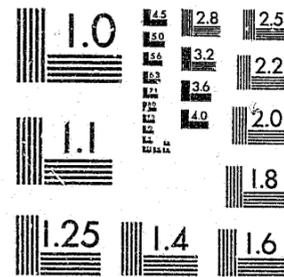


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THE USE OF TELEPHONE CONFERENCING  
IN CRIMINAL TRIAL COURTS

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d for delivery at the Annual Law and Society Association Meeting,  
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### Introduction

The commonly used approach to conducting court business is to assemble all of the participants at the courthouse. Lawyers, litigants, defendants (in criminal cases), and witnesses, if any, gather at the courthouse for hearings held in a courtroom or the judge's chambers. Despite the tradition behind this procedure, it unquestionably consumes scarce resources.

The lawyers, litigants, criminal defendants, and witnesses must travel to reach the courthouse. Additionally, there is the time spent waiting for the hearing to begin. In emergent matters, the judge and courtroom staff may have to wait until all the lawyers arrive.

Because of the unproductive nature of the travel and waiting time, there is a need to consider alternative ways of holding hearings. Audio-telephone conferencing (hereinafter referred to as telephone conferencing) is a possible method for conducting certain pretrial and posttrial proceedings without impairing the quality of the hearings or sacrificing the rights of the defendants.<sup>1</sup> Although video conferencing (See, ABA, 1980; Blakely, 1975), closed circuit television (See, for example, Eliot, 1978 and Gilmore, 1980), and videotaped testimony (see, for example, Borke *et al.*, 1978; Coleman, 1977; Miller, 1974; McCrystal and Maschari, 1980) are other available technologies, the use of telephone conferencing is appealing because of its low cost, simplicity, and the common use of the telephone as a method of communication.

Previous research had demonstrated the utility of telephone conferencing in the parallel area of administrative fair hearings. Under controlled experimentation, the use of telephone conferencing was found to lower travel costs

<sup>1</sup> A telephone conference call in the court context generally involves a judge located in chambers with a speakerphone, which permits an official record to be made, and lawyers at their respective offices, with their clients. A courtroom staff member places the call to the attorneys and when they are on the line, the staff person brings the judge on the line. The proceeding begins by the judge setting forth the purpose of the hearing and the ground rules of the conference call.

for hearings' officers, increase the satisfaction of claimants, and not impair the quality of the hearings (Corsi, 1981a, 1981b).

Building on Corsi's research, we undertook a two phased study of telephone conferencing in the courts. The first phase described the extent and conditions under which telephone conferencing had been used. A basic conclusion of the study was that selected judges used it with reported success in some instances, but telephone conferencing was clearly the exception and the in-court procedure the rule (Hanson, Mahoney, Nejelski, Shuart, and Thornton, 1981). As a step toward increasing our understanding about the advantages and disadvantages of this tool, we designed a program to implement and evaluate the use of telephone conferencing on a pilot basis in selected civil and criminal courts of general jurisdiction in Colorado and New Jersey.

Findings from the civil court research point to three key consequences of telephone conferencing (Hanson, Olson, Shuart, and Thornton, 1983). First, attorneys were satisfied with the new procedure and saw no difference in the quality of the hearing when conducted by telephone. Second, there were considerable time savings for attorneys and evidence suggested that the litigants benefit by lower fees and taxpayers benefit by institutional attorneys (e.g., city and county attorneys, legal aid attorneys, and attorneys general) operating more efficiently. Third, the range of matters amenable to telephone conferencing includes substantive, procedural, and discovery-related motions.

The objective of this paper is to focus on the experiences and results of telephone conferencing in criminal cases in the selected Colorado and New Jersey courts.<sup>2</sup> If the use of telephone conferencing in civil cases is not

<sup>2</sup> The criminal courts include Cumberland and Atlantic Counties in New Jersey and the 2nd, 12th, and 20th Judicial Districts in Colorado. The New Jersey sites are part of the Atlantic Vicinage which consists of the four southernmost counties of that state. Denver is Colorado's 2nd Judicial District. The 12th District, a six-county jurisdiction located in the southern part of the state, has two principal courthouses in Alamosa and Del Norte. It is larger than the state of Connecticut. Boulder, a suburb of Denver, is the 20th District.

yet routine, then its application in criminal cases is truly innovative. During our exploratory study, we found few instances of criminal telephone hearings even among those judges who used it in civil cases. Thus, we sought answers to basic questions about the feasibility and desirability of criminal telephone hearings. They include: What sorts of matters are suitable for telephone conferencing? How easily can the new method be integrated into existing court procedures and practices? How satisfied are the participants with telephone hearings? What are the advantages and disadvantages to criminal defendants?

Answers to these questions are based on observations of trial courts of general jurisdiction that agreed to consider conducting telephone hearings. In addition to documenting the process by which the courts went about implementing telephone conferencing, we conducted systematic interviews with the participating judges and attorneys in each test site. The remainder of this paper highlights the essential findings concerning four main topics: (1) the nature of the hearings in which telephone conferencing was used; (2) the process of implementing the procedure; (3) the attorneys' reactions; and (4) the judges' reactions.

