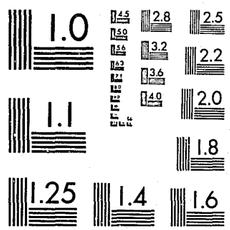

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Telephone Conferencing in Civil and Criminal Court Cases

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ABSTRACT

The common approach to conducting court business is to assemble all of the participants at the courthouse. Lawyers, the parties, and witnesses, if any, travel to the courthouse and wait until space is available in a courtroom or judge's chambers. In emergency situations, the judge, court reporter, and judge's clerk frequently have to wait until all of the other participants reach the courthouse.

Telephone conferencing is a possible way of avoiding the travel time and minimizing the waiting time that are associated with the traditional, in-court approach. Basically, a telephone hearing in the court is a three-way conversation among the judge and the two attorneys located at their respective offices. Despite the potential savings associated with the application of this available technology, there has been limited information on which to answer basic questions about telephone conferencing's effects on the cost, time and quality of court proceedings.

The objective of this project was to explore the range of telephone conferencing's application in selected civil and criminal trial courts and to assess its impact. Pilot courts in Colorado's 2nd, 12th and 20th Judicial Districts and New Jersey's Atlantic Vicinage initially offered telephone conferencing in civil cases and subsequently in criminal cases. In conjunction with state and local court officials and bar groups, the Institute for Court Management and the American Bar Association Action Commission to Reduce Court Costs and Delay provided a research component to the project that measured telephone conferencing's effects through interviews with attorneys, judges, and other court staff members, observation of individual court proceedings conducted by telephone conference and those conducted in court and an examination of court rules to understand how the innovation was integrated into existing practices.

The basic results of the evaluation indicate that a high proportion of all of the participants benefited from the new procedure. Simply stated, the evidence warrants the following seven conclusions:

(1) The range of matters handled by telephone conference was extraordinarily wide. In civil cases, applications involved substantive, discovery, and procedural motions and related pretrial hearings. In criminal cases, applications involved lower court appeals, motions, arraignments, show cause hearings in bond forfeiture, and witness testimony.

(2) Attorneys saved both travel and waiting time.

(3) Civil litigants and criminal defendants paid lower fees when their attorneys participated in telephone conferences. However, the use of the contingency fee in

civil cases and the flat fee in criminal cases inhibited lower costs in every instance.

(4) A high proportion of attorneys were satisfied with telephone conferencing. In fact, there were no significant differences in the perceived quality of hearings conducted by telephone conference from those conducted in court.

(5) Similarly, judges saw no impairment of the quality of hearings due to telephone conferencing. However, they believed that telephone conferencing provided greater scheduling flexibility and reduced the length of hearings.

(6) Court staff accommodated the new procedure without increasing their overall workload.

(7) The introduction of telephone conferencing required careful attention and a review of how court proceedings were scheduled, arranged, and conducted, in order to integrate the new approach into existing practices and to achieve maximum benefits.

The Colorado and New Jersey experiences provide empirical justification for the adoption of telephone conferencing by other jurisdictions and an extension into other areas such as post-trial motions of prison inmates and oral argument in appellate courts.

PREFACE

This evaluation report presents the results of two years of work by the American Bar Association Action Commission to Reduce Court Costs and Delay and the Institute for Court Management to implement and assess telephone conferencing procedures in the courts. It also marks the completion of almost four years of collaborative efforts by these two organizations on the subject of telephone conferencing.

It seems appropriate in light of this considerable activity to open this report by putting telephone conferencing and the work we have done into context. Where does it fit in? What is its importance? What does it mean?

We start with a recognition of the two major problems confronting our legal system--volume and delay in the courts and the high cost of litigation to the parties. Up to now, most new judicial procedures have addressed volume and delay, and have had as their object improving the efficiency of court functions. High litigant costs were typically overlooked, even where, as often occurred, modification designed to improve court efficiency increased individual litigant costs. This inattention was generally benign; court and attorney practices and procedures were so ingrained that they seemed immutable. In addition, there was little precedent for considering litigation costs in procedural reforms.

In recent years, however, there has been more concern about high litigant costs and their impact on access and the quality of justice administered by the courts. As exemplified by the ABA's Action Commission, the organized bar has increasingly recognized its responsibility--both for the status quo and for seeing that unnecessary costs are reduced. From the perspective of the courts, there has been a growing understanding that procedural reforms must be sensitive to their impact on attorney practices. Providing the courts with the necessary and most effective management tools and expertise has been a key objective of the Institute for Court Management.

