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**Research on Videoconferencing at Post-Arrest Release Hearings:
Phase I Final Report**

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Dr. Seri Irazola served as the project director from the project's start date (November 2013) until September 2014. In this role, she oversaw the earlier phases of the project, led two workgroup meetings, created instruments, conducted a site visit, and worked on initial report planning and drafting.

Expert Workgroup Members

A special thank you is extended to the expert workgroup members who not only participated in three meetings to share their insight, but who also provided the researchers, Federal partners, and additional meeting stakeholders with material, ongoing information, and suggestions for this report. Following is a list of the expert workgroup members:

- ❑ **Samuel Benedict**, Regional Attorney Manager, Wisconsin State Public Defender
- ❑ **Kevin Bowling**, Court Administrator/Attorney Referee, Ottawa County, Michigan
- ❑ **Chief Justice Ronald D. Castille**, Supreme Court of Pennsylvania
- ❑ **Thomas Clarke**, Vice President of Research and Technology, National Center for State Courts
- ❑ **Amelia Cramer**, Chief Deputy Pima County Attorney, Pima County Attorney's Office
- ❑ **Honorable Jonathan P. Hein**, Common Pleas Court, Darke County, Ohio
- ❑ **John W. Johnson**, Captain, Miami-Dade Corrections and Rehabilitation
- ❑ **Carol Mitchell**, Court Access Specialist, Arizona Administrative Office of the Courts
- ❑ **Steven Siegel**, Director of Special Programs Unit, Denver District Attorney's Office
- ❑ **Randy Whitman**, Case Manager, Maine Pretrial Services, Inc.

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Introduction

As local governments continue to contend with growing budget constraints and expanding criminal justice costs, they are increasingly turning to technological solutions and alternatives in an effort to mitigate criminal justice expenditures, maintain efficiency, and promote public safety. The use of videoconferencing technology in criminal justice settings has served as a powerful asset to criminal justice stakeholders; however, there is still much to learn regarding the mechanics of these systems and their broader implications. Recognizing the complex challenges and nuances of implementing such technology, as well as the diverse interests at stake, the National Institute of Justice (NIJ) funded the Research on Videoconferencing at Post-Arrest Release Hearings project (NIJ Videoconferencing Project). The project is jointly supported by NIJ's Office of Research and Evaluation and the Office of Science and Technology.

NIJ seeks to identify protocols that improve practices and maximize return on investment using videoconferencing to expedite judicial decision-making concerning whether to release a defendant from custody and the appropriate conditions of release, including bail. NIJ anticipates three phases of study:¹

- **Phase I: 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 II: 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 III: Evaluation**—Submit final protocol to multiple new sites for self-implementation and support an objective cost-efficiency study over an extended period.

NIJ also established an expert workgroup for the life of the project (Phases I to III) to participate in meetings, review draft work products, advise on site visits, and otherwise contribute to the project at NIJ's direction.² These consultants include a wide range of stakeholders (e.g., judges, attorneys, court and jail administrators) and others working in jurisdictions across the United States with various remote technology applications (see Expert Workgroup Members on page i).

¹ See NIJ's Web site to learn more about the project: <http://www.nij.gov/topics/courts/Pages/post-arrest-release-videoconferencing.aspx>

² The expert workgroup members served a 1-year term from January to December 2014 for Phase I. Two expert workgroup members left at the end of Phase I, due to retirement and schedule conflicts; they were replaced for Phase II. All other members continued to Phase II.

In 2013, NIJ awarded a contract to ICF International (ICF) to assist on project Phase I by developing work products documenting a blueprint for videoconferencing protocols through expert meetings, site visits, and other sources. This final report includes the information gleaned in Phase I.

Goals of the Final Report

This final report was written to fulfill three goals:

1. To provide a broad overview of the use of videoconferencing in release hearings, including current practices and potential challenges.
2. To provide jurisdictions, policymakers, and court personnel with a blueprint for understanding videoconferencing and whether it may be beneficial for their jurisdiction.
3. To provide context for later project phases, including the selection of jurisdictions for field testing (Phase II) and evaluation of outcomes (Phase III).

The final report includes five sections. *Background and Understanding* includes an overview of pretrial release practices, challenges, and outcomes and sets up the role of videoconferencing at pretrial. *Design and Methodology* outlines the study's methods. *Findings* reviews the overall study findings, as well as specific findings from the workgroup meetings and the site visits. *Discussion and Implications* provides a discussion of the findings and implications for jurisdictions that may be interested in implementing this technology in the future. The final section, *Conclusions*, provides the study summary and conclusions, including project limitations.

Background and Understanding

Pretrial Release Practices, Challenges, and Outcomes³

Over the past three decades, the jail inmate population in the United States has grown steadily (Minton, 2011; 2013).⁴ Data from the most recent jail census conducted by the Bureau of Justice Statistics (BJS) reveals that between 1999 and 2006, there was a 23% increase in the total jail population (Stephan & Walsh, 2011). According to a recent report sponsored by the Bureau of Justice Assistance (BJA), the growth in the jail population can be attributed, in part, to a fundamental shift in the distribution of pretrial and sentenced inmates occurring during this time period. These changes have resulted, in large part, from the increasing reliance on financial release conditions (i.e., money bail; Bechtel, Clark, Jones, & Levin, 2012). Despite the legal preference for nonfinancial release

³ One of the three pillars established for this project includes pretrial release hearings (see Meeting 1: Three Pillars). Though this is a focus for understanding practices of videoconferencing, conditions of release are outside of the scope of this research.

⁴ See Appendix A for all references.

conditions, money bail has become the dominant practice for pretrial release decisions. Money bail was used in 53% of felony cases in 1990, and by 2006, the proportion of cases rose to 70% (Cohen & Reaves, 2007; Cohen & Kyckelhahn, 2010).

This growing reliance on pretrial financial release conditions has far-reaching implications for court administration, case outcomes, jail management, local government expenditures, and public safety. The most direct impact of this practice has been the reduction in rates of pretrial release. Between 1990 and 2006, the rate of pretrial releases in felony cases decreased from 65% to 58% (Cohen & Kyckelhahn, 2010). Additionally, national data reveal that only five out of six pretrial detainees who received financial release conditions were able to post bail (Cohen & Reaves, 2007).⁵

The expansion of pretrial detainees held in local jails and the overall growth in the jail population has also meant that local jails are suffering from challenges in jail population management, such as overcrowding. In a survey documenting pretrial processes in large U.S. counties, findings showed that 39% of responding jurisdictions had jail populations that exceeded capacity. Most respondents also reported that, on average, 51% to 60% of their jail population consisted of pretrial detainees (Pretrial Justice Institute, 2009b). Because the county is ultimately responsible for the cost of detaining defendants who cannot meet bail, pretrial detention can also have a substantial impact on local budgets. The cost of pretrial detention alone is estimated at \$25 million per day, the equivalent of \$9 billion per year (The National Association of Pretrial Services Agencies, 2009). Furthermore, several studies have documented the link between pretrial detention and postconviction incarceration, providing evidence that defendants who are detained prior to trial are more likely to plead guilty, be convicted, be sentenced to prison, and receive harsher prison sentences than those who are released (Rankin, 1964; Wald, 1972; Landes, 1974; Zeisel, 1979; Goldkamp, 1979; Clarke & Kurtz, 1983; Gottfredson & Gottfredson, 1988; Phillips, 2007, 2008).

The Role of Pretrial Services

In response to criticism of the money bail system for pretrial release and the expanding population of pretrial detainees in local jails across the country, criminal justice stakeholders have called for the expansion and enhancement of pretrial services (International Association of Chiefs of Police, 2011; National Association of Counties, 2009). Where they exist, pretrial services programs provide invaluable services to the jurisdictions they serve. Such programs are generally responsible for performing inmate screenings and interviews following arrest and booking; conducting defendant risk assessments to inform release decisions; supervising (i.e., ensuring defendants meet pretrial release conditions) and reporting on defendants who are granted pretrial release; and providing status updates and reminders to defendants of upcoming court events and appearances (International Association of Chiefs of Police, 2011; National Association of Counties, 2009; American Bar Association Standard 10-4.2, n.d.).

⁵ This project is neutral on bail bond issues, and the scope of the research was developed with input from representatives from both pretrial release and bail/bond agencies.

Although pretrial services provide important programming to local jurisdictions across the U.S., there is recognition that access to these services and/or a timely pretrial release hearing may be limited due to geographic location (e.g., rural jurisdictions), limited staff and resources, jail transportation restrictions, and security concerns, among others. The Pretrial Justice Institute conducted a survey targeting the 150 most populous counties across the United States (2009b). Findings indicate that while nearly half of the surveyed counties offer the initial pretrial release determination hearing 24 hours a day, 7 days a week, 15% reported only providing hearings during business hours, Monday through Friday. More limited hours of operation can cause delays in pretrial release decision making and extend the time that a defendant is held in custody. For example, in jurisdictions with more limited hours, an individual who is arrested on Friday evening may have to wait until Monday morning to be taken before a judicial officer for the first time. In such instances, a balance must be struck between the jail resources used to hold the defendant for longer periods and the resources that would be required to hold more frequent release hearings (Pretrial Justice Institute, 2009b).

The Use of Videoconferencing in Criminal Justice Proceedings

In recent years, the use of videoconferencing technology has become increasingly common in the legal system and is used to conduct both administrative and civil proceedings, as well as pretrial release and sentencing hearings (Neimon, 2001; Diamond, Bowman, Wong, & Patton, 2010). The first use of video technology in the legal system occurred in an Illinois court in 1972 to conduct a videophone bail hearing. Since this time, the use of videoconferencing has expanded dramatically, with over half of States allowing for videoconferencing in some types of criminal proceedings by 2002 (Ashdown & Menzel, 2003; National Center for State Courts, 1995). The 2009 Survey of Pretrial Services programs illustrated the proliferation of videoconferencing technology in the courtroom, with over half (57%) of the surveyed programs reporting that they use videoconferencing to conduct initial appearance proceedings (Pretrial Justice Institute, 2009a).