#### The Use of Telephone Conferencing

At the outset of the project, we anticipated the applications of telephone conferencing to be non-evidentiary motion hearings, involving issues of procedure or discovery. Motions to suppress and evidentiary hearings were believed to be extremely difficult, if not impossible, to conduct by telephone. However, the actual utilization pattern turned out somewhat differently than initially expected and varied across the different courts.

For example, in Cumberland and Atlantic Counties, a primary application was municipal court appeals. In most instances, these hearings involved

private defense counsel and a defendant on bond. These two factors gave rise to potential time savings because defense counsel were generally located several miles from the court and the defendant could avoid both travel and waiting time.<sup>3</sup> Although these factors may have made the telephone hearings in these instances desirable, other factors contributed to their feasibility. Municipal court appeals were based on the lower court record and involved neither new evidence nor testimony from the defendant. Thus, the application seemed reasonable and potentially beneficial to the defendants. They are now handled routinely by telephone.

Motions to expunge prior criminal records also were affected by the introduction of telephone conferencing. These motions were filed somewhat frequently because of the rules prohibiting the employment of persons with criminal records in Atlantic City's casinos. Prior to the implementation of telephone hearings, defense counsel made in-court appearance even though most motions were not highly contested. They are now all handled by telephone in Cumberland County. In Atlantic County, a telephone hearing is held only if the prosecutor objects. Otherwise, no appearance by defense is required.

In Colorado, the size of the 12th District played a key role. Here the Public Defender and the District Attorney had requested the court to conduct arraignments and motion hearings by telephone. Somewhat reluctantly, the court agreed to try the new procedure but often mentioned to defense counsel the possible disadvantages of telephone conferencing. The Court felt that

<sup>3</sup> In the Atlantic Vicinage, many lawyers practice in counties in which they do not reside. As a result, the offices of the private defense bar that practice in Cumberland were several miles from the courthouse. Similarly, the attorneys who practice in Atlantic County generally do not have their offices near the courthouse because the criminal court is located in Mays Landing, a small town outside of Atlantic City.

last minute plea bargains could be made at in-court arraignments whereas telephone arraignments might require a second hearing to enter a negotiated plea because of the inability of the prosecutor and defense counsel to bargain when they were geographically miles apart.

Telephone conferencing proved workable, however, because of the lawyers' incentives to avoid traveling great distances for perfunctory, three-minute initial appearances by the defendant in the District Court. The two Public Defenders, with offices in Conejos and Alamosa, avoided traveling 60-80 miles by handling arraignments by telephone. Furthermore, when the public defenders did not need to travel to one of the District courthouses, this permitted the office's investigators to use the state car. Similar benefits accrued to the district attorney. Finally, lawyers from Denver appearing in 12th District cases represented their clients far less expensively by telephone because the round trip travel time would have required several hours. Thus, necessity rather than convenience was the mother of the innovation's acceptance in this rural setting.

The application in Denver District Court fell into three general categories. First, the judges used the telephone to resolve matters arising spontaneously such as questions from a jury, motions to sequester a jury, and emergent matters. Rather than waiting for all of the attorneys to appear, the Court preferred to rule as quickly as possible in order to avoid waiting for the attorneys to appear in person. Second, in instances where witness credibility was not an issue, testimony was taken. Third, show cause hearings on bond forfeitures were done by telephone because they permitted the bondsman, who frequently had to appear in more than one case on the same day, to avoid traveling to the Denver District courthouse.

These applications evolved because of the court's desire to use the innovation to its advantage as well as to accommodate attorneys and defendants. To the extent that the court could expedite at least part of its large case-

load, the judges were willing to handle matters by telephone. Given the continuous presence of the public defender at the courthouse, however, the court found it difficult to schedule many matters for telephone in advance with this group of attorneys.

In summary, the various applications grew out of situations where the new procedure could save time for at least one participant. Because the different settings surrounding each court created different possible configurations of time savings, the types of matters handled by telephone varied. However, in all of the courts, if time savings seemed likely, and the participants knew in advance that issues of credibility and confrontation were not likely to arise, telephone hearings were conducted in both serious cases (e.g., homicide, armed robbery, major fraud) as well as less serious ones.

#### Implementation

The integration of telephone conferencing into existing court procedures proved no easy task. Despite the apparent simplicity of the idea, considerable effort was expended to achieve three basic requirements in order to translate the professed interest by the different courts to actually conducting telephone hearings. The three requisite steps were: (1) determining matters that were appropriate for telephone conferencing; (2) designing procedures for conducting the hearings; and (3) notifying the bar.

The manner in which these steps were taken varied between the criminal and civil courts for a number of reasons, including the differences between the size and nature of the bars, the proximity of the prosecutor and public defender to the courthouse, and the concerns by the bench and the bar for the defendant's constitutional rights. Although space does not permit us to describe the implementation process in both civil and criminal courts, the points at which the processes were different are noted below.