The Action Commission has focused on testing innovative procedures designed to effect reductions in cost to the litigant. Because attorney fees are the greatest part of total litigation cost, its focus has been on reducing the time an attorney is required to spend on a specific matter. Reduce that time and the reduction should translate into a reduced cost to the litigant. The Commission is looking at three areas in which attorney time can be reduced--(a) duplicative or repeated effort necessitated by a prolonged court process, (b) time disproportionately devoted to a particular matter, and (c) non-productive time spent traveling to and from the court and time spent waiting at the court for a matter to be heard.

The telephone conferencing program undertaken by the Action Commission and the Institute for Court Management is directed

squarely at reducing or eliminating non-productive time expenditures by attorneys. In addition, for the court, conferencing offers an incremental though important court management tool. Although the savings from the use of telephone conferencing may be modest in relation to the total cost of litigation, telephone hearings offer real and distinct savings. These savings should not be overlooked or discounted because either they do not provide a broad scale solution to high litigation cost or because telephone conferencing procedures do not revamp what might be perceived as an inefficient system.

The use of telephone hearings did not originate with the work of the Action Commission and the Institute for Court Management. Our objective, rather, has been to document telephone conferencing's impact when its use became regularized within a court. Assisting the project courts to implement telephone hearing programs, we realized that this experience provided in many respects a microcosm of the issues in court reform--the decision to alter procedures, the implementation process, the role of the bar and attorney reactions, the impact on court staff. This report attempts to extract and distill from the project courts' experiences information that would be useful to other courts interested in incorporating telephone conferencing into their procedures.

Although this report provides the reader with the essential information on telephone conferencing effects on the cost, time and quality of court proceedings, several other publications will provide specific information tailored to particular audiences such as judges, practicing attorneys, and court managers. These other publications, which have appeared in major professional journals should be consulted because they present information on particular topics in a succinct manner. A complete list of the articles and papers published as of the date of this report is found in Appendix D.

Finally, the project staff members wish to acknowledge the assistance of many other individuals in the formulation and execution of the research. A continuing scource of advice was provided by the Project Advisory Board. The Board members met with the staff to review the work-in-progress at two critical junctures in the project and offered specific suggestions for this report and related publications. Their ideas proved especially helpful in maintaining a clear focus on the project's research objectives.

Members of the bench, bar and court staff who were interviewed during the project deserve our special thanks. Additionally, the presiding judges and court administrators in each of the project's pilot courts played key roles in introducing the new procedure, monitoring its operation, and making adjustments where needed. Without their oversight, the project could not have succeeded.

The interest of representatives of the National Science Foundation (NSF) and the National Institute of Justice (NIJ) strengthened our commitment to producing a final project beneficial to both practitioners and legal policy researchers. Arthur Konopka and Cheryl Martorana initially guided the project from their positions at NSF and NIJ, respectively, and were ably succeeded by Charles Brownstein and Bernard Auchter.

Jessica Kohout provided valuable assistance in the development of data files to store the information gathered from the many interviews and court records. She was extremely efficient in the use of appropriate statitiscal computer programs in the analyses of these data.

Finally, to Ephanie Blair, Kristie Heronema, Anne Kittredge, Lynn Montoya, and Kim Patterson, we are indebted for their careful work in preparing this report. Additionally, they ably served the project by preparing the many survey instruments and the collateral publications. We owe them a great deal.

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The traditional method of conducting court business is to assemble all of the participants at the courthouse. The lawyers, parties, and witnesses, if any, travel to the courthouse for a hearing conducted by a judge who is assisted by one or more staff members. Without question, this approach consumes scarce resources including the time spent traveling to and then waiting at the courthouse for the scheduled hearing to begin. In the case of emergency matters, the judge and court staff may have to wait for all of the lawyers to assemble.

Telephone conferencing is a readily available technology that may reduce travel and waiting times by permitting the lawyers to remain in their offices. As a result, civil litigants and criminal defendants with private counsel may ultimately benefit to the extent that attorney time savings are reflected in lower fees. Moreover, institutional attorneys, e.g., attorneys general, district attorneys, public defenders, city and county attorneys, and legal aid attorneys, may also benefit by having more time to spend on their cases and thereby serve the interests of their clients and taxpayers through greater efficiency. In addition, limited travel funds may be used more effectively.

Despite the "obviousness" of these benefits, few, if any, American courts use telephone conferencing on a courtwide, regularly-scheduled basis. Individual judges in selected courts have used telephone conferencing, but their experiences have not been well documented nor its advantages and disadvantages well established.

One factor accounting for the limited application of the technology is the lack of systematic evidence of telephone conferencing's effects on the quality and cost of court hearings for judges, attorneys, civil litigants, criminal defendants, and court staff. Uncertainty about telephone conferencing's effects reinforces the use of the traditional in-court approach.