Videoconferencing
<p>What is it?</p> <ul style="list-style-type: none"> ▪ Interactive technology that transmits audio, visual, and other data so that two or more parties can communicate with one another using monitors.
<p>What are its proposed benefits?</p> <ul style="list-style-type: none"> ▪ Reduced travel for court and detention personnel ▪ Reduced transportation costs ▪ Increased security ▪ Reduced medical costs through use of telemedicine ▪ Alternative venues for staff training and administrative gatherings ▪ Improved efficiency of legal proceedings <p>(Supreme Court of Wisconsin, 2005, p. 4)</p>

For pretrial release hearings, videoconferencing has the potential to reduce security issues and costs associated with transporting inmates from jail to court; alleviate jail overcrowding and reduce the number of pretrial inmates housed in local jails that do not pose a threat to public safety; increase the duration of time defendants are able to spend in the community prior to trial; and provide a useful tool for rural jurisdictions that may otherwise struggle to meet time standards for pretrial release hearings (Forsythe, 1999;

Mahoney, Beaudin, Carver III, Ryan & Hoffman, 2001; Wiggins, 2004). Many jurisdictions have taken advantage of video technology for pretrial case processing.

In Monroe County, Florida, for example, pretrial services staff located in Key West are able to conduct interviews and initial arraignments by video for individuals arrested over the weekend, who would normally have to wait until the following Monday to have their interview and arraignment (Mahoney et al., 2001). The successful integration of videoconferencing technology to conduct interviews with newly arrested defendants in the Sixth Judicial District in Virginia represents another promising strategy for rural communities. Through video interviewing, two pretrial services staff operating out of Emporia, Virginia are able to complete pretrial investigations across three rural counties that are hundreds of miles apart. Courtrooms in each county are also linked into the videoconferencing network so that the pretrial staff are able to answer questions and provide information as needed to judicial officers determining pretrial release conditions. These practices have allowed the pretrial services agency to meet the needs of previously underserved remote rural districts or districts with too small a population to justify pretrial services. Videoconferencing in Emporia has been cited as extending equitable pretrial services and release decisions to areas that are currently underserved and overly dependent on “entrenched patterns of cash bond” (Forsythe, 1999).

POTENTIAL ISSUES IN VIDEOCONFERENCE USE FOR ARRAIGNMENT HEARINGS

While such programs have helped some jurisdictions to increase efficiencies in the courtroom and can potentially broadly impact local criminal justice systems, implementation of this technology is dependent on many considerations and potential drawbacks that must be taken into account. Prominent arguments against the use of videoconferencing in criminal proceedings discuss violations of defendants’ constitutional rights. One argument claims that the use of video technology would be in violation of the Sixth Amendment’s Confrontation Clause, since the defendant is not able to confront witnesses in a face-to-face meeting (Maryland v. Craig, 1990). The Court in Maryland decided that the Confrontation Clause “reflects the preference for face-to-face confrontation at trial ... a preference that must occasionally give way to considerations of public policy” (pp. 849–850). The Sixth Amendment right to counsel is also called into question in cases where the defense attorney is present in the courtroom for the proceedings and the defendant remains in jail, eliminating the opportunity for impromptu conference or private communication between the defendant and his or her attorney (Diamond et al., 2010). This concern is salient in light of recent survey data showing that defense attorneys are more likely to be located in the courtroom during a video hearing, rather than at the jail with the defendant (Pretrial Justice Institute, 2009a).

Both substantive and procedural due process concerns also arise due to the remote and sometimes perceived impersonal nature of video proceedings. Such arguments stress that the defendant’s physical presence in the courtroom is critical for making judgments of his or her credibility and competence, as well as physical and psychological wellbeing (United States v. Algere, 2005; Diamond et al., 2010). In fact, the audio feature on some videoconferencing technology uses a middle bandwidth filter that cuts off low and high

voice frequencies, which are typically used to transmit emotion. This feature removes critical emotional cues that can be used by judicial officers to determine a defendant's remorse and character (Scherer, 1986; Wiggins, 2004). While these concerns are most apparent when considering conducting a full criminal trial using videoconferencing technology, some of these issues also arise during pretrial release hearings. Diamond and colleagues (2010) assert that "Given that the defendant's freedom prior to trial is a matter of great consequence, there is at least a serious argument that procedural due process requires the defendant's physical presence at a bail hearing" (p. 881). Other widely cited drawbacks of videoconferencing technology are lack of access or experience with the technology, discomfort with using the technology, system errors that can significantly impede communication, and poor visual or audio quality (Bellone, 2013).

In their study of videoconference bail hearings and the institution of a centralized bond court in Cook County, Illinois, Diamond and colleagues (2010) attempted to test the assertions that such hearings impair attorney-client communication and reduce the human element necessary for judges to adequately make bail decisions. The videoconferenced bail hearings in Cook County were widely criticized due to the poor video quality, little to no time for public defenders to consult with and prepare defendants for hearings, and the brief nature with which hearings were conducted under this system. Results of the study show that bail amounts increased dramatically immediately following the implementation of the videoconferenced bail hearings by an average of 51%. In addition, researchers also found that bail amounts only increased for those offenses that were shifted to videoconferencing hearings (Diamond et al., 2010). In a study on the impact of videoconferencing on private attorney-client communications, Bellone (2013) found that courts using videoconferencing experience attorney-client communication privacy challenges when the attorney is located in the courtroom and the defendant remains in the jail or prison facility. Survey results also showed that a significant number of jurisdictions with videoconferencing systems experienced equipment failures with physical components, such as issues with wiring, electricity, bandwidth, and aging equipment. Suggested remedies for these potential inadequacies include training for court personnel and technological upgrades (e.g., separate, secure lines for private attorney-client communication; Bellone, 2013).

The challenges related to videoconferencing technology demonstrate the need to better understand the mechanics of this technology, how it actually works in practice, and its broader implications for local criminal justice systems. A 2002 survey of Federal district courts provides insight into the nuances of implementing technology into the courtroom. In particular, the survey calls attention to the various implementation considerations to include: legal appropriateness (e.g., Sixth Amendment concerns); cost considerations; inmate security; privacy; whether courts have permanently installed equipment or must share with other courtrooms; the sophistication and types of technology used (e.g., real-time transcript viewer annotation system, digital audio recording, projectors, monitors, evidence presentation equipment); and staff and attorney training to become familiar with technology (Wiggins, 2004). The National Association of Pretrial Services Agencies standards also highlight the importance of providing adequate notice to victims of crime of pretrial release hearings (2004). Recent survey data show that only 30% of jurisdictions

notify victims of a defendant's pretrial release (Pretrial Justice Institute, 2009a). For jurisdictions that are able to expedite release hearings through the use of video technology, it will become just as important to ensure that the process for victim notification, particularly in States with statutory notification requirements, is able to keep pace with these advancements.

Design and Methodology

The NIJ Videoconferencing Project was initiated by NIJ to address five main research questions:

1. What are the working standards for conducting and recording videoconferences, archiving and making files accessible, and addressing issues associated with video court transcripts?
2. How do the defendant, victim/witness, jail, and court respond to the videoconferencing protocol?
3. How are processes (access to counsel and 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, and so forth?
5. What are the cost implications of implementation and maintenance?

The project will be carried out in three phases. ICF was contracted by NIJ to assist with Phase I of this project which consists of four tasks. First, ICF assisted NIJ in establishing and coordinating the expert workgroup, as well as planning and facilitating three expert workgroup meetings. Second, ICF developed interview and observational site visit protocols and submitted these protocols for institutional review board (IRB) approval. Third, ICF worked with NIJ to identify and select site visit jurisdictions, schedule observational site visits, and conduct site visits in two videoconferencing settings. For this task, ICF developed site visit summaries for NIJ. Fourth, ICF prepared the final report and executive summary for Phase I of the project.

Expert Workgroup Selection and Meetings

In order to gain a better understanding of the landscape of videoconferencing practices in release hearings, ICF identified expert candidates of various stakeholders with involvement in videoconferencing technology in courts. ICF worked with NIJ to make final workgroup selections and to recruit members. These experts were selected based on their scholarly work on videoconferencing, roles in professional organizations traditionally involved in pretrial issues, and practitioner experience in jurisdictions using videoconferencing. These stakeholders included judges, pretrial representatives, public defenders and prosecutors, correctional administrators and staff, court and information technology administrators, and victim advocates.

NIJ convened three expert workgroup meetings throughout Phase I of this project. ICF assisted NIJ with planning and facilitating two in-person and one virtual workgroup meetings. ICF assisted with scheduling the meetings, planning logistics, and creating meeting materials. For each of the meetings, ICF served as the primary or lead facilitator for these discussions and was primarily tasked with guiding participants through preestablished roundtable discussion topics and questions. The following provides an overview of each of the three expert workgroup meetings:

- Meeting 1 was held on February 10, 2014, at NIJ in Washington, DC. Attendees included four ICF staff members, NIJ project staff, the eight expert workgroup members, invited Federal observers (e.g., NIJ, BJA, BJS, Office for Victims of Crime), and observers from additional stakeholder groups (e.g., American Bail Coalition, American Probation and Parole Association, Association of Prosecuting Attorneys, International Association of Chiefs of Police, Justice Management Institute, National Association of Criminal Defense Lawyers, National Legal Aid and Defender Association).

The meeting had four objectives: (1) discuss and review the NIJ Videoconferencing Project; (2) facilitate presentations by three expert workgroup members on three themes of videoconferencing (use of videoconferencing in pretrial release hearings, pretrial detention, and remote technology in courts); (3) facilitate discussion around videoconferencing implementation issues and solutions, including conducting and recording videoconferences, storing and archiving recording, and accommodating court and jail needs and restrictions; and (4) review and discuss Phase I observational site visit protocols and interview guides.

- Meeting 2 was conducted via videoconference on June 24, 2014. Attendees included two ICF staff members, NIJ project staff, eight expert workgroup participants, and one Federal observer. The meeting opened with a brief update on the progress of the project. The meeting had two primary objectives: (1) discuss observations from the first videoconferencing site visit to Montgomery County, Pennsylvania, and (2) facilitate discussion of videoconferencing implications and considerations in court and detention settings from the first site visit. The expert workgroup also provided input on the site visit materials and gave recommendations of locations for the second site visit.
- Meeting 3 was held on January 12, 2015, at the National Institute of Justice in Washington, DC. Attendees included three ICF staff members, NIJ project staff, the eight expert workgroup members, invited Federal observers (BJA, BJS, NIJ) and observers from additional stakeholder groups (e.g., American Jail Association, International Association of Chiefs of Police, Maryland Office of the Public Defender, National Association of Pretrial Services Agencies, National Legal Aid and Defender Association).

The meeting had three main areas of focus: (1) review and provide feedback on the Phase I final report outline; (2) discuss and identify videoconferencing implementation issues and solutions; and (3) discuss next steps and Phases II and III of the NIJ Videoconferencing Project. Participants discussed: changes in the technology; attorney-client interactions in videoconferencing hearings; defendant perspectives; procedural justice; pretesting equipment; the use of videos for court records; continuity planning; and decorum during videoconferencing proceedings. The expert workgroup also discussed concerns from their jurisdictions on recording and archiving videoconferencing hearings, sustainability issues and costs, accommodating defendants' special needs, and victims' rights in the videoconferencing process.

