secure greater speed, economy, and convenience in the administration of the law at the price of fundamental principles of constitutional liberty, the price is too high.

Read more in Eric Bellone, “**Private Attorney-Client Communications and the Effect of Videoconferencing in the Courtroom.**” *The Journal of International Commercial Law and Technology* 8, no. 1 (2013): 24-48.