The Institute for Court Management and the American Bar Association Action Commission to Reduce Court Costs and Delay began a collaborative project in the spring of 1981 to assess telephone conferencing's effects in civil and criminal cases. With the cooperation of the bench and bar in Colorado and New Jersey, telephone conferencing was introduced in selected trial courts of general jurisdiction as a method of conducting hearings. In addition to measuring the reaction of the participants, the field tests offered the opportunity to document the process of implementing a change in court procedures. The field tests were designed to answer the following five questions:

(1) What is the range of court matters amenable to telephone conferencing?

(2) How satisfied are attorneys, who are primary beneficiaries of the innovation?

(3) How do judges see telephone conferencing affecting the nature of court proceedings?

(4) What are the time and cost savings associated with the new procedure?

(5) What are the administrative requirements of conducting court business by telephone conference calls?

The field tests involved observations of proceedings conducted both by telephone conference and in court, and interviews with over 1,500 practicing attorneys, twenty-two judges and fifty-seven court staff from the Colorado and New Jersey test sites. Additionally, records were kept and analyzed on cases and circumstances in which telephone conferencing was applied.

Findings

Utilization. The range of matters that were handled by telephone conference was extraordinarily wide. There were instances of virtually all types of pretrial proceedings in both criminal and civil cases handled by telephone although some types were more regularly handled under the new procedure and others only exceptionally. Nevertheless, there were certain patterns of utilization. In civil cases, substantive, discovery, and procedural motions proved suitable for telephone conferencing, including multi-party and multiple motion hearings. Approximately seventy percent of the telephone hearings were pretrial motion hearings with the remaining matters being pre-trial conferences, settlement conferences and post-trial motions. When telephone conferencing was made presumptive, as in New Jersey, the proportion of telephone hearings was considerably greater than when it was a more voluntary process, as in Colorado. The proportion of motion hearings conducted by telephone was seventy percent in New Jersey and forty percent in Colorado.

In criminal cases, there was considerable diversity in the matters handled by telephone. With the exception of municipal court appeals in New Jersey, few matters were routinely set for telephone hearings. However, the matters handled by telephone included the entry of a plea, motion hearings, testimony, and applications for reduction of bail.

Attorney reactions. Eighty-five percent of the civil and criminal attorneys were satisfied with the new procedure and did not see it impairing the quality of the proceedings. That is, the attorneys who participated in telephone hearings believed that they were able to present their arguments as effectively and answer the judge's questions as adequately as a comparable group of attorneys who appeared in court. In addition, there was no difference between how the telephone conference and the in-court participants viewed the judge's understanding of the issues. A higher percentage of the attorneys who had participated in telephone hearings in criminal cases (ninety-three percent) were

satisfied with the procedures than were those who had particpated in telephone hearings in civil cases (eighty-five percent).

Judicial reactions. Basically, the judges saw telephone conferencing as neither impairing nor improving the quality of the hearings in civil or criminal cases. However, one advantage that the judges perceived was that the telephone hearings appeared to be shorter because the arguments were more precise. Their perceptions of the time savings were confirmed by the actual length of hearings; both single and multiple motion hearings were shorter when conducted by telephone. A second advantage noted by the judges was the increased scheduling flexibility that telephone conferencing offers. The judges believed that it was generally easier to schedule a matter for a telephone hearing as opposed to arranging a time convenient for all participants to convene at the courthouse.

Time and cost savings. Private and institutional attorneys saved travel and waiting time in both civil and criminal cases. The amount of time varied from court to court with an average across all test sites of approximately one hour per hearing. Moreover, whereas time spent waiting for telephone hearings was usually five to ten minutes, the average waiting time for in-court proceedings was forty-five minutes. In addition, attorneys appearing in court were not able to spend that time productively, e.g., by working on the immediate case, other cases, or conducting research.

Time savings translated into cost savings for civil litigants and criminal defendants. The average savings, i.e., lower fees than would be charged had the hearing been conducted in court, were $130 in civil cases and $175 in criminal cases. However, the pass-on is not automatic. The use of contingency and fixed-fee billing practices inhibits this process, whereas hourly billing is more conducive to time savings being reflected in the attorney's fee.

Administrative consequences. The ability of the judges, attorneys, civil litigants, and criminal defendants to reap the benefits of telephone conferencing depends on the reactions of courtroom staff--law clerks, court clerks, secretaries, and court reporters. In all of the test sites, the court staff adapted to the new procedure and quickly learned how to schedule, arrange, conduct, and record telephone hearings. Although telephone conferencing requires some new tasks to be performed, the court staff did not believe that their overall workload increased. However, court reporters emphasized that their ability to make an accurate record depended on having attorneys identify themselves when speaking.