Matters Appropriate for Telephone Hearings. The decisionmaking process was equally important in the implementation schemes in the criminal project sites, but varied significantly from the civil decisionmaking process. Consensus as to suitable matters and procedures in the New Jersey and Colorado civil sites was always in terms of judicial consensus. In the criminal court setting, the decisionmaking group was expanded to include the other major participants in the criminal courtroom workgroup: the prosecutor and the public defender (Eisenstein and Jacob, 1977). This occurred in both criminal sites in New Jersey and all three jurisdictions in Colorado.

The criminal project in New Jersey initially involved only one judge handling all criminal court activity in one county--Cumberland. Although this involvement was due in part to the encouragement of the Assignment Judge for the Atlantic Vicinage, neither the Assignment Judge nor the Administrative Office of the Courts offered any guidelines as to the appropriate matters or procedures for telephone hearings. The criminal judge met immediately with the county prosecutor and two assistant prosecutors to identify specific matters and procedures. This meeting resulted in the identification of six specific criminal court matters as appropriate for telephone hearings: motions for additional discovery, motions to extend the time for discovery, motions to review rejections into the pretrial intervention program, motions to expunge a prior criminal conviction, applications for bail reduction, and appeals from the lower court. The telephone hearing option would also be available for certain emergent matters which did not fall into these categories (e.g., a doctor's testimony on the need to move an individual from a holding institution to a hospital).

Several months later, the two criminal judges handling pretrial criminal matters in Atlantic County followed a similar decisionmaking process but with

far different results. The judges and prosecutor met to determine what matters could be handled by telephone conference and decided that the procedure would be appropriate for any criminal matter not requiring testimony.

The criminal project in Colorado posed the same implementation problem as the civil project: three geographically and administratively distinct project sites. In the Twelfth District, a series of joint meetings were held over a thirteen-month period before agreement was reached regarding appropriate matters. The prosecutor and public defender, enthusiastic about the new procedure and potential travel time savings, were quick to designate certain matters for telephone hearings. The judges, however, were concerned about the impact of the new procedure on the disposition of matters and cases, and delayed their decision. First appearances and certain pretrial conferences and motions were finally designated as appropriate for telephone hearings.

The Boulder judge participating in the criminal project was willing to handle several types of business by telephone. During January of 1982, he met first with the district attorney to specify the matters, then with the district attorney and the public defender to finalize the list and discuss procedures. The list developed at the first meeting--arraignments, requests for preliminary hearings, bond hearings, and certain motions--posed no problems to the public defender in theory, but its feasibility was questioned in terms of logistics. The matters designated as appropriate are generally handled by a public defender; yet, because a public defender is at the courthouse each day to handle certain in-court matters, telephone conferencing would probably be used sparingly--a prediction which was realized.

Three criminal judges, including the Presiding Judge of the Criminal Division, participated in the project in Denver. Meetings were held first among the judges, then included representatives of the district attorney's and public

defender's offices. Although several of the participants expressed reservations about the procedure, all were willing to try it. The first joint meeting resulted in a list of matters deemed suitable for telephone conference: arraignments, certain motions, hearings for the appointment of counsel, and requests for forthwith hearings.

Designing Procedures for Conducting Telephone Hearings. As in civil matters, the Assignment Judge in New Jersey's Atlantic Vicinage chose to relinquish first-hand involvement in the procedural decisions in the criminal area. The criminal court judges, once they had agreed to participate, were left with the decisions of what to handle by telephone and how. As discussed above, the judges met with members of the prosecutor's offices to arrive at a consensus. Resolutions of the procedural decisions in both criminal court locations were handled at the same meetings which designated the appropriate matters. Even in the criminal settings, the preliminary decisions established general guidelines which served as the framework for the development of step-by-step procedures. It was decided that telephone conferences would be available only for those matters falling into the categories identified as appropriate. Having passed that initial hurdle, a matter would be scheduled for a telephone hearing only with the consent of the prosecutor and defense counsel. Defense counsel would be instructed to have the defendant present at the respective law office so that he/she might participate, if necessary, in the proceedings. The final ground rule established at the initial meeting was that the court reporter would record all argument, with the record reflecting the presence of the defendant.

During the first six months of the pilot project in Cumberland County, the judge conducted the majority of municipal court appeals and selected bail appli-

cations by telephone hearing.<sup>4</sup> Municipal court appeals filed in Cumberland County are now routinely scheduled for telephone conferences in consecutive fifteen minute time slots one day each month. A schedule noting the case names and numbers, names of defense counsel, and hearing times is sent to the prosecutor and each participating defense attorney several days before the hearing date. Attorneys are expected to be available for the hearings fifteen minutes before and fifteen minutes after the scheduled time slot. Occasionally, attorneys will have scheduling conflicts, that is, other business scheduled at the appointed time. In these instances, the attorney notifies the judge, and either another telephone hearing is scheduled or the matter is scheduled for an in-person hearing in conjunction with other in-court appearances. The defense attorney then notifies the defendant of the time and date of the hearing so that he may be present, either in the courtroom or in the defense attorney's office.<sup>5</sup> If an incarcerated defendant wants to be present at the hearing, the defense attorney must request that the defendant be brought from the holding cell to the courtroom.