Data Collection Instruments

ICF created the site visit interview and observation instruments.⁶ Instruments were reviewed by NIJ and the expert workgroup and were approved by ICF's IRB and NIJ's Human Subjects Protection Officer. These instruments included interview protocols for court administrators, judges and prosecutors, defendants, defense attorneys, family members, victims, and other stakeholders. Interview instrumentation with court administrator and information technology (IT) staff covered: background on the history of the videoconferencing program; the context of program implementation (e.g., eligible cases and populations for videoconferencing versus in-person arraignments); program funding and resources; planning and governance of the videoconferencing system, including training, software, and IT needs; program implementation protocols and policies (e.g., data security and storage, disaster or emergency plans, the use of help desks and interpreters); and data issues, challenges, and perceptions of the appropriate uses for videoconferencing. Interview instrumentation for use with judges and/or prosecutors covered perceptions of program successes, obstacles, and the appropriate uses for videoconferencing. Interview protocols for other detention and court staff involved in videoconferencing (e.g., jail staff, defendants, defense attorneys, family members, victim advocates) included questions and prompts about experiences and perceptions of the videoconferencing experience (e.g., clarity and quality of the process, suggestions for improvement).

The researchers used a structured observation protocol to systematically gather information on aspects of the videoconference, such as video and audio quality, size of participants on the video screen, types of technology used, videoconference setup, and any challenges experienced during the videoconference. The observation protocol also included several domains for observation and data gathering:

- Videoconferencing equipment used
- Frame of reference in video panel (e.g., distance to camera/monitor, panoramic views)

⁶ See Appendix B for site visit instruments.

- Courtroom and detention setting characteristics (e.g., room size, personnel in attendance, noises, decorum)
- Defense and defendant conference capabilities (e.g., could the defendant and defense counsel confer in private during the hearing; number of people around defendant)
- Interactions with jail staff and defendants
- Traditional versus videoconferencing operations (technology-specific challenges or barriers to procedures—e.g., whether defendant can hear the judge)

Following the site visits, ICF prepared and submitted brief site visit reports that documented the details and findings of the visit. Additional information on site visits can be found below.

Site Visit Planning and Implementation

ICF prepared a list of potential jurisdictions for site visits. Potential jurisdictions were determined based on their current use of videoconferencing in courts. The list included reasons for selection, current videoconferencing practices, any relevant stakeholders, and general information on the site (e.g., rural or urban). After initial engagement and recruitment by NIJ, ICF conducted planning calls with two sites. Following site visit planning activities (scheduling days and locations of visit, discussing safety and decorum protocols), ICF conducted two site visits with the participation of NIJ.

Site Visits

ICF visited two sites that conduct pretrial release hearings through videoconferencing with the purpose of observing the technology in action and determining the collaboration needed between various agencies in criminal justice to organize videoconferencing hearings. Researchers observed and collected data from both sides of the videoconference to observe ease of communication, technology setup, and any challenges from either side with the remote hearing. All of the various stakeholders in these hearings were observed, from judicial stakeholders (e.g., judges, court magistrates, court and network administrators, prosecutors and defense attorneys) to defendants. Researchers also interviewed individuals who engaged with the videoconferencing technology to describe their experiences and the benefits and challenges of conducting remote hearings.

On June 4, 2014, two researchers from ICF and one computer scientist from NIJ traveled to Montgomery County, Pennsylvania for a 1-day site visit to observe their videoconferencing practices. Montgomery County is a suburban county located northwest of Philadelphia. That morning, one researcher from ICF and the NIJ scientist viewed court proceedings from the Montgomery County Courthouse network administrator, while the second ICF researcher stayed in the Montgomery County Correctional Facility. Five bench warrant hearings were observed from both sides of the videoconference. Next,

researchers conducted interviews with court and jail staff. From there, researchers traveled to a district court to observe two more hearings; researchers also observed an in-person bench warrant hearing to compare the experience with that of the videoconferencing technology. Following the site visit, ICF conducted an in-depth interview with the court videoconferencing manager and IT manager about their system; ICF also interviewed the judge from Montgomery County Courthouse about experiences and perceptions of conducting videoconferencing hearings.

On November 17, 2014, two researchers from ICF and three scientists from NIJ traveled to Baltimore City, Maryland to observe practices in their circuit and district courts. Baltimore City is an urban environment and a city independently operated from Baltimore County. One ICF researcher and two NIJ scientist staff observed videoconferencing proceedings at the Clarence M. Mitchell, Jr. Courthouse in downtown Baltimore. One ICF researcher and one NIJ scientist observed proceedings from Central Booking and Intake. Researchers observed habeas corpus hearings from the courthouse and men's and women's detention facility. After the hearings were finished for both the men and the women, researchers at the circuit court interviewed the judge who presided over the hearings; researchers at the correctional facility spoke with staff from the State Attorney's office, as well as the pretrial services division. All researchers traveled to the Edward F. Borgerding District Court Building to watch bail review hearings. Following the site visit, ICF interviewed a public defender and IT manager to better understand the videoconferencing system in Baltimore and the experiences of those engaging in the process of remote hearings.

Synthesis of Data and Final Report

Following the site visits and expert workgroup meetings, ICF synthesized information from previous project activities and prepared the final project deliverables. NIJ and the expert workgroup reviewed and provided feedback on report outline prior to drafting. This final project report with findings from Phase I of the project, as well as an executive summary that includes a synthesis of the final report, were final deliverables for this project.

Findings

To focus discussions in the Workgroup meetings, NIJ established three themes (hereafter the Three Pillars) of videoconferencing: (1) pretrial release hearings, (2) pretrial detention, and (3) remote technology in courts.

Meeting 1: Three Pillars

The first expert workgroup meeting brought together stakeholders in videoconferencing with a wide range of experiences and viewpoints on the technology. The expert workgroup, including participants from the courtroom and jail side of a videoconference, came to the project with varied perspectives.

The first expert workgroup meeting initiated these conversations on the Three Pillars with presentations from expert workgroup members. Three workgroup members presented on

their experiences and viewpoints on videoconferencing. One expert spoke from the perspective of the court during pretrial release hearings; another spoke from the perspective of the jail; and the final presentation focused on the technology implemented in courts. The following provides an overview of protocols, policies, and practices of videoconferencing from the framework of the Three Pillars.

Pretrial Release Hearings

The first presenter provided a background to their jurisdiction's implementation of videoconferencing, and the standards set for videoconferencing practice in pretrial release hearings. In response to concerns for the safety of judges and advocates, the jurisdiction filed for a rule change with their State's Supreme Court to allow for videoconferencing hearings. The court convened an advisory committee with representatives from defense attorneys, the court, court administrators, and other stakeholders. The committee surveyed 13 counties, of which 12 were using some form of videoconferencing technology, and reviewed their court cases to survey the outcomes of these cases. The committee wanted to address concerns such as due process, Sixth Amendment rights, confrontation clause, the ability of victims to participate, confidentiality between a defendant and their counsel in a videoconferencing setting, and the defendant's right to be present when evidence is presented. Some concerns of those who opposed the use of videoconferencing in this jurisdiction follow: defense counsel is not able to be located with their client, poor quality in audio and video, a dehumanizing criminal process, and the difficulty of assessing a defendant's comprehension and consent over video feed.

As part of this rule change, court administrators were required to produce detailed procedures for videoconferencing technology implementation. Until courts could meet technical and logistical criteria for hosting videoconferencing, they could not implement it. These criteria set by this jurisdiction include (1) the ability to have simultaneous conversation; (2) the ability to see facial movement and expressions; (3) the provision of an official record of proceedings; (4) the ability to have confidential communication between the defendant and their counsel before, during, and after the proceeding; (5) the ability for victims to view and participate via audio and video; (6) compliance with the victim's rights, such as their right to be present in all proceedings; (7) the ability for public participation; and (8) the inclusion of interpreter services for spoken and sign languages.

The jurisdiction had an instance when the videoconferencing equipment broke down before the court had scheduled remote hearings. Defendants were transported almost 3 hours, each way, from the detention facility to the courthouse. Victims were also transported to the courthouse, but they did not feel comfortable appearing in the courtroom. A victim's advocate served as a runner to provide information to the victims, who waited in another room in the courthouse. The judge, defense, victims, and corrections officers were upset about the broken equipment and the need to transport the defendants to the courthouse for the initial appearances. The expert said that this incident, where remote hearings were disrupted when the equipment failed, demonstrated how much the jurisdiction had grown to rely on videoconferencing capabilities. People

involved in videoconferencing hearings in the jurisdiction have expressed their appreciation for videoconferencing and its benefits.

Pretrial Jail Detention

The next presenter discussed the benefits he observed in his jurisdiction from using the videoconferencing technology in correctional facilities to improve the safety of inmates and jail staff. The county implemented videoconferencing to improve safety and mitigate some of the risks of transporting inmates. The expert stated that it is a safety issue for the correction's side to transport inmates to courthouses. The further inmates move away from their cells, safety concerns increase; transporting inmates from the jail to a downtown courtroom becomes more risky.

The presenter recognized the benefits of videoconferencing in correctional facilities in a few ways. Videoconferencing removes the need to transport inmates outside of a correctional facility for a court hearing, reducing the likelihood of the occurrence of an adverse event. The presenter noted that almost one-third of the inmates (in the detention center) have a mental health condition; sometimes the indicators for these illnesses are undetectable until situations occur that would be harmful for jail staff. The safety of inmates and staff may be improved through remote hearings. Jurisdictions may have increased cost savings when corrections officers do not need to transport inmates to courtrooms, though other costs may be incurred by bringing lawyers into detention facilities. Additionally, the expert reported that videoconferencing expedites the hearing process. Inmates want to see their trials progress without significant delays, and videoconferencing helps move their cases forward. Finally, the availability of experts improves when remote participation is an option.

The expert recognized that the use of videoconferencing has its own set of issues as well. If video quality is poor, this could influence or affect the hearing. Although safety is increased in situations where an inmate has a mental health condition, some experts may prefer that the individual is physically present in the courtroom for assessments and hearings. Signed documentation needs to be secure, and the detention facility and court need to determine which location will be the custodian of records. Many agencies and jurisdictions do not have the infrastructure to put this technology into place, and they lack the resources to implement and maintain it. The presenter said that the safest defendant is one that is in a secure location. Correctional facilities can use videoconferencing to alleviate some of the concerns of transporting inmates to courts, and the expert indicated that videoconferencing may provide safer outcomes than those from traditional court appearances.