Implementation. Telephone conferencing was successfully implemented on a courtwide basis in the participating project sites. The success of the undertaking was not due to the apparent simplicity of the technology, however, but rather to the care taken by the judges, staffs, and bar members in planning and

implementing the procedure. Three implementation activities in particular were addressed by key participants during the planning stage: the determination of matters suitable for telephone conferencing, the formulation of procedures, and the notification of the bar.

Recommendations

Based on these findings, seven basic recommendations are offered. First, the relative advantages of telephone conferencing merit consideration of the innovation by state trial courts across the country. The demonstrated flexibility of telephone conferencing, i.e., positive results under a variety of environmental conditions and court settings, suggest that it can be adopted by urban, suburban, and rural courts.

Second, the actual introduction of telephone conferencing should follow a planned sequence of use first in civil cases and then in criminal cases. Once judges are comfortable with the procedure in civil cases, they will know how it may be best applied in the criminal arena.

Third, although the use of telephone conferencing can be tailored to meet the needs of individual judges and types of caseloads, some central coordination is needed in order to ensure that attorneys are not confronted with a bewildering array of telephone conferencing procedures. Here the administrative office of the courts in each state might appropriately take the responsibility for overseeing the implementation process. Moreover, the administrative office can help encourage consultation with the bar in designing the procedure for each court location.

Fourth, the organized bar should raise the issue of telephone conferencing with the court and indicate a willingness to support its introduction. Interest shown by the bar will facilitate the implementation process by alerting judges that the bar is receptive to the idea and willing to try it out.

Fifth, county commissioners and state legislators should be informed of proposed pilot projects and apprised of their results. Because of the potential savings to civil litigants and criminal defendants, these funding sources for the courts should be made aware of how a simple procedural change can produce meaningful benefits. Although some courts may have basic telephone conferencing capabilities, state and local funds will likely be necessary to provide the necessary equipment in all jurisdictions.

Sixth, further experimentation is warranted in order to determine expanded applications of telephone conferencing. Although the pilot projects in Colorado and New Jersey demonstrated the utility of the new procedure in resolving many types of pretrial matters in civil and criminal cases, two other areas of potential use were beyond the scope.

The first is the post-trial motions filed by inmates of state and federal prisons. In this situation, telephone conferencing would serve to avoid transporting the prisoner from the institution to the trial court. In addition to reducing the costs of transporting prisoners and minimizing the security risks associated with such transportation, telephone conferencing may benefit inmates who may lose bed space or placement in training programs if they temporarily leave the institution.

A second area of application is appellate court proceedings. Although some courts of appeal use telephone conferencing for motion hearings, this practice has been adopted by only a few jurisdictions. Additional matters that may be appropriate for telephone conferencing include pre-hearing conferences and oral arguments. Given the extensive geographic jurisdiction of some appellate courts, telephone conferencing may serve to eliminate lengthy travel time by attorneys in some instances or travel time by judges in jurisdictions who ride circuit.

Seventh, the demonstrated utility of telephone conferencing calls for a future national-scope research agenda to address related technological innovations in the courts. Closed circuit television, video-taped testimony in trials, and video-conferencing are among the promising technologies that have been tried in selected jurisdictions but are not widespread. Moreover, there is a lack of sufficient evaluative information to enable other jurisdictions to decide whether to introduce these ideas.

The Colorado and New Jersey telephone conferencing projects suggest an approach to analyzing these other technologies. By combining an intensive examination of selected courts, the telephone conferencing research project produced both comparative data and a rich understanding of qualitative factors shaping the introduction of planned changes in the legal system.

CHAPTER I

INTRODUCTION

Background

The conventional method of conducting court business is to assemble all of the participants at the courthouse. Generally, the lawyers, parties, and witnesses, if any, travel to attend the proceeding; in some jurisdictions judges as well may travel to different court locations. A striking feature of this traditional approach is the amount of scarce resources that is consumed in simply bringing the participants together.

Considerable time is spent by lawyers traveling to and from the courthouse. Even in urban areas where lawyers are located near a courthouse, they likely practice as well in and must travel to adjoining jurisdictions. In addition, time is spent at the courthouse waiting for a scheduled hearing to begin. Each set of participants must wait until their case can be heard. In emergency matters, the judge and staff may have to wait until all of the lawyers reach the courthouse.

Travel and waiting time have direct effects on the parties who have retained private counsel as their attorney's travel and waiting time are typically charged to them. Moreover, the elimination of travel and waiting time should enhance the opportunities to serve clients, by both the private and institutional (e.g., attorneys general, district attorneys, public defenders, city and county attorneys, and legal services) attorneys. The fact that travel and waiting time are spent unproductively further warrants the search for alternatives to the traditional approach.