At the appointed time, the judge, bailiff, court clerk, and reporter assemble in the courtroom where the hearings are held. Because the prosecutor's

<sup>4</sup> While municipal court appeals are handled by the private defense bar, most defendants in bail applications are represented by public defenders. Though the Cumberland County public defender's office is located approximately fifteen miles from the courthouse in Vineland, a staff attorney is usually at the courthouse at all times handling various court matters. Because of this arrangement, the public defenders saw little advantage to themselves if matters were handled by telephone conference. The judge, however, continues to work with the public defender's office to identify matters conducive to the telephone hearing procedure and tries to schedule matters that can be handled by telephone on certain days and those that cannot on other days, thereby allowing the public defenders to decrease travel time.

<sup>5</sup> Several defense attorneys in the area appear to have speakerphones, which allow defendants to hear the proceedings while sitting in the attorney's office.

office is located within the courthouse, the attorney representing the county appears in court to argue the matters. (In Cumberland County, a single prosecutor is assigned all telephone hearings for that day.)

The judge then places the call from the bench to the defense attorney. Once the attorney is on the line, the judge identifies himself and activates the speakerphone so that the defense attorney arguing by telephone can be heard throughout the courtroom. The judge then begins the hearing (which is recorded by the reporter) by identifying the matter before the court, the attorneys involved, their location during the hearing, and the location of the defendant. The hearing then proceeds with defense counsel speaking first, followed by the prosecution's argument. The judge occasionally interrupts a presentation with questions, and renders a decision with explanation at the close of argument. The procedure is repeated until the scheduled hearings are completed.

Similar procedures for conducting telephone hearings were adopted in Atlantic County with one exception--scheduling. While municipal court appeals are automatically scheduled for telephone conference in Cumberland County, the telephone hearing mode must be specifically requested by defense counsel in Atlantic County. Under this arrangement, attorneys who are unaware of the availability of telephone hearings for conducting municipal court appeals continue to request the traditional hearing procedure, which minimizes the use of the telephone hearing mode.

For the most part, the procedures developed by the criminal judges in Colorado were similar to the procedures adopted by all three courts in the civil project. For example, telephone hearings were to be set in the same manner as in-person hearings. In criminal cases, because of speedy trial requirements, a return date is generally given for all matters in each case. Upon receiving

a return date, an attorney could subsequently request that the matter be set for a telephone hearing. Like the civil procedures, a twenty-four hour notice to the court generally had to be given by a party wishing to appear in person. Finally, as in the civil project, the court would place the calls to the attorneys, except for the Twelfth District where attorneys were generally required to initiate the conference call.

In Denver and Boulder it was assumed that in most cases the prosecutor would appear in the judge's chambers during a telephone hearing due to the usual all-day presence of the attorney at the courthouse. Also, in Denver, a number of situations arose in which both the district attorney and defense counsel appeared in chambers and a witness or defendant appeared by telephone. For example, an evidentiary hearing was held on a post-conviction appeal motion in which the attorneys were present in chambers and a nurse gave testimony by telephone from the Denver County Jail. These "split" hearings are scheduled, recorded, and conducted in the same manner as a regular telephone hearing in which all parties participate by telephone.

The more important procedure, however, centered on the issue of the defendant's presence. Unlike civil motion hearings, in which many clients choose not to attend, defendants in criminal cases are usually present at most of their criminal proceedings. Therefore, the defendant would have to be clearly notified if a matter had been set for a telephone hearing and his consent given to his own or his attorney's appearance by telephone. If a defendant wished to appear in person, sufficient notice of this desire was to be given to the court. It was further agreed that, similar to in-court appearances, a telephone appearance could be waived by the defendant, and the hearing would proceed without him.

Hearings when defendants were on bond presented another concern. Both the judges and prosecutors wanted to know the defendant's whereabouts at the time of the hearing. It was therefore agreed that a defendant on bond would appear in his defense counsel's office for the hearing and that his presence would be indicated on the record.

The criminal procedures to be adopted in the individual courts were crucial, given the sensitive nature of criminal cases. Hence, it was appropriate that discussions of the procedures would involve considerable time and, consequently, some delay in reaching agreements acceptable to all parties.

Notification of the Bar. Because of the critical nature of criminal matters in general, the criminal court judges were more inclined to involve the bar in the planning stages of the criminal project. Unlike civil matters which involve a vast array of attorneys, most criminal cases are handled by relatively few attorneys, primarily prosecutors and public defenders. Whereas a judge handling civil proceedings can more or less unilaterally decide the hearing mode and inform the attorneys of his decision, a criminal judge will not force an unwilling prosecutor or defense attorney to handle a hearing by telephone. The judges and project staff members agreed that much of the success of the project would weigh heavily on its receptivity by this group of lawyers. Therefore, preliminary meetings in the criminal project sites generally included representatives from both the district attorney's office, and frequently the public defender's office.

In Colorado, receptivity of the attorneys tended to vary across the three districts. The proposed project generated considerable enthusiasm among prosecutors and public defenders in the Twelfth District. Even when the judges appeared somewhat reluctant after having used the procedure in a few criminal cases, the attorneys continued to express interest. The reason for this ap-

pears to be one of logistics: As there are only three district attorneys and two public defenders for the entire six-county region, the attorneys saw advantages in the opportunity to handle their calendars by telephone.