Remote Technology in Court Settings

The final presentation reviewed the various uses of videoconferencing practiced by jurisdictions, and the issues courts face that are unique to different jurisdictions. The presenter cited a large national survey that was carried out in many jurisdictions to determine how and when videoconferencing technology is used in criminal justice proceedings (National Center for State Courts, 2010). Responses from the survey

indicated that most sites use the technology for arraignments, first appearances, and interpreters. Some sites used it for purposes outside of their courtrooms, like training and civil purposes. Within these sites, there is a wide range of capabilities and resources. There is increased interest in the field to incorporate videoconferencing hearings, especially with remote interpreters. Funding for State courts systems was threatened when the courts did not comply with civil rights in cases that required participation of an interpreter. Videoconferencing opens courts to broader capabilities for conducting hearings. A challenge to this, however, is attempting to maintain the dignity of the court through remote hearings. An appropriate courtroom experience must be reproduced through the video technology.

The top barriers to implementing videoconferencing are resources and resistance. As most sites are self-funded, they must decide how they will pay for the equipment and its operation. Rural sites, in particular, struggle to implement the technology. This may be due to a lack of resources or capacity for the technology. As a result, rural jurisdictions that lack access to resources may have bandwidth issues; videoconferencing requires high-speed bandwidth in order to run efficiently. Overall, videoconferencing is a substantial cost to jurisdictions to implement. Jurisdictions may also encounter resistance to implementation, particularly from attorneys who prefer to have defendants appear in courts. For defense attorneys, it is necessary to have the ability to communicate privately, either with the lawyer physically present with the defendant or by having a separate phone line in the court.

As technology progresses, the range of technological solutions for videoconferencing increases. Older systems were expensive, but also less reliable than what is available to courts today. The presenter recommended that sites should use high-definition networks, as there are issues with due process in lesser-quality networks. Price performance is improving; videoconferencing systems are not only more advanced and less expensive, but they are also more reliable and less proprietary. These newer systems are decreasing the risk of equipment failure. Sites using videoconferencing need to set technical standards to ensure the concerns of stakeholders in this process are addressed.

Main Concerns

Phase I of the NIJ Videoconferencing Project provided an opportunity to identify a well-informed and balanced understanding of videoconferencing practices and considerations and implications for use. Those considerations for videoconferencing in courts—such as (1) issues with implementation and management of conducting videoconferencing, (2) accommodation of due process and safety considerations, (3) inclusion of victims in the videoconferencing process, and (4) collaboration and funding—were discussed in depth during the expert workgroup meetings and observational site visits. Through these observations and facilitated meetings, a range of challenges and considerations emerged for planning and implementing videoconferenced hearings. The following provides a summary of key considerations and concerns for implementation and planning videoconferencing identified through Phase I activities. Separate reports were provided

to NIJ about the expert workgroup meetings and observational site visits. Notes from these meetings and site visits were incorporated into this report.

Conducting and Recording Videoconferences

TRAINING

Jurisdictions may choose to formalize training for individuals who operate or engage in videoconferencing systems in their facilities. Expert workgroup members and site visit court and detention staff reported varying degrees of staff training in the use of videoconferencing equipment. In some instances, training was listed as a requirement for judges, prosecutors, and defenders, in order to operate videoconferencing technology in their courts. Others reported their court employees had no formal training or education in managing the systems. As some experts from the workgroup discussed, having individuals cross-trained in the equipment prevents disruptions in hearings if the main equipment manager is unable to operate the system or leaves. One expert's jurisdiction gives annual training to magisterial level, with some of these employees having no formal education beyond high school. One judge from a site visit recommended that judges set up peer-training sessions to discuss factors important to their participation in videoconferences, such as communication and maintaining decorum of the courtroom. She said judges prefer to learn how to address these issues from other judges, as they understand their perspective during the videoconferencing process.

DEDICATED STAFF

Some experts and site visit respondents reported having dedicated staff to operate the technology during court proceedings. One expert workgroup member reported that lawyers and judges were frustrated by the slow setup process of the equipment. At this member's court, there is no dedicated staff to operate the system, and court staff feel they cannot become familiar with the equipment. Another expert stated their jurisdiction has seen improvement in the number of hearings that start on time since employing dedicated staff to manage videoconferencing hearings. In Montgomery County, one individual served as the dedicated staff person for videoconferencing at the correctional facility. When she is on vacation or away from work, she finds a replacement for that time and trains them before she leaves. In addition, this staff person conducts regular refresher trainings for stand-in staff on procedures for operating the equipment. Experts also mentioned turnover of staff equipped to operate videoconferencing systems as a concern (e.g., detention staff, IT staff). Continuous cross-training of staff at both the jail and court side could mitigate some of these issues.

SECURITY

Sites looking to conduct videoconferencing hearings have the added concern of cybersecurity. Older videoconferencing systems are run through closed-circuit television, or CCTV. Newer systems are moving away from physical connections and use IP (Internet Protocol) connections and cloud-based storage. Experts stated the importance of ensuring a safe transmission of videos and records. One expert described contingency plans in the jurisdiction for continuing videoconferencing hearings during a disaster. The

jurisdiction can set up portable courtrooms, in areas like a gymnasium, to continue the process while the county recovers its infrastructure. Other sites, like Baltimore, are not equipped for continuing videoconferencing hearings in events like a power outage or disaster, and must reschedule hearings as a result.

Related to physical security, the expert workgroup agreed that security of the technology (large televisions/monitors or heavy equipment) is an important consideration. Equipment should be stored and safeguarded with inmate movement. As one expert remarked, “It only takes one incident where someone gets hurt for the cost savings to not matter anymore.” The expert recommended that equipment be bolted down when in use and locked up when not being used. Otherwise, the physical safety of others in the room and the safety of the equipment are compromised.

DECORUM—TRADITIONAL VERSUS VIDEOCONFERENCING ENVIRONMENTS

One common theme with conducting hearings through videoconferencing is the need to maintain decorum through a virtual connection. One expert reported his/her jurisdiction requires a system check before every videoconferencing hearing. If the presiding judge is not satisfied with the appropriateness of the technology, the videoconferencing hearing will not occur. Judges interviewed during both site visits expressed concern over the ability to replicate the experience of the courtroom over a videoconference. Three common elements were identified by interview participants as being critical to preserving the courtroom experience: (1) high-quality equipment; (2) ability to maintain eye contact with defendants; and (3) ability to communicate with defendants and ask questions to ensure the defendant is able to fully participate and understand the nature of the proceedings.

Courtroom proceedings need to be replicated in correctional facilities. However, this can be challenging. For example, most microphones observed on the site visits were located at the judge’s bench. This may make it difficult to hear someone, like a pretrial case manager or public defender who is close to the bench but not directly at the microphone. Alternatively, multiple microphones placed around a courtroom may pick up background noises that distract from the speaker. Some systems observed did not allow for hearing multiple individuals speaking at once, as would be the case in a traditional, in-person, release hearing. In some systems, the audio system cuts out (mutes) the sound of the second speaker, so others may be unaware that someone was trying to talk.

Essential Components of the Videoconferencing Experience

- High-quality equipment
- Ability to maintain eye contact
- Ability to communicate with defendants and ask questions

Even with the ability to hear multiple individuals talking at once, defendants may go unheard when they wish to speak. On both site visits, defendants raised their hands to be called on to speak. At those times, the judge was looking at documents or an individual in the courtroom, and missed the defendant’s request to speak. On most occasions, the defense attorney noticed the defendant and notified the judge. On one occasion, the

defendant went unnoticed and did not speak for the remainder of the hearing. A function, such as a button to signal their request to speak, could prevent a defendant from going unnoticed.

In one court location in Baltimore City, the detention facility sound was muted during procedural activities in the courtroom (i.e., the detention facility images could be seen but no sound was heard). In one instance, the defendant was clearly talking; however, court personnel were talking to one another and did not acknowledge (or know) that the defendant was communicating. Muting and unmuting sound may minimize background noise of a detention setting for the court setting; however, implications to muting include the defendant not being heard in real time during the proceedings. In another instance, the detention facility muted a defendant because other inmates were being disruptive to the proceedings.

Beyond audio alone, expert workgroup members and site visits illustrated how videoconferencing affects the visual experience of a hearing. For example, the images projected of the courtroom may be focused closely on the judge, meaning the defendant cannot see his/her counsel but can hear counsel. Defendants in this instance may be more or less inclined to speak or ask questions during the proceeding. Alternatively, the projected image of the courtroom may depict all relevant courtroom staff (e.g., judge, prosecuting attorney, defense attorney), but at a distance or side angle where a defendant may or may not be able to see facial expressions. The physical setup of the technology may limit the ability of people in the courtroom (judge, prosecutor, defense attorney) or detention facility (staff, defendants) to see the nuance of activities across settings. However, several judicial experts believed that these nuances, while important, were not critical or detrimental to due process proceedings.

In most observed cases, a panoramic camera focused on all speakers, and could pan to one person when needed. In Baltimore City, the pretrial representative, public defender, and State's attorney stood at the judge's bench with the television stand off to their right. Their backs were turned to the camera when they spoke to the judge. Auto-panning cameras can address the issue of missing speakers in a courtroom, but these cameras can cause trouble when a distracting noise, such as shuffling of papers, causes the camera to focus off the main speaker. Some expert workgroup members recommended multiple, voice-activated cameras focused on all speaking parties in the courtroom. Other experts, speaking in the context of bail review hearings, said this may not be necessary, as most of the procedural items are addressed prior to the hearing.

One expert member noted that the quality of the video feed should be good enough to observe expressions and facial movement, noting that the video needs to show "the whites of their eyes." Facial recognition is important for those on the side of the court to recognize if the defendant understands them.

Furthermore, during the Montgomery County site visit, defendants were quiet but looked to the detention staff for clarification about words and language used during the hearing. At the conclusion of the case, the defendant asked detention staff to explain or

paraphrase what occurred during the proceeding. It is unknown if the public defender or other court personnel ever realized that the defendant wanted clarification about the proceedings. One expert recommended sites using videoconferencing have a bailiff-trained staff member present on the jail side who knows the defendant's rights. Maryland has public defenders who work out of Central Booking in Baltimore; they are able to coordinate with the defendant to explain the process, their rights, and to ensure that the defendant is comfortable with the videoconference hearing.