There are at least two alternative ways of conducting court business. One way is for the judge to decide matters without oral argument. By resolving matters strictly on the basis of the "papers"--briefs, affidavits, and so forth--attorney travel and waiting time are completely eliminated. Despite the extent to which some jurisdictions follow this practice, it has certain limitations.

One problem is that this approach is very labor-intensive for the court. Evidence suggests that one consequence is that courts which adhere to this approach tend to take longer to render decisions (Connolly and Lombard, 1980). Additionally, the elimination of oral argument is disquieting because it removes the decision-making process from observation by the attorneys and

requires them to invest more in the time-consuming process of brief writing.[1]

An alternative that appears, at least initially, not to have those limitations is audio-telephone conferencing (hereinafter referred to as telephone conferencing).[2] A telephone hearing offers the potential of preserving oral argument while providing the court with desired information in a more efficient manner than an in-court hearing.

Applied in the context of court proceedings, a telephone hearing generally involves a multi-party call among the judge and the lawyers for the respective sides.[3] The judge is typically located in chambers (or the courtroom) with a speakerphone, which permits a court reporter to make an official record, and the lawyers are located at their offices, possibly with their clients. A courtroom staff member places the call to the attorneys and when they are on the line, the judge joins the line. The proceeding begins with the judge setting forth the purpose of the hearing and the ground rules of the conference call. Evidence from a systematic test of telephone conferencing in the administrative arena indicated that hearings conducted by telephone were equal in quality, less costly, and were more satisfying to claimants than in-court proceedings (Corsi and Hurley, 1979a, 1979b, 1979c; Corsi, Rosenfeld, Newcomer, and Niekark, 1981a, 1981b). For all of these reasons, the Institute for Court Management (ICM) and the American Bar Association Action Commission to Reduce Court Costs and Delay (Action Commission) decided to undertake a project to determine the advantages and disadvantages of telephone conferencing for courts.

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1 Resolving matters strictly on the basis of the papers can increase the cost of litigation because of the extra time required by lawyers to prepare the written briefs. This finding is drawn from a recent study on the difference in fees charged by lawyers in federal cases and their state court counterparts. Kritzer, et al. contend that one of the explanations for the higher litigation cost in federal cases is due to the fact that motions filed in federal courts are more likely to be accompanied by lengthy briefs than are comparable motions filed in state courts (See Kritzer et al., 1983).

2 For work in the related area of videophones in courts and ancillary agencies, see Blakey (1975), Eliot (1978). Other analysts have argued for the use of speakerphones and picturephones in the civil arena to grant continuances for trial and for the taking of depositions. See, for example, Haeberle (1977).

3 Telephone conferencing is the technology used to permit communications among persons at three or more separate locations. Court proceedings conducted by telephone conferencing are defined as telephone hearings.

Previous Research

ICM and the Action Commission conducted an exploratory study to learn the extent to which and the conditions under which telephone conferencing was already being used in civil litigation. By focusing on those judges who had tried it, we hoped both to gain a sense of how telephone hearings were conducted and to pull together what was known and what was not known about the innovation's effects.[4]

The exploratory research involved interviewing forty-three judges whom we identified as already having used telephone conferencing to some extent. These judges represented thirty-one federal, state, and local courts at both the trial and the appellate levels. In addition, 660 civil litigators in Colorado and New Mexico, most of whom had not participated in telephone hearings, were surveyed for their views on the possible applications of telephone conferencing. The basic findings from this first phase of the research (Chapper, Hanson, Mahoney, Nejelski, Shuart and Thornton, 1982) were as follows:

- Current utilization patterns. The courts in which telephone conferencing was used varied widely in terms of jurisdiction, geographic location, population density of the area served, caseload size, and other factors. Judges who utilized the innovation employed it in a wide range of proceedings, including scheduling conferences and pretrial conferences as well as motion hearings. Telephone conferencing was used less frequently in criminal cases than in civil cases, but its functions in some courts included taking pleas as well as conducting motion hearings.

There were four basic criteria that judges used in deciding whether a telephone hearing was a satisfactory substitute for an in-court civil motion hearing. They are:

1. Type of motion. Procedural motions were more suitable than substantive ones for telephone conferencing.

2. Necessity of hearing testimony. Non-evidentiary hearings were more suitable than evidentiary ones for telephone conferencing.

3. Length of hearing. The shorter the anticipated length of the hearing, the more suitable it was for telephone conferencing.