In Boulder, there exists a somewhat different situation. The public defender's office is located within walking distance to the courthouse. Therefore, although the public defenders expressed no resistance to the proposal of conducting certain criminal matters by telephone, they viewed the procedure as offering them little savings in time and, consequently, were less enthusiastic about the innovation. The district attorney, whose office is located in the same building as the court, expressed interest in the project, and distributed project information to other staff attorneys in his office.

In Denver, despite the close proximity of the offices of both the prosecutor and public defender to the courthouse, initial reactions toward the procedure were positive on both sides. In subsequent meetings with the public defender, however, reservations were expressed concerning a number of issues. One was a tactical problem, that is, coordinating the schedules of the public defenders who are often required to be at the courthouse each day to handle a variety of business. (In Denver District, the public defender's office is divided into three divisions; each division is assigned to cover two courtrooms.)

Another concern of the public defenders was over the proposed handling of arraignments by telephone of persons in custody. The proposal, which was initially agreed upon by all the participants at a preliminary meeting in Denver, would allow the participating judges to accept not guilty pleas from incarcerated defendants at the Denver County Jail. However, the public defenders were reluctant to participate in the new procedure fearing criticism from clients and the possibility that by not appearing in court it would lessen the chance of reaching a plea agreement at the arraignment stage. Denver public

defenders did express interest in handling arraignments and other matters by telephone for those defendants who were on bond. Yet, it was difficult to prearrange these matters for telephone hearings given the scheduling of public defenders in more than one courtroom. The public defenders and private counsel, however, have benefited by the use of telephone conferencing to handle spontaneous matters.

In New Jersey, the county prosecutors were contacted first by the Assignment Judge for their support of a project in Cumberland and Atlantic Counties, and then by the criminal judges for input into the procedures. The judges chose not to involve the public defender's office or the private defense bar in this process, but rather to notify them of the project and its guidelines at the scheduled monthly bar meeting. This non-involvement during the planning phase could be responsible in part for the continued hesitancy on the part of defense counsel to request telephone hearings.

In addition to the group presentation at the Cumberland County Bar Association meeting, the Cumberland Bar Bulletin, The Docket (Atlantic County Bar Association), and The New Jersey Law Journal all published articles listing those matters deemed appropriate for telephone hearings and the procedures. An article in an Atlantic City newspaper served to inform attorneys in the surrounding counties of the pilot project with an account of the first criminal telephone hearings conducted. Lastly, those attorneys scheduled to participate in a telephone hearing in Cumberland County are so notified by a schedule from the judge which is forwarded to the parties several days prior to the date of the hearing.

In summary, the implementation process was a tentative, gradual process in which the judges had to remain committed to the objective of trying out the innovation. Some judges appeared enthusiastic at the outset but lost interest

when asked to meet several times to discuss procedures and to review initial experiences with the new procedure. Hence, although criminal court judges may share decisionmaking authority more with the bar than do civil judges, they were still pivotal in the implementation process.

Attorney Reactions

At the beginning of the project, several attorneys experienced reservations about the desirability of telephone hearings. Some of the attorneys offered arguments against all possible applications of telephone conferencing. As an illustration, members of one public defender's office stated that there would be no gain to them by conducting telephone hearings when the defendants are in custody, and there would even be a loss in time or a weakening in relationships with their clients. If a public defender traveled to the jail in order to be with his client during a telephone hearing, this would require more time than the time normally required to walk to the courthouse. On the other hand, if the attorney was not with his client, and the defendant "appeared" by telephone from the jail, this would depreciate the importance of the hearing for the client, lessen the attorney's control over his client, and make the hearing too impersonal for the defendant.

These same attorneys had arguments against telephone hearings for their clients on bond. Although they admitted a telephone hearing might mean that their clients had to take off less time from work, and be more convenient than an in-court hearing because of less waiting time, the attorneys objected to this application. The attorneys said that if the defendant was at the attorney's office, he would likely want to discuss his case after the hearing was concluded. This demand on the attorney's time was viewed as a burden and a valid reason for not using the new procedure.

Interestingly, the attorneys who ultimately participated in the telephone hearings were generally satisfied with the new procedure. Structured interviews were conducted with attorneys on a variety of topics, including their degree of satisfaction, the factors associated with satisfaction, the effects on criminal defendants, and time and cost savings. The results of the interviews are summarized below.

Satisfaction. Most of the attorneys were satisfied with the way in which the telephone hearings were conducted. Of the prosecutors, public defenders, and private attorneys interviewed, 90 percent were either "very satisfied" or "somewhat satisfied" with the procedure, according to Table 1.<sup>6</sup> Compared to many other changes in court procedure, this level of satisfaction suggested a positive appraisal of telephone hearings.