DEFENDANTS' RIGHTS

Without counsel present, defendants may misrepresent information in their bail appearance that causes them to not meet bail conditions. Experts stressed the importance of having counsel meet with the defendant prior to his/her initial court appearance in order to help avoid miscommunication and misrepresentation in court. One expert stated it is important for counsel to be competent enough to represent the defendant from either the physical location of the defendant or the judge. One option suggested including dual staffing—defense counsel staff at both court and detention settings to minimize miscommunication and ensure communication between defendant and defense counsel.

Confidential communication between an attorney and a defendant is a common concern when the two parties are communicating remotely. Other defendants waiting for their hearings can overhear discussions between a defendant and their attorney. There may be complaints about the quality of representation if a lawyer and defendant never meet in person, and the defendant is only represented virtually. Public defenders in Baltimore City were especially uncomfortable with the inability to have private conversation with the defendant during remote hearings. One observed public defender warned the defendant (his client) before speaking to the judge, saying "I want to remind you [that you] don't have an attorney there, so we're at a disadvantage here." Defense attorneys in Baltimore must request for the courtroom to be vacant in order to speak privately with defendants. Experts indicated that some locations have private phone lines in detention facilities to enable private attorney-client communications.

COURT DOCUMENTATION

Expert workgroup members indicated that presenting documentation in court becomes difficult when videoconferencing is involved. Specifically, the experts indicated that vendors struggle with ways to set up systems to sign, review, and exchange court documents. As more courts are moving toward videoconferencing, the need for an electronic document management system intensifies. In Arizona, court guidelines require that the defendant at the detention facility has to have the documents in a timely manner and must have access to the documents during a proceeding. Currently, neither site visited had any option for secure transmission of court documents between the detention facilities and courts. In Baltimore, a public defender said she has to make sure her client has the right documents before the case, or "We're out of luck."

BANDWIDTH AND VIDEO SCREEN ISSUES

Most experts and sites mentioned bandwidth as an important factor to success with videoconferencing systems. Sites using older networks and equipment may have bandwidth issues. Prior to upgrading their videoconferencing equipment, Baltimore City had frequent disruptions to hearings as a result of bandwidth issues (i.e., audio and video would lag or cut out altogether). A pretrial representative in Baltimore recalled having to reschedule videoconferences for any disruption to the quality of the video feed. Sites may decide to use high-quality fiber optic cables to increase bandwidth and improve the quality of the videoconferencing system.

A wide range of screen options were observed during site visits. Most commonly, sites used a television, or large, highly pixelated monitor to present video feed from the detention facilities. Monitors typically have built-in cameras that are high quality. Montgomery County, however, demonstrated that other video technology can be used when there is a challenging situation with a hearing. Corrections officers were uncomfortable bringing an inmate, who was on suicide watch, to the videoconferencing room in the detention facility. The judge conducted the hearing through a tablet and a correctional officer's smartphone. The judge said that it is not common for them to use this type of electronic technology, but it was an option that does not require jail staff to transport an inmate who was deemed unstable.

Storing and Archiving Videoconferences

AUDIO AND VIDEO RECORDS

Sites using videoconferencing systems differ in regard to how remote hearings are stored and if they serve as a court record. In Pima County, Arizona, courts may allow a recording of the videoconference, a transcript, or audio recording to serve as a court record. Meanwhile, Waukesha, Wisconsin has no standard method for archiving these hearings. Court records can be either digitally audio recorded or transcribed.

Some States and counties have moved away from court reporters as the standard method of creating a court record. According to observations and interviews in Baltimore City, audio equipment in the courtrooms of the circuit court record court proceedings (i.e., become the official court record) in place of a court reporter. Expert workgroup members noted that some courts use the videoconferencing recording as the hearing or trial record. However, other experts indicated that the videoconferencing is just a process to share information and that the official trial or hearing record is still recorded by a clerk.

Accommodations

VICTIM PROTECTION

While ensuring the rights of defendants are met, jurisdictions that use videoconferencing must also account for the rights and needs of victims. Victims may not want to appear via a video feed. It is important that courts maintain the victim's privacy and protect the victim's identity, especially in cases involving children or sexual assault victims. However, one expert mentioned that in their jurisdiction, the media wanted the ability to have access

to the records of proceedings. To address this, some courts move victims off camera when they provide testimony in a proceeding. Pima County, Arizona includes the option to redact video recordings to maintain confidentiality for victims, though this is a time-intensive process.

INTERPRETERS

Experts stated that remote interpreters have been valuable to their operations of videoconferencing hearings. In Arizona, where there are large populations of Spanish and tribal language speakers, courts use remote interpreters in their hearings. Yuma County, Arizona has a videoconferencing system connecting the superior court and a limited jurisdiction court located 25 miles apart, as well as the county jail. Interpreters in Yuma County have found they save time by not commuting between the two courts, as well as experiencing a reduction in their health and safety concerns by not working in the jails. Experts in Arizona also reported using a high-definition, two-way videoconferencing system successfully for sign language interpretation. Court staff from Montgomery County and Baltimore City mentioned the complication of interpreters working from the court side of a videoconference. In the past, inmates have not understood interpretations when the interpreter is not present with them.

ACCOMMODATING INDIVIDUALS WITH DISABILITY

Videoconferencing presents additional challenges for individuals with disabilities. In most cases, experts recommended having individuals appear in person for their hearings to mitigate these added concerns. In the case of a defendant with a mental or cognitive disability, one judge felt it was necessary to have this person in court; she thought she was better able to judge the defendant's comprehension of the hearing in person (rather than over a video feed).

Implementing and Sustaining Videoconferencing

PREIMPLEMENTATION COLLABORATION

In addition to the concerns regarding restrictions within locations where videoconferences may take place, a lack of collaboration between these stakeholders can present its own set of issues. In Arizona, a court was using old audiovisual (AV) equipment. The upgrade to the AV system became an unexpected, additional cost for this court to properly integrate with the State's video system. Other experts mentioned how integrating new AV equipment with old recording equipment is difficult. Experts stated it is important to not only bring in stakeholders to plan from a business perspective, but also to coordinate the network and IT components of implementing a videoconferencing system. One expert recommended bringing judges into planning discussions to manage their expectations of remote hearings. A judge from Baltimore City also recommended bringing in judges in the planning stages, so they can better understand the components involved in implementing a videoconferencing system.

As some experts said, States without unified court systems should consider multiple uses for implementing a videoconferencing system beyond arraignments; coming up with as

many uses as possible maximizes the jurisdiction's return on investment.⁷ One expert listed different uses for the videoconferencing technology system besides arraignments: videoconferences between courts and hospitals to avoid unnecessary patient disruption during involuntary commitment proceedings, videoconferencing for child support hearings where a party may be incarcerated or located in another State, abuse and neglect hearings, and trainings. Another expert stated that while their jurisdiction initially did not allow for arraignments conducted through videoconferencing, they currently allow videoconferencing for arraignments, arrest warrants, bail, release determinations, civil hearings, a few sentencing hearings, meetings, and training. Experts also noted that some jurisdictions have modified their use of videoconferencing after implementation, including some uses that may not be appropriate for the technology in place. One expert stressed the importance of monitoring the evolving uses of videoconferencing, so that sites can identify when their practices are outside of the scope of the original model of videoconferencing.

GOVERNANCE/ADMINISTRATION

Many experts identified a governance structure as a useful component for implementing a videoconferencing system. A governance structure may set the parameters for videoconferencing uses in their jurisdiction. Further, a governance structure would allow for better coordination between courts, jails, and prisons. Stakeholders in the videoconferencing systems need to meet on a regular basis to provide input on their experiences with using the technology. Governance systems may also determine the appropriate level of operation for videoconferencing and conduct regular reviews of procedures to adjust policies as necessary. For example, one expert noted that the judiciary meets every 2 years to review videoconferencing requirements of their unified system, makes recommendations for change, and enacts procedural changes as necessary to address technological or system needs.

MAINTENANCE

Experts reported mixed funding sources for jurisdictions implementing videoconferencing systems. In Arizona, the courts are responsible for funding, but local jurisdictions have contributed to the implementation using funds confiscated from racketeering cases. In Pennsylvania, it is the responsibility of State troopers to implement videoconferencing, while in Wisconsin, the systems are funded through individual counties. An issue raised with having counties fund their own systems is the high failure rate of intercounty videoconferencing operations, as counties may have different and incompatible systems.

VENDORS

Videoconferencing vendors are split between more established vendors with proprietary systems and start-up vendors with open systems. In these cases, experts said it is a choice for jurisdictions between open solutions and mature, expensive systems. Experts

⁷ Experts mentioned other successful applications for videoconferencing, including delivery of translator services, facilitating attorney-defendant conferences, facilitating expert consultation, taking pleas, conducting sentencing proceedings, and conducting parole and probation hearings.

emphasized the need to have established agreements in place with vendors to ensure timely and adequate responses to system malfunctions and failures.

COST SAVINGS

Both expert workgroup participants and interview participants of the two site visits noted cost savings to be a driving consideration for videoconferencing, although it was noted that cost effectiveness has not been proven through rigorous research at this time. The following provides an overview of the perceived or intended benefits of implementing videoconferencing:

- Transportation costs (i.e., fuel and staff cost savings) were identified as specific costs to be impacted by videoconferencing. Fuel costs would be minimized through reduced transporting of inmates to and from the detention facility. Related, there should be a parallel reduction in staff required to transport inmates. Montgomery County reported reduction in costs for transportation as a result of using videoconferencing for pretrial hearings. However, costs are reduced—not eliminated—as inmates may insist on in-person appearance before a judge or magistrate.
- Food costs were also identified as a potential area for savings. Feeding inmates outside of a secure detention facility is costly. By keeping inmates in the detention facility, detention staff do not have to feed inmates outside of this setting, minimizing overall food costs per inmate. For example, in rural settings, transportation to and from the courthouse may require hours of travel and necessitate feeding inmates. Eliminating long trips and meals will minimize these overall operating costs.
- Medical cost savings were considered to be a key consideration for implementing videoconferencing. Expert workgroup members perceived that overall health (for inmates, court personnel, and detention staff) may be improved as close exposure to sick inmates is minimized. Thus, medical costs for inmates getting sick and staff being away on sick leave can be minimized.

Experts also discussed the idea of ‘cost shifting,’ which is the burden of cost shifted to some agencies or stakeholders as a result of videoconferencing implementation. While some groups, such as correctional facilities, may experience cost savings as a result of using videoconferencing, other stakeholders may find their transportation costs increase due to the need to travel between the court and detention facilities.

CREATING A PROTOCOL

Experts were mixed between those whose jurisdictions have a protocol for videoconferencing in courts, those who have operating guidelines, and those who do not have any established guidelines. Some benefits to having a written protocol are establishing a group of decision-makers who can set the boundaries for videoconferencing use, understanding the concerns of all involved stakeholders in the

jurisdiction, and maintaining consistent practices for videoconferencing in a jurisdiction. However, some sites may see a written protocol as limiting; to prevent this, jurisdictions should regularly meet to discuss the written protocol and determine whether they need to make any changes to current practices.