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4 Because telephone conferencing is used on a regular basis by only certain individual judges in selected jurisdictions, we regard this technology to be "innovative" in the courts. In the broader context, we realize that the technology has been available for a number of years and that it has been used extensively, especially in private business.

4. Travel considerations. Matters involving one or more out-of-town attorneys were more likely candidates for telephone conferencing than matters involving only local counsel.

• Judicial attitudes toward the use of telephone conferencing. All of the judges interviewed had used telephone conferencing and tended to be enthusiastically supportive of it. Despite the diversity of courts where telephone conferencing was used, a striking consensus of opinion existed on the following three points:

1. Telephone conferencing saves the court time because cases move faster, the hearings are shorter, cases are easier to schedule, and less time is spent waiting for attorneys.

2. Telephone hearings have little or no effect on (i.e., they neither improve nor impair) most aspects of court hearings. These aspects include: counsel's preparation, judge's preparation, judge's control over the hearing, judge's ability to manage the hearing, and the judge's ability to ask questions. However, although most judges believe that the relevancy of counsel's arguments is no different during telephone hearings, some believe that there is greater relevancy.

3. Telephone hearings save attorney's time by reducing travel time and waiting time.

• Attorney attitudes toward the use of telephone conferencing. Lawyers believed that telephone hearings were satisfactory substitutes for in-court appearances in certain matters and unsatisfactory in others. While attorneys saw certain advantages arising from the use of telephone hearings, they deemed them most appropriate in resolving procedural matters (e.g., motions that are not case dispositive). Based on the survey of civil litigators in New Mexico and Colorado, the following percentages of attorneys believed that telephone hearings are suitable substitutes for in-court hearings in all or most cases involving eleven selected court matters:

Setting trial dates (96%)
Motion for extension of time (89%)
Motion for default judgment (62%)
Motion to join parties (50%)
Pretrial conference (37%)
Motion to dismiss (32%)
Motion in appellate court (30%)
Application for a temporary restraining order (26%)
Motion for summary judgment (16%)
Testimony from a witness in a remote location (9%)
Oral argument in appellate court (6%)

Additional survey findings provided a tentative explanation for the attorney's predisposition that telephone hearings were suitable (or unsuitable) substitutes for in-person civil motion hearings. The explanation can be summarized in the following four points.

1. Attorneys used three criteria in assessing telephone hearings. They were (a) the ability to answer the judge's questions, (b) the ability to present an effective oral argument, and (c) the judge's understanding of the issues.

2. If attorneys believed that they could answer the judge's questions as adequately, that they could present as effective an oral argument, and that the judge's understanding of the issues is as great during the telephone hearings, they then saw advantages (e.g., reduced travel and waiting time) arising from the innovation. Finally, if they saw advantages associated with telephone hearings, they considered them suitable in either all or most cases.

3. If attorneys viewed the three criteria negatively in assessing telephone hearings, they then saw disadvantages arising (e.g., inability to gauge the judge's reaction, technical problems). Moreover, if they saw disadvantages associated with telephone hearings, they considered them suitable in only a few or no cases.

4. Attorney predispositions toward telephone hearings were not the product of other factors. The survey showed that none of the following five other types of variables was significantly correlated to predispositions: (a) social, legal, and background characteristics; (b) general legal practice; (c) civil motion practice; (d) time generally spent in in-court civil motion hearings; and (e) experience with telephone hearings.

• Economic costs and savings. According to the judges interviewed, telephone hearings saved time and money for the court, counsel, and litigants. This view was supported by the attorneys surveyed. Only eleven of the 660 attorneys thought telephone hearings would be more expensive than in-court hearings.

• The innovation process. The adoption of telephone conferencing in those relatively few courts which had used it appeared to be a very ad hoc process in which the backgound and interest of the judges were important factors. Most of the judges who utilized telephone conferencing for motions and other types of court business had previously used conference calls during their years in private law practice. The innovation had been adopted by these judges with limited suggestions or technical assistance from a state court administrator's office or judicial training institution. In addition, the judges who used telephone conferencing had usually introduced it with little or no advance

consultation with the litigating bar. However, in one court where telephone conferencing was introduced without such consultation, the judge reported that the bar gave no support to the innovation and it was subsequently discontinued.

Furthermore, certain court characteristics affected the receptivity of the bench and the bar to telephone conferencing. We found that six factors--including the court's organization, structure, facilities, availability of resources, existing motion rules and practices, and the manner in which telephone hearings were incorporated into existing procedures--significantly shaped the extent to which judges and attorneys were predisposed to telephone conferencing in general, and their interest in specific program configurations. Hence, the realities affecting the introduction and use of telephone conferencing were much more complex than the simplicity of the technology of telephone conferencing suggested.