Table 1  
Attorney Satisfaction with Telephone Hearings

<u>Level of Satisfaction</u>	<u>Colorado Attorneys</u>	<u>New Jersey Attorneys</u>
Very Satisfied	27	27
Somewhat Satisfied	12	17
Neither Satisfied, nor Dissatisfied	1	2
Somewhat Dissatisfied	0	5
Very Dissatisfied	0	1
	<u>40</u>	<u>52</u>

Some of the same factors that accounted for attorney satisfaction in civil cases were explained as satisfaction in criminal cases. Based on the civil court research, we expected that three attitudinal variables would

<sup>6</sup> The interview included both open-ended questions and closed-ended questions. The closed-ended questions were generally Likert-scale items with possible options ranging from "very satisfied" or "strongly agree" to "very dissatisfied" or "strongly disagree".

predict satisfaction. They include the attorneys' views on (1) the ability to make an effective oral argument, (2) the ability to answer the judge's questions, and (3) the judge's understanding of the issues. If telephone hearings allowed attorneys to present arguments adequately on these three dimensions, they were likely to be satisfied with the procedure.

According to Table 2, two of these three factors predict reasonably well. The first and second factors are moderately related to satisfaction in Colorado and the first and third factors are highly related in New Jersey. The reason why the one factor did not predict well in each state is because of the lack of variation on the criterion. That is, in Colorado most of the attorneys maintained the same views about the judge's understanding of the issues and in New Jersey the attorneys maintained the same views about the ability to answer the judge's question.

Table 2

Factors Associated with Attorney Satisfaction with Telephone Hearings\*

	<u>Colorado</u>	<u>New Jersey</u>
Ability to Present an Effective Oral Argument	.47	.70
Ability to Answer the Judge's Questions	.42	-.01
Judge's Understanding of the Issues	-.14	.76

\* The gamma measure of association is the basis for the coefficient reported here.

Advantages and Disadvantages to Criminal Defendants

We anticipated that the attorneys who participated in telephone hearings would more likely see advantages to the procedure and less likely see

disadvantages. The rationale for this supposition was that the actual hearing would be considerably different than the attorneys imagined. That is, the telephone hearing would, in fact, pose minimal problems of credibility, confrontation, and constitutional rights and would instead prove to be as orderly as in-court proceedings.

Table 3 provides evidence that the "users", i.e., attorneys who participated in telephone hearings, had different views on the advantages and disadvantages to defendants than "non-users", i.e., attorneys who appeared in court to resolve matters deemed potentially eligible for telephone hearings.

A closer look at the data revealed that the representative role of the attorney seems to make a difference in the types of advantages and disadvantages that attorneys see as a result of handling matters by telephone. For example, the public defenders saw fewer tangible savings (such as less time and travel) for their clients than did private lawyers; overall, they saw fewer benefits than did district attorneys and private attorneys. In citing disadvantages, public defenders were less concerned with factors related to body language, as were the district attorneys and private lawyers, and were more concerned with telephone hearings' effects on their rapport with clients and the defendants' constitutional rights.

Time and Cost Savings. When hearings were conducted by telephone, attorneys saved both travel and waiting time. According to Table 4, the round trip travel time was approximately one hour in both states. However, the time saved varied from court to court. For example, the travel time saved in Colorado's 12th District was four hours while the average amount saved in the 2nd District (Denver) was one hour. Additionally, waiting time was reduced on average by half an hour in Colorado and nearly an hour in New Jersey. This savings is important because the attorneys indicated that most of the in-court waiting time is spent unproductively.

Table 3

## Advantages and Disadvantages to Criminal Defendants When Hearings in the Case are Heard by Telephone

Advantages	Attorneys who Participated in Telephone Hearings		Attorneys who Participated in Only In-Court Hearings	
	Number of Attorneys Mentioning Factor	% of Total Number of Attorneys	Number of Attorneys Mentioning Factor	% of Total Number of Attorneys
Saves Time and Money	78	83.0	13	68.4
Expedites Hearings	31	33.0	4	21.1
Avoids Necessity of Defendant Having to Appear in Court	10	10.6	2	10.5
Provides Better Communication between Attorney and Client	5	5.3	2	10.5
	N = 94		N = 19	
<hr/>				
Disadvantages	Attorneys who Participated in Telephone Hearings		Attorneys who Participated in Only In-Court Hearings	
Promotes Distortion of Justice to Defendant	35	37.2	10	52.6
Attorneys can Better Represent their Clients in Person	32	34.0	4	21.1
Need for Defendant to be Personally Involved to Understand	21	22.3	7	36.8
Inability of Judge and DA to See and Confront Defendant	21	22.3	5	26.3
	N = 94		N = 19	

Table 4

Time Savings Associated with Telephone Hearings

	<u>Colorado</u>	<u>New Jersey</u>
Travel Time (average number of minutes per hearing) Avoided by the Use of Telephone Conferencing	117	54

Time (average number of minutes per hearing) Spent Waiting for Hearing to Begin

	<u>Colorado</u>	<u>New Jersey</u>
Telephone Hearing	6	10
In-Court Hearing	37	67

The cost savings to criminal defendants was not an automatic translation of time savings for lawyers to a proportionate reduction in fees charged. Numerous factors inhibit a perfect translation.<sup>7</sup> The highest hurdle was the lawyer's fee structure. Cases handled on a fixed fee basis were less likely to be adjusted because of reduced time than cases handled on an hourly basis. Nevertheless, when court proceedings were handled by telephone, 38 percent of the Colorado attorneys and 75 percent of the New Jersey attorneys responded that they did pass on cost savings to their clients. In those instances where the attorneys charged lower fees, the average savings was nearly \$400 in Colorado and \$130 in New Jersey, according to Table 5. The larger savings in Colorado are attributed to the extraordinary savings accruing to defendants in the 12th District who were represented by counsel from Denver. If the 12th District cases are excluded, the average savings in Colorado is much closer to the figure for New Jersey.