Discussion and Implications

This project marks an important first step toward developing a well-informed and balanced understanding of the needs and potential challenges for conducting pretrial release hearings through video technology. Many stakeholders have noted both the promise and shortcomings of videoconferencing technology in the courtroom; however, there is a lack of research-based guidance on how these limitations can be overcome. The following provides a discussion of the key considerations for development and implementation of videoconferencing. The discussion is guided by information gathered through the three expert workgroup meetings, a review of the extant literature on this topic, and information gathered through observational site visits to two jurisdictions that use videoconferencing. The report produced as part of Phase I provides criminal justice practitioners and policymakers with access to information about the use of videoconferencing technology in pretrial release hearings and may provide early guidance on whether technology integration is feasible for their jurisdiction and practical considerations for planning for video technology use. Phase I findings set the stage for future study phases and more formative (Phase II) and rigorous (Phase III) investigation of both the implementation and impact of videoconferencing technology in post-arrest settings on system and individual outcomes, including the impact of videoconferencing on system costs.

Technological Considerations

Videoconferencing is an interactive technology that enables two or more parties, in separate locations, to communicate with one another (sends and shares video, voice, and data over a transmission circuit so that two or more parties are able to communicate with one another; Wisconsin Supreme Court, 2005). This technology allows sharing and communicating of audio, video, and data images and has a number of potential system-level benefits for release hearing application. The technological equipment is a distinct component to consider when a site plans to implement a videoconferencing system. The equipment is the tool that allows videoconferences to occur, and depending on the quality of the equipment, it limits how videoconferences are conducted. The following highlights key considerations that emerged from the observational site visits and expert workgroup meetings regarding technological considerations for videoconferencing. Implications of the considerations are also discussed.

Overall technical software and transmission capacity was a key consideration for videoconferencing implementation. The nature and type of videoconferencing (e.g., point-to-point videoconferencing on closed-circuit systems, Internet provider systems that use wireless or domain sites) can limit the functionality and speed of sharing of video, audio, and data images. The different connectivity options may be driven by infrastructure (i.e., existing phone or cable systems) in or near courthouses and detention facilities. Older

buildings or more remote locations (i.e., rural locations) may be limited in their ability to use certain types of technology for videoconferencing, as wiring for these capabilities may be limited. Transmission options and bandwidth were also listed as important considerations, as analog transmissions are outdated and typically do not allow for high quality data (see video and audio below). Use of high definition transmission may result in higher quality data transmission; however, additional equipment is necessary to transmit data.

Video and Audio Capacity

Screens or platforms used to present the shared information vary considerably; consequently, the resolution of the image will vary. This variation has real implications, given that defendants may not be in the presence of their defense attorneys. As a result, nonverbal cues or body language may be missed or misinterpreted by courthouse parties.

Sound quality and control is also an important consideration. Similar to video resolution, audio systems capacity to pick up and relay softer sounds such as a defendant muttering that he/she does not understand something or wants to speak may not be heard. In addition and related to physical setup, if the court has to mute the defendant due to background or disruptive noise, it can result in missed opportunities to hear a defendant speaking. Microphone placement also arose as an issue that impacted the experience of hearing and ability to clearly hear all parties.

Physical Setup of Technology

The physical setup of the technology (i.e., the positioning of the cameras, microphones, and defendants, as well as display screen angles) vary in implementation by site and impact how participants can see or hear others in the court proceeding, including who is in view, the nuanced interactions between individuals, and facial expressions. These things impact the decorum of the court and whether the hearing is experienced similarly to an in-person hearing. Security of equipment (e.g., bolting down equipment or locking it up when not in use) was also an important issue brought up, particularly on the corrections' end.

Ability to Address Challenges

Findings from the expert workgroup meetings and observational site visits indicate variability in the ability or approach to address challenges that arise with technology. Court and detention setting factors (e.g., procedures, rules, and physical structures), may limit the workarounds and approaches for system failures and malfunctions. In some instances, experts and site visit interview participants articulated clear procedures and processes if the system was not functioning properly. In other instances, site visit interview participants were less sure about procedures and workarounds for system malfunctions. Some solutions identified included (1) use of alternative/functioning rooms or floors, (2) transfer of inmates to the court for in-person hearings, and/or (3) delay and reschedule of hearings to allow time to resolve the problem. Sites and experts stated they have to reschedule most hearings when there are technical failures. Power outages also inhibit the ability to conduct videoconferences, and slow down the progress of a case.

Recording, Storage, and Use of Videoconferencing Data

Use and storage of videoconferencing data was identified as having important implications for videoconferencing implementation. Responsibility for ownership of data files was listed as an important consideration because it has real cost implications. In some settings, videoconferencing data are not stored. The expert workgroup discussed the role of videoconferencing data as part of the court record—some identified videoconferencing data as part of the record and others indicated it is not part of the official court record. Thus, the legal requirements to preserve and save data are different across jurisdictions.

Preimplementation Considerations

Preimplementation considerations on videoconferencing use were identified and discussed at expert workgroup meetings, as well as observational site visits. These considerations include planning for implementation, cost considerations, the populations to be served, protection of civil liberties for defendants, and incorporation of victims into the release hearing process.

Cost

Cost emerged as a dominant theme in discussions about preimplementation of videoconferencing. Input from experts suggests that preimplementation should focus on planning and identification of resources to be used to implement videoconferencing. Given that videoconferencing involves both courts and corrections, sources of funding and overall resources and responsibilities for administration of videoconferencing will vary. Availability of resources may change. As a result, preimplementation should consider long-term planning of costs, management, and administration of videoconferencing over time. Alternative sources of funding or alternative uses for technology should be included in these discussions. Several experts indicated that costs can be offset by alternative uses, such as staff in-service training activities, administrative meetings, and civil cases.

It should be noted that the expert workgroup, as well as some interview participants from site visits, indicated that overall cost effectiveness has not been conclusively established through rigorous study at the time of data collection. The implication is that future implementation research in videoconferencing should have as a primary focus the impact of videoconferencing on program costs across criminal justice system settings.

Improved Public Safety

The expert workgroup identified improved public safety as being a key consideration for implementing videoconferencing. Transportation of offenders to and from detention settings to courtrooms includes certain risks for staff, court officials, and other inmates. By minimizing the exposure to other populations, potential safety issues can remain contained within the detention setting, allowing greater control and security of jail staff over inmates. One expert emphasized the increased security during arraignments for inmates who have committed serious crimes, such as crimes against a child;

videoconferencing hearings may mitigate the risk of retaliation or violence among inmates.

Rural Versus Urban Areas

Geographic location was identified as a preimplementation factor for consideration. Setting up broadband capacity in rural areas may be costly or cost inefficient. Rural jurisdictions may have fewer resources to allocate to expanding the infrastructure and capacity to conduct videoconferencing.

Populations Served

When considering videoconferencing implementation, consideration should be given to the populations to be served through this medium. This consideration includes the types of inmates and cases to be heard through videoconferencing (e.g., general population, high security, administrative segregation populations, hospitalized defendants, inmates with mental illness or mental health issues) and procedures for dealing with special cases and populations.

INVOLVEMENT OF VICTIMS

Inclusion of victims in the videoconferencing process was a key discussion among experts. Discussion and recommendations about victim involvement varied considerably. Some experts noted that victims should be involved in all aspects of the criminal court process, including release hearings. One expert noted that her jurisdiction required victim notification and invitation to postarrest court hearings and reviews. Other experts noted that some States have constitutional or statutory provisions that enumerate victim rights in criminal proceedings, including rights to be notified of hearings or participate in hearings. In other instances, the role of victims in release processes was less established. Experts stressed the importance of early and adequate victim notice related to the safety and protection of the victims, particularly in domestic violence or sexual offenses. The experts found victim involvement to be a priority in planning and implementing videoconferencing technology in courts.

Protecting Civil Liberties

Experts indicated that planning for videoconferencing requires serious consideration and protection of civil liberties for defendants. Ensuring rights are stated, known, and documented, and the process for opting in or out of videoconferencing was listed as an essential pre-implementation consideration. Expert workgroup members indicated it was important to have procedures to address special needs of defendants (such as interpreters) and processes to accommodate special needs. In addition, experts indicated that pre-implementation planning should include adequate access to legal counsel and procedures to ensure defendants have access to counsel.

Program Implementation

A number of program implementation issues emerged in discussion with expert workgroup members and site visit interviews. Key considerations for program

implementation included getting support from different system administrations (police, court, and corrections) and court participants (judges, IT management, public defenders, victim services, prosecutors, jail administration and staff, other staff [e.g., pretrial services and probation departments]). In addition, collaboration was identified as a critical issue in program implementation. Objections to videoconferencing should be heard and addressed so that stakeholders have a role in planning and implementation of the process. Expert workgroup participants noted that governance committees and partnering organizations/agencies are fundamental to ensure smooth operations of videoconferencing—disagreement among staff on the proper way to implement and oversee videoconferencing can disrupt or delay implementation. In addition, contractual agreements with IT support and/or technology vendors should be in place prior to implementation of the program. Protocols and policies in the event of system failure or malfunction should be in place.

Staffing considerations were listed as a critical element to program implementation, including staff needs and training. Expert workgroup members indicated that detention settings should have the right balance of officers on the floor to accommodate videoconferencing schedules, in addition to standard detention administration needs. Detention administrators should work in coordination with court administration and technology management to identify oversight and management staff and training needs (IT training and security training) for implementation. In addition, experts indicated it is important to have backup staff trained and available to accommodate for staff turnover and staff leaves to ensure capable overseeing of videoconferencing procedures within the court or detention facility. In addition, experts indicated the availability of IT support both for detention and court personnel is critical to rapidly respond and resolve technology malfunctions or system issues.

Training staff in these emerging roles is an important consideration, as training has implications beyond ability to serve in a videoconferencing function. Enhanced training of detention or court staff may increase pay rates of staff who require additional resources to sustain their involvement and support.

In addition to the other program implementation considerations, experts stressed the importance of sustainability planning as a component of program planning. Experts noted the roles of legislative or executive support in continued financing of programs. Strategic planning and strategic plans were identified as being critical to continued operations of videoconferencing. In addition, experts identified regular reviews (judicial, executive, or legislative) and revisions to procedures and requirements to address emerging challenges and considerations.