Although these findings indicated that telephone conferencing was feasible at least in some instances, they left certain important policy research questions unanswered.[5] Because of the exploratory nature of the study, telephone conferencing's effects on the satisfaction of the participants, the quality of the hearings, and the time and cost savings were not known with any precision. Basically, five key issue areas were beyond the scope of the initial study.

First, the relative frequency of telephone hearings for specific matters was not known because of the lack of available information from administrative records. For example, in courts where telephone hearings were held, information on the following factors necessary to estimate telephone conferencing's use in civil motions was unavailable: number of motions filed, number of motions decided strictly on the papers, and the number of motions set for oral argument. Judges were asked to estimate retrospectively utilization patterns, but even these estimates tended to be very general.

Second, information on attorney satisfaction with the new procedure and their assessments of telephone conferencing's effects on the quality, time and cost of court proceedings was incomplete. Although we encountered attorneys during the course of the study who had used the innovation, their experiences tended to be situations where they clearly benefited. In these instances, they stood to gain substantial time savings and they felt comfortable with opposing counsel and the judge. The attorney survey did not supplement these personal accounts because the number of attorneys in the sample who had participated in a telephone hearing was very small.

Third, the judges' reactions may have reflected the views of "pioneers" in the field, i.e., those who were among the first to try the innovation and then to continue to use it. This group understandably found the innovation to be a valuable tool to aid in the management of their cases.[6] Given that these judges were frequently the only members of their courts to use telephone conferencing, their positive evaluations may have reflected a particular role orientation which was different from most judges.

Fourth, the administrative requirements of handling matters by telephone were not known because in few courts, if any, did all judges use telephone conferencing.[7] Clearly, the administrative burden of telephone conferencing is a more salient issue when it is applied on a regular basis rather than on an occasional basis by a limited number of judges.

Fifth, the exploratory research did not address the question of telephone conferencing's role in criminal courts. Although the initial study focused, by design, on civil litigation, the fact remains that comparable information, even at the exploratory level, was not gathered on criminal cases.

Research Framework and Agenda

Building on the exploratory research, ICM and the Action Commission designed and implemented field tests of telephone conferencing in selected civil and criminal trial courts of general jurisdiction in Colorado and New Jersey. The field tests involved having judges who had not previously used telephone conferencing on any systematic basis offer telephone hearings on a regular basis. The field tests were not intended to substitute a telephone hearing for an in-person hearing in every case. We encouraged the judges to define a set of potentially eligible matters, but the choice of a telephone hearing rested with the individual judges.

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5 The legal validity of telephone hearings has not been the subject of extensive litigation. We are aware of only one case challenging the use of telephone conferencing. In that single instance, the Florida Court of Appeal decided that the telephone conference was a valid procedure. See Greensburg v. Simms Merchant Police Service, Florida Appellate, 410 So. 2d 566 (1982).

6 A sense of the case management orientation of these judges can be gleaned from self-reports by the following judges who have been among the first in using telephone conferencing: Gene Schnelz, Michigan Circuit; William R. Hendley, New Mexico Court of Appeals; August J. Goebel, California Superior Court; and Alfred L. Luongo, U. S. District Court for the Eastern District of Pennsylvania. See, Hanson, Mahoney, Nejelski, and Shuart (1981).

7 One exception is New Mexico's 2nd Judicial District (Santa Fe), a four-judge court, where all judges use telephone conferencing to varying degrees.

The purpose of the field tests was to determine telephone conferencing's effects when the innovation was offered on a regular basis. From our perspective, these field tests would permit us to address such key issue areas as:

- Utilization. We expected to maintain a close count of the extent to which telephone conferencing was used in a variety of contexts such as: evidentiary vs. non-evidentiary hearings, two attorney vs. multi-party hearings, single motion vs. multiple motion hearings, motion hearings vs. other court business, civil vs. criminal cases, in order to assess the feasibility of the new procedure.

- Attorney satisfaction. We anticipated interviewing attorneys who had participated in telephone hearings and to compare their reactions with those attorneys who had not participated in such hearings. Through systematic interviews, information was to be gathered on attorney attitudes toward the cost, time, and quality of telephone hearings.

- Judicial reactions. The introduction of telephone hearings on a regular basis was expected to allow us to gauge the reactions of judges with presumably varying orientations toward case management in general, and telephone hearings in particular.

- Administrative requirements. The regular use of telephone hearings would permit us to conduct a close examination of the administrative benefits and burdens to the courtroom staff who normally arrange, schedule, and record court hearings.