Although these estimates are subject to errors in calculation by the attorneys, there are several reasons for believing that they are honest estimates and not deliberate attempts to inflate the savings in order to satisfy our expectations. One reason is that they do vary and do not suggest an attempt to follow a "party line" in claiming a standard fee reduction. Second, the variation in savings coincided with the travel time that was likely to be saved. That is, the variation in dollar savings was related in a rational way to a definite source of dollar savings. Third, most attorneys charging on a non-hourly basis indicated that their fees would not be lowered instead of making unrealistic estimates of cost savings.

<sup>7</sup> The issue of cost savings to criminal defendants is relevant only in cases involving private counsel. However, the time saving realized by district attorneys and public defenders contributes to their greater efficiency which is beneficial to taxpayers.

Table 5

Cost Savings to Criminal Defendants with Private Counsel

	<u>Colorado</u>	<u>New Jersey</u>
Average	391	130
Range	25 - 999	35 - 300

Judges' Reactions to Telephone Hearings

Judges play a critical role in the use of telephone conferencing. The bench must first be committed to testing the innovation before it is available to the other participants in the civil and criminal justice systems. Moreover, after the initial commitment is made to offer telephone conferencing, judges are pivotal players in influencing the matters to be handled by telephone and the manner in which the hearings are to be conducted.

The willingness of the bench to use telephone conferencing is not entirely obvious given the conventional wisdom that the most direct beneficiaries of the procedure are the attorneys who save travel and waiting time. The question arises as to why judges would adopt a procedure that reduces travel time to the courthouse. Additionally, telephone conferencing's effects on the quality of the hearing is an important consideration to the bench. If telephone conferencing threatens the quality of hearings, then few judges are likely to risk losing control or an understanding of the issues simply to save attorney travel time.

Personal interviews were conducted with the participating judges after the civil and criminal projects had been underway for approximately one year. It was believed that the judges, having had time to absorb telephone conferencing and its procedures, would be in a position to respond to our inquiries. Altogether, twenty-four participating judges were interviewed in the two states.

Advantages and Disadvantages of Telephone Hearings. The judges clearly

believed that an advantage of telephone conferencing was its contribution to the greater operational efficiency of the court. Both civil and criminal court judges agreed that this included two basic advantages: (1) scheduling flexibility and (2) time savings. Yet, the criminal judges in both states tied the benefits to the court more closely to the nature of the business handled by telephone than did the civil judges. In New Jersey, the benefit of scheduling flexibility meant convenience in rescheduling hearings. Matters handled by the telephone were generally scheduled on the specific days that they would have been scheduled for in-court hearings. The judges found that they were able to reschedule these hearings in the event that they or counsel were not available at the pre-arranged time. Instead of having to reset the matter for the next regularly-scheduled date, the matter could be heard by telephone within a day or two.

The Colorado judges described the time savings as arising from an increased capacity to resolve matters more expeditiously. For emergent matters, the judges could make immediate rulings instead of having to wait for attorneys to arrive in court. For other matters, telephone conferencing enabled the judges to make decisions at the time a request for a hearing was made and thereby avoid clogging the calendar with additional matters for future hearing dates. Consequently, the Colorado judges were more willing to use the telephone in this way than in handling motions and others on a pre-arranged basis.

The criminal court judges tended to see fewer disadvantages with telephone conferencing than did the civil judges. Some of the judges simply could not see any disadvantage to the court, counsel, or defendants. The disadvan-

tages that were mentioned revolved around the possible weakening of the relationship between counsel and clients.

One possible explanation for judges perceiving fewer disadvantages in criminal cases is that the technology and the court matters to which it is applied are more closely linked in the minds of the criminal judges than they are for civil judges. The criminal judges who used the innovation most frequently tended to be the least critical. These "pioneering" judges seemed self-conscious of their innovative role in their court--they knew that other judges who were participating in the project were not using the procedure as extensively; they knew that there were others who were actually opposed to the idea. I suspect that unless they maintained a positive attitude toward the technology they would have found it difficult to justify their applications.

Another group of criminal court judges used the telephone conferencing procedure but on a more moderate basis. These judges probably preferred to handle matters in court, but would suggest a telephone hearing in certain instances, such as if the hearing involved considerable travel for one or more of the participants. The reason for this may be twofold. First, these judges, early on in the project, expressed some reluctance in conducting criminal telephone hearings because they believed that the procedure might actually lengthen the disposition of cases--the judges believed that because the district attorney and defense counsel would not have the same opportunity to discuss issues on the telephone as they would during a recess at court, that this would lessen the chances for early settlements. Second, these judges handle relatively few criminal cases and efficiency in the court is simply not a primary motivation for handling matters by telephone. In fact, the few in-court hearings that are held probably give both the judge and attorneys the opportunity to discuss informally the status of other cases.