Conclusions

The blueprint from Phase I of the project, outlined in this report, marks an important first step toward developing a well-informed understanding of the needs, challenges, requirements, and practices for conducting pretrial release hearings through video technology. The report produced as part of Phase I provides criminal justice practitioners

and policymakers with access to information about the use of videoconferencing technology in pretrial release hearings and may provide early guidance on whether technology integration is feasible for their jurisdiction and practical considerations for planning for video technology use. Phase I findings set the stage for future study phases and more formative (Phase II) and rigorous (Phase III) investigation of both the implementation and impact of videoconferencing technology on system and individual outcomes including costs.

Potential benefits to the use of videoconferencing are substantial—decreased staff/personnel time to travel to and from detention and court settings, decreased transportation costs of moving inmates from detention to court settings, offsets in costs with alternative uses for videoconferencing equipment costs, increased security of inmates and detention and court staff, reduction in medical costs due to reduced exposure to other inmates in close confines of transport, reduction in offsite meal costs, and increased overall efficiency of procedural hearings. Phase I, however, has also identified specific areas where challenges in implementation may arise. First, jurisdictions (either local or State unified court jurisdictions) have their own sets of procedures, rules, and requirements for videoconferencing implementation. While experts noted what works for them, there is no consistent method of implementation. Second, videoconferencing is an emerging field, and intended goals may not be realized until processes and procedures are revised and lessons learned. Expert workgroup members and site visit interview respondents agreed that collaboration across systems is essential to ensuring smooth videoconferencing processes. This cooperation is also necessary early on to designate responsibilities across criminal justice systems/agencies and identify funding sources. In addition, establishing and documenting clear protocols and procedures is fundamental to ensuring success in videoconferencing implementation.

Potential challenges or other considerations identified by practitioners (both expert workgroup members and site visit interviews) are important to address as the field emerges—increased staff training requirements, alternative uses of videoconferencing to offset costs (e.g., staff training, administrative meetings, civil court), accommodations for inmates with special needs, accommodations for victims, storage and data security requirements, use of videoconference data as the official court record, due process protections (adequate access to counsel, adequate access to court documents and records), and procedures to address malfunctions and system failures. The current report illustrates key areas for consideration for further research on videoconferencing at release hearings. The following sections provide an overview of project limitations and next steps in investigation into the implementation and outcomes of videoconferencing.

Limitations

Phase I of NIJ's Videoconferencing Report has expanded what is known about the practices, applications, requirements, and considerations for videoconferencing. The work has clarified protocols and practices that use videoconferencing to expedite release from custody for defendants being held in jail awaiting trial. However, it is important to note the parameters and limitations of this work. This section identifies the limitations of

the review of protocols and practices of videoconferencing for release hearings, as well as information gathered through observational site visits.

Due to the exploratory nature of Phase I of this project, the findings in this report are not generalizable beyond the specific observational site visits included in this study and expert anecdotal information gathered through the expert workgroup meetings. Although the experiences, insight, and information gathered from practitioners and policymakers (i.e., expert workgroup and observational site visit interviews) are important and formative and help shape our understanding of videoconferencing, the findings are not exhaustive of all videoconferencing considerations. Challenges identified may be specific to jurisdictions, as implications for technology, preimplementation considerations, and implementation are driven by legal, extralegal (e.g., inclusion of victims in hearings is informal and not required statutorily; informal policies that affect system operations), and justice systems and structures and may not be applicable in other States or settings. It should be noted that expert panel members, external and invited guests to meetings, and site visit interview participants articulated clear opinions and perspectives in favor of or against the use of videoconferencing technology based on their experiences and expertise.

Research on Videoconferencing at Post-Arrest Release Hearings—Next Steps

NIJ's Videoconferencing Project—Phase I provided an opportunity to gather information from experts in the planning, implementation, and management of videoconferencing, as well as information through direct site observations and interviews. This report, and the findings within, create the foundation for more rigorous investigation into the implementation of videoconferencing, as well as the impact of implementation on system and offender outcomes. The subsequent phases of inquiry (Phases II and III) will each build on previous phases to culminate in rigorous, multisite research on videoconferencing.

NIJ's Videoconferencing Project—Phase II will include the development of protocols for videoconferencing implementation and an assessment of videoconferencing in two pilot sites (one rural). Implementation and assessment studies will be conducted, and the protocol or blueprint on video technology implementation will be based on field testing. The project will gather both quantitative and qualitative data on the process and implementation of videoconferencing and develop measures to assess impact at system and offender levels. The project will culminate with a modified protocol for implementation of videoconferencing.

NIJ's Videoconferencing Project—Phase III will include an evaluation of the implementation of the protocol over an extended period of time at multiple sites (i.e., multiyear, multisite evaluation). Sites will be selected and recruited for self-implementation of the revised protocols for videoconferencing planning and implementation. Rigorous evaluation will examine the implementation of the protocols,



outcomes of videoconferencing within the study site, and the impact of videoconferencing on system and offender outcomes, including an objective cost efficiency study.

Both phases will include participation of the expert workgroup, in coordination with NIJ, to guide implementation of both field testing and evaluation of videoconferencing programs. In addition, the expert workgroup will advise on the site selection, recruitment protocols, and interpretation of findings at each phase.

Appendix A: References

- American Bar Association. (n.d.). Standard 10-4.2. Investigation prior to first appearance: development of background information to support release or detention determination. Retrieved from http://www.americanbar.org/publications/criminal_justice_section_archive/crimjust_standards_pretrialrelease_blk.html
- Ashdown, G.G., & Menzel, M.A. (2002). The convenience of the guillotine? Video proceedings in federal prosecutions. *Denver University Law Review*, 80(1), 63–110.
- Bechtel, K., Clark, J., Jones, M.R., & Levin, D.L. (2012). *Dispelling the myths: What policy makers need to know about pretrial research*. Washington, DC: Pretrial Justice Institute.
- Bellone, E.T. (2013). Private attorney-client communications and the effect of videoconferencing in the courtroom. *Journal of International Commercial Law and Technology*, 8(1), 24–48.
- Clarke, S. H., & Kurtz, S. T. (1983). The importance of interim decisions to felony trial court dispositions. *Journal of Criminal Law and Criminology*, 74(2), 476–518.
- Cohen, T.H. & Reaves, B.A. (2007). *State court processing statistics, 1990-2004: Pretrial release of felony defendants in state courts*. (BJS Publication No. NCJ 214994). Washington, DC: U.S. Government Printing Office.
- Cohen T. H. & Kyckelhahn, T. (2010). *Data advisory: State court processing statistics data limitations*. Washington, DC: U.S. Government Printing Office.
- Diamond, S.S., Bowman, L.E., Wong, M., & Patton, M.M. (2010). Efficiency and cost: The impact of videoconferenced hearings on bail decisions. *The Journal of Criminal Law and Criminology*, 100(3), 869–902.
- Forsythe, L.P. (1999). Video pretrial interviews in rural jails. *American Jails*, 13(2), 28–34.
- Goldkamp, J. S. (1979). *Two classes of accused: A study of bail and detention in American justice*. Cambridge, MA: Ballinger Publishing Company.
- Gottfredson, M. R., & Gottfredson, D. M. (1988). *Decision making in criminal justice: toward a rational exercise of discretion*. New York, NY: Plenum Press.
- International Association of Chiefs of Police. (2011). *Law enforcement's leadership role in the pretrial release and detention process*. Alexandria, VA: Author.
- Landes, W. M. (1974). Legality and reality: some evidence on criminal procedure. *Journal of Legal Studies*, 3(2), 287–337.

- Mahoney, B., Beaudin, B.D., Carver III, J.A., Ryan, D.B., & Hoffman, R.B. (2001). *Pretrial services programs: Responsibilities and potential*. (NIJ Publication No. NCJ 181939). Washington, DC: U.S. Government Printing Office.
- Maryland v. Craig, 497 U.S. 836, 844, 1990.
- Minton, T.D. (2011). *Jail inmates at midyear 2010 – statistical tables*. (BJS Publication No. NCJ 233431). Washington, DC: U.S. Government Printing Office.
- Minton, T.D. (2013). *Jail inmates at midyear 2012 – statistical tables*. (BJS Publication No. NCJ 241264). Washington, DC: U.S. Government Printing Office.
- National Association of Counties (NACO). (2009). *Jail population management: Elected county officials' guide to pretrial services*. Washington, DC: Author.
- The National Association of Pretrial Services Agencies. (2004). *Standards on pretrial release* (3rd ed.). Washington, DC: Author.
- The National Association of Pretrial Services Agencies. (2009). The truth about commercial bail bonding in America. *Advocacy Brief*, 1(1), 1–10.
- National Center for State Courts. (1995). Briefing papers: Videoconferencing. Retrieved from http://www.ncsconline.org/d_tech/archive/briefing/vc.htm.
- National Center for State Courts. (2010). *NCSC Video Conferencing Survey*. Retrieved from <http://www.ncsc.org/services-and-experts/areas-of-expertise/technology/ncsc-video-conferencing-survey.aspx>.
- Neimon, M.G. (2001). *Can interactive video work in Waukesha County? An analysis and survey*. Institute for Court Management. Williamsburg, VA: National Center for State Courts.
- Phillips, M. T. (2007). *Bail, detention, and non-felony case outcomes*. Research Brief Series No. 14. New York, NY: New York City Criminal Justice Agency.
- Phillips, M. T. (2008). *Pretrial Detention and Case Outcomes, Part 2, Felony Cases, Final Report*. New York, NY: New York City Criminal Justice Agency
- The Pretrial Justice Institute. (2009a). *2009 survey of pretrial services programs*. Washington, DC: Author.
- The Pretrial Justice Institute. (2009b). *Pretrial justice in America: A survey of county pretrial release policies, practices and outcomes*. Washington, DC: Author.

- Rankin, A. (1964). The Effects of Pretrial Detention. *New York University Law Review*, 39, 641–655.
- Scherer, K.R. (1986). Vocal affect expression: A review and a model for future research. *Psychological Bulletin*, 99(2), 143–165.
- Stephan, J.S., & Walsh, G. (2011). *Census of jail facilities, 2006*. (BJS Publication No. NCJ 230188). Washington, DC: U.S. Government Printing Office.
- Supreme Court of Wisconsin, Policy and Planning Advisory Committee. (2005). *Bridging the distance: Implementing videoconferencing in Wisconsin*. Author: Madison, WI. Retrieved on February 2, 2015 from <http://www.wicourts.gov/courts/committees/docs/ppacvidconf.pdf>
- United States v. Algere, 457 F. Supp. 2d 695, 700 (E.D. La. 2005).
- Wald, P. (1972). The right to bail revisited: A decade of promise without fulfillment. In S. S. Nagel (ed.), *The Rights of the Accused*. Beverly Hills, CA: Sage Publications.
- Wiggins, E.C. (2004). What we know and what we need to know about the effects of courtroom technology. *William & Mary Bill of Rights Journal*, 12(3), 731–743.
- Zeisel, H. (1979). Bail revisited. *American Bar Foundation Research Journal*, 4, 769–789.

Appendix B: Observational Site Visit Instruments

Court/Network Administrator Interview

Thank you for agreeing to meet with us to discuss your jurisdiction's program and work related to videoconferencing at post-arrest release hearings.

As you know, this project is funded by the National Institute of Justice (NIJ). To give you an overview, this project is jointly supported by NIJ's Office of Research and Evaluation, and Office of Science and Technology. The purpose of the project is to identify protocols that improve practices and maximize return on investment using videoconferencing to expedite post-arrest release from custody for defendants who were arraigned and are being held in jail custody awaiting trial. Today, we are onsite to gather information on how these systems work in practice.

In order to create a draft protocol, we need to better understand the videoconferencing practices in general. We would like to ask you a few questions about the way your videoconferencing program operates. We are not evaluating your videoconferencing program, but rather are using the information we receive from you to better understand the key components of videoconferencing programs as a whole. The information we collect from you may help us to identify elements to include in the protocol, best practices, and also any programmatic obstacles of specific videoconferencing programs.

This interview should take about 45 to complete. This discussion is completely voluntary; you can refuse to answer any question for any reason. We would like your permission to audiotape this interview, so that we can focus on the content rather than note-taking. Will you allow us to record this conversation?⁸

- ⇒ If "no": Not a problem. We will be taking written notes, and may need to follow up with you after the interview to obtain any clarifying information that we may have missed.
- ⇒ If "yes": Great, we will begin recording now. [***Start recorder.***]

Before we begin, do you have any questions for me regarding our study or how we will use this information?

Begin Interview.

GENERAL VIDEOCONFERENCING INFORMATION AND HISTORY OF THE PROGRAM

- 1) Can you tell me when you first began using videoconferencing for the purpose post-arrest release hearings?
- 2) How was your videoconferencing program started?
- 3) Was there a specific impetus that prompted the start of your videoconferencing program?
- 4) Do you have a videoconferencing protocol? [*obtain a copy*]

⁸ ICF did not record or request to record any interviews conducted during the site visits.

- a. How was it created? Tested?

VIDEOCONFERENCING SUPPORT

- 1) Who provided funding and other support to implement your videoconferencing program initially?
- 2) Did you use your in-house IT staff or other (contracted) vendors to start-up your videoconferencing program?
- 3) Do you utilize in-house IT staff or other (contracted) vendors to maintain your videoconferencing program? What resources are needed to sustain your videoconferencing program?

VIDEOCONFERENCING PLANNING AND GOVERNANCE

- 1) Do you have a videoconferencing governance committee or structure?
 - a. (If “yes”) Which professions are represented on your Governance Committee?
- 2) Has your state developed any “memoranda of understanding” or inter-agency policies that guide the implementation of videoconferencing? (*please describe*)
- 3) Do you have any document specifying the minimum standards for use for legal acceptance in your jurisdiction?
- 4) Do you have a formal training protocol for operating your videoconferencing program? (*please describe*)

VIDEOCONFERENCING SPECS

- 1) When is videoconferencing available?

	Yes/No	Option (Sole use/Concurrent)
Criminal cases		
Civil cases		
Arraignment		
Appellate		
Sentencing		
Other (describe)		

- 2) Is your videoconferencing program available in languages other than English?
- 3) Is your videoconferencing program available in TDD or TTY for users who are Deaf?
- 4) Is your videoconferencing program intuitive (i.e., user friendly)?
- 5) What type of software/hardware do you use?

- 6) How are transcripts accessed and obtained?
 - a. Is identifying information redacted from public transcripts?
- 7) What type of security do you have in place for your technology (e.g., to prevent against hacking, encrypted transmissions, etc.)?
- 8) Do you have a plan for disaster recovery?
- 9) Do you have remote interpreters?
- 10) Do you have a helpdesk for unforeseen issues?
- 11) Does the video and sound quality allow participants to:
 - a. Interact with others as if they were in the same courtroom?
 - b. Observe demeanor and nonverbal communications?
 - c. Scan the room and observe all meeting participants and observers?
- 12) How do participants conduct confidential and sensitive communications during hearings, such as between the defendant with defense counsel and court interpreter?
- 13) How are documents relating to the hearing securely transferred and authorized between participants?

DATA SECURITY AND PRACTICES

- 1) What password practices do you use to ensure network security?
 - a. Are default passwords changed after implementation?
- 2) Do you enable encryption during a videoconferencing session?
- 3) Have you regularly updated firmware and system software? About how often does this occur?
- 4) What physical security do you practice to ensure security of data and technology?
- 5) How is the videoconferencing network kept separate from the court's network system?
- 6) How do you provide authorized access to archived files that parties have the right to review?
- 7) How do you ensure secure transmission of archived files?

PROGRAM SUCCESSES AND OBSTACLES

- 1) What do you perceive as the greatest success(es) of your videoconferencing program?
 - 2) What is your definition of “success” (outcomes)?
 - 3) Have you encountered any challenges or limitations to planning, implementing or using your videoconferencing program? (*please describe*)
 - a. Have you resolved these challenges or limitations? How?
 - b. If not, what resources are needed to resolve these issues?
 - 4) What do you perceive as the benefits of videoconferencing?
 - a. For rural jurisdictions?
 - b. For urban jurisdictions?
-

PERSPECTIVES

- 1) From your perspective, when do you think videoconferencing should be used?
 - a. In what circumstances should it not be used?
 - 2) What needs to be in place for videoconferencing to work (i.e., infrastructure)?
 - 3) What is the minimum that needs to be in place for videoconferencing to be effective?
 - a. What is the gold standard?
 - 4) What do you believe are the most important elements of a videoconferencing program?
-

Can you think of anything else you would like us to know about your videoconferencing program?

Thank you very much for your time, and for providing us with this information. If you can think of anything you would like to add, or have any questions regarding this study, please feel free to contact me at _____, or by e-mail at _____.

We appreciate your participation, and will be in contact with you again in the near future.

[Stop recorder.]

Judge and Prosecutor Interview

Thank you for agreeing to meet with us to discuss your jurisdiction's program and work related to videoconferencing at post-arrest release hearings.

As you may know, this project is funded by the National Institute of Justice (NIJ). To give you an overview, this project is jointly supported by NIJ's Office of Research and Evaluation, and Office of Science and Technology. The purpose of the project is to identify protocols that improve practices and maximize return on investment using videoconferencing to expedite post-arrest release from custody for defendants who were arraigned and are being held in jail custody awaiting trial. Ultimately, we are charged with creating a protocol for NIJ that can be tested in jurisdictions as part of a later project phase. Today, we are onsite to gather information on how these systems work in practice.

In order to create a draft protocol, we need to better understand the videoconferencing practices in general. We would like to ask you a few questions to capture your perceptions about the benefits and challenges of videoconferencing in a courtroom setting. The information we collect from you may help us to identify elements to include in the protocol, best practices, and also any programmatic obstacles of specific videoconferencing programs.

This interview should take about **15-30** minutes to complete. This discussion is completely voluntary; you can refuse to answer any question for any reason.

Before we begin, do you have any questions for me regarding our study or how we will use this information?

Begin Interview.

PROGRAM SUCCESSES AND OBSTACLES

- 1) What do you perceive as the greatest success(es) of your videoconferencing program?
- 2) What is your definition of "success" (outcomes)?
- 3) Have you encountered any challenges or limitations to planning, implementing or using your videoconferencing program? (*please describe*)
 - a. Have you resolved these challenges or limitations? How?
 - b. If not, what resources are needed to resolve these issues?
- 4) What do you perceive as the benefits of videoconferencing?
 - a. For rural jurisdictions?
 - b. For urban jurisdictions?

PERSPECTIVES

- 1) From your perspective, when do you think videoconferencing should be used?
 - a. In what circumstances should it not be used?
 - 2) What needs to be in place for videoconferencing to work (i.e., infrastructure)?
 - 3) What is the minimum that needs to be in place for videoconferencing to be effective?
 - a. What is the gold standard?
 - 4) What do you believe are the most important elements of a videoconferencing program?
-

Other Participant Interview
[Jail Staff, Defendants, Defense Attorneys, Family Members, Victims, Advocates]

Hello, my name is _____, and I am a researcher for ICF International.

I am working on a project supported by the National Institute of Justice (NIJ), which is part of the Department of Justice. This project wants to find ways to improve practices using videoconferencing to speed up release from jail for defendants who are arraigned and are being held in custody waiting for trial. Today, I am here to get information on how this process works.

I would like to ask you a few questions about your experience with videoconferencing **today**. Your answers may help me find things to include in a document on videoconferencing, some best practices, and also any problems with videoconferencing programs.

I only have six questions, which should take about 5-10 minutes to answer. These questions are all voluntary; you can say you don't want to answer any question for any reason. If you want to stop answering my questions at any time, you can. This information is all private. I will not share your name or any of your information to anyone or in any document. Answering my questions will not help or hurt you or your case in any way. It is completely okay if you do not want to answer. Also, **I will not be asking you anything about this case, or the charge; answering these questions will not affect the case in any way. Please do not share any details about the case with me.**

Do you want to answer a few questions for me? Is it okay for me to continue with this interview?

⇒ If yes: Before we start, do you have any questions for me on this project or how I will use this information? Since you agreed, I will now ask you questions about your experience today.

⇒ If no: Thank you for your time!

Begin Interview.

1. Can you tell me about your experience today using videoconferencing today?
 - a. Was it a positive experience?
 - i. Why?
 - b. Was it a negative experience?
 - i. Why?

2. Were there any problems with the videoconferencing today?
 - a. What?
 - b. How do you think the problem could have been avoided?

3. In your opinion, is there anything good about using videoconferencing in hearings like the one today?
 - a. What do you think are the benefits (For example, does it lessen transportation costs, stop the spread of contagious diseases, improve safety)?
4. What is needed for videoconferencing to work (e.g., a similar courtroom location, privacy and contact between the client and their attorney)?
5. Is there anything that you think could be improved with your videoconferencing experience today?
6. Do you have any other information or opinion about videoconferencing that you would like to share?

For Jail Staff Only:

Do you believe you have sufficient space, equipment, and other resources to conduct hearings via videoconferencing in secure facilities?

Thank you for your time!