The judges who used the technology sparingly generally found it difficult to separate it from the application. They found the technology to be of limited value because they could not easily see how and when it could be applied.

Quality of the Hearings. The civil and criminal judges had similar views on telephone conferencing's effects on the quality of the proceeding. They were asked to compare telephone hearings to the traditional in-person hearings along several dimensions: the judge's understanding of the issues, the judge's ability to control a telephone hearing, the judge's ability to ask questions, counsel's preparation, counsel's ability to present an effective argument, and counsel's ability to answer questions. Most of the judges said that telephone conferencing did not change the proceedings for better or for worse. The judges unanimously agreed that telephone hearings do not alter their understanding of the issues pertinent to the hearing. Furthermore, they overwhelmingly agreed that their ability to ask questions during a telephone hearing is the same as for in-person hearings.

Although there appears to be somewhat less of a consensus regarding the remaining dimensions, a plurality of the judges interviewed believed that their control over a telephone hearing, counsel's ability to answer questions, and counsel's preparation efforts are the same when compared to an in-court hearing. Of the remaining judges, those with positive views are counterbalanced by those with a more negative appraisal. For example, as one judge, commenting positively on counsel's ability to answer questions, said, "They (counsel) are more relaxed and at ease in their own law office". Several of the judges interviewed attribute this reduction in nervousness to telephone conferencing. On the other hand, of those judges who responded that attorneys' ability to argue effectively was lessened by telephone conferencing, one reason mentioned was that counsel appeared not to be as "psyched up" for

a telephone hearing as they often are for in-person hearings. It is interesting to note, however, that during the course of his interview, another judge said that counsel are more "psyched up" for a telephone hearing than they are for an in-person hearing.

#### Effects on Criminal Defendants

The judges' views on telephone conferencing's effects on defendants parallels their sense of the overall advantages and disadvantages. That is, the judges who used telephone conferencing saw several positive effects and few, if any, negative consequences. The benefits cited include the potential financial savings to clients with retained counsel in the form of lower fees. Additional benefits to defendants are the possibility of having to take off less time from work because of the more certain time schedule for telephone hearings. Finally, for defendants in institutions, such as state mental hospitals or prisons, telephone hearings prevent the individual from losing bed space or placement in a special training program.

Again, our explanation is that these judges are perfectly confident with the applications that they had made, and therefore, can think only of hypothetical instances where the defendant might suffer because the hearing was handled by telephone. Because these judges viewed the application as proper, they feel confident about the procedure and, hence, see only positive effects for defendants.

In summary, most judges believed that telephone conferencing did not impair the quality of the proceedings. The judges in Colorado and New Jersey claimed that they were just as able to grasp the issues, control the proceeding, ask questions of counsel under the new procedure. Moreover, the judges indicated that the hearing did not sacrifice the rights or interests of criminal defendants.

The primary incentives for the court to use telephone conferencing are scheduling flexibility and time savings. Moreover, the way in which these benefits were achieved reflected how the judges incorporated the innovation into their respective decisionmaking approaches. Instead of being a straight jacket, telephone conferencing was molded to fit each judge's conception of how the technology could be best used to achieve time savings and scheduling flexibility.

#### Conclusion

As many observers of American criminal courts have pointed out, the success of criminal court reforms hinges on the planned change satisfying the incentives of the various participants (see, for example, Davis, 1982; Feeley, 1979, 1983; Hillsman, 1982; Nimmer, 1978). The effort to introduce telephone conferencing is an illustration of that basic principle. Reported satisfaction by attorneys and judges with telephone hearings reflect the ability to save time by foregoing the in-court approach.

We believe that the telephone conferencing fleshes out this general observation concerning incentives and successful change. Simply stated, the judges and attorneys who participated in the telephone hearings had to overcome the tendency to view criminal hearings as adversarial battles potentially threatening the constitutional rights of defendants in order to see that telephone conferencing might further their interests. No doubt criminal cases are always serious matters because of the possible sanctions that may be imposed on offenders and the harm that offenders impose on society and individuals. However, this image may not reflect all hearings.

Some judges and attorneys could see that certain hearings were not dramatic confrontations and that advantages were likely to arise from telephone conferences. This perspective allowed the participants to stretch the range of appli-

cations. As an illustration, a guilty plea in a felony case was accepted by telephone with an out-of-state defendant because the judge knew of the plea bargain in advance and that he was going to impose probation rather than a prison sentence.

On the other hand, judges and attorneys who were reluctant to use telephone conferencing raised general principles, such as the public and media's access to court hearings, as reasons for foregoing the new procedure. The judges who raised this sort of issue professed to be eager to conduct court business in their air-conditioned chambers by telephone instead of the less comfortable courtroom. However, as long as these individuals continued to view telephone hearings in the abstract, they could not seize the advantages of time savings or air-conditioning. Thus, an auxiliary condition under which incentives and the implementation of change are linked is the ability of the participants to view procedural changes in the context of specific cases and judiciously apply new ideas where they fit particular circumstances.

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