The field tests were not simply research sites in the conventional sense. Both ICM and the ABA Action Commission worked with state and local officials in both states to design, implement and monitor the pilot projects. As a result, in addition to the information gathered from court records and interviews, the ICM and ABA Action Commission telephone hearings project staff pulled together descriptive information on implementation--the process of introducing planned change in the courts--as well as prescriptive plans for avoiding pitfalls in introducing the change.

Test Sites for Field Tests

Discussions with judges, state court administrators, and bar leaders in New Jersey and Colorado led to the selection of these two states as research sites. In New Jersey, a small-sized but populous Eastern state, the courts were already equipped with telephone conferencing equipment and many of the judges and members of the bar were familiar with the innovation, having conducted some hearings by telephone during the 1979 gasoline

shortage.[8] In Colorado, a geographically large, Rocky Mountain state, telephone conferencing was not used by the judges and would have to be implemented as a new court procedure.

In addition to selecting courts of general jurisdiction as the research sites, individual courts within the two states were chosen on the basis of environmental considerations. The environmental setting was deemed important because prior research indicated that telephone hearings offered particular advantages in different locations. For example, in an urban setting the savings in the time spent by an attorney waiting for a hearing to begin might be a more important factor than the travel time saved. In a suburban area that drew attorneys who frequently practiced before several courts, telephone hearings might reduce the delay caused by continuances when attorneys had conflicting court schedules. In rural communities, significant travel time reductions for attorneys might be the overriding consideration.

Both New Jersey and Colorado are divided administratively into judicial districts (or vicinages as they are called in New Jersey)--Colorado has 22 judicial districts; New Jersey has 15. Some of the districts include one county exclusively while others are made up of several counties. In both states a presiding judge is appointed for each judicial district by the state's chief justice. In some districts, the judges travel to hear cases in the various court locations throughout their respective jurisdictions.

In Colorado, telephone hearing procedures for both the civil and criminal tests were introduced into three judicial districts: the 2nd Judicial District (Denver), the urban center of the state; the 20th Judicial District (Boulder), a suburban district that draws attorneys from Denver and surrounding areas; and the 12th Judicial District (Alamosa), a six-county rural area which is larger than the state of Massachusetts. In New Jersey, the site of the telephone hearings program was the Atlantic Vicinage, a judicial area comprised of the four southern-most counties in the state: Atlantic County, an urban area undergoing growth and change due to the economic revitalization of Atlantic City; Cape May County, a seaside community with seasonal fluctuations in population; and Cumberland and Salem Counties, which are predominantly agricultural.

The civil project involved the participation of a total of ten District Court judges in Colorado and twelve Superior Court

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[8] In addition, the Assignment (Chief) Judge in one of the judicial districts had conducted hearings by telephone for a number of years and expressed an interest in implementing and establishing the procedure throughout the district.

judges in New Jersey.[9] The participating judges in the civil project handle a variety of matters: in Colorado, the Denver judges handle civil cases exclusively;[10] the Boulder civil judges divide their caseloads into thirds, with each handling matrimonial, probate, and general civil matters; the Twelfth District judges handle all types of cases, including criminal.[11] The participating New Jersey judges are divided between two divisions: the Chancery Division, handling all general equity and matrimonial matters, and the Law Division, handling all civil and criminal matters.[12] All eleven of the general equity, matrimonial, and civil judges in the four counties, as well as the New Jersey Tax Court judge based in the Vicinage, participated in the civil project.[13]

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[9] In addition to the judges, the other major participants in telephone hearings are the attorneys. In Colorado, membership in the Colorado Bar Association for the three judicial districts are: Alamosa--45; Boulder--300; Denver--4,000. Although a number of cases filed in Boulder and Alamosa involve Denver attorneys, the reverse does not seem to hold true (i.e., attorneys from Boulder and Alamosa generally do not practice in Denver District Court). Memberships in the County Bar Association in the Atlantic Vicinage in New Jersey are as follows: Atlantic County --360; Cape May--100; Cumberland--160; Salem--45. (These groups are not mutually exclusive, i.e., some of the 360 members of the Atlantic County Bar may also belong to the Cape May Bar.) Attorneys in the Vicinage often practice in the northern counties of the state, as well as the federal and state courts located in adjoining Philadelphia, Pennsylvania.

[10] They do not handle matrimonial, probate, water or tax matters.

[11] The participating judges in the Colorado civil project and their locations were: Judges Roger Cisneros, Robert Fullerton, Susan Barnes (who has retired from the bench), John Brooks, Jr., (who was reassigned to another courtroom) and John F. Sanchez (Denver); Judges Richard W. Dana, William McLean and Murray Richtel (Boulder); and Judges Robert W. Ogburn, and O. John Kuenhold (Alamosa).

[12] Because this project defines court matters strictly on a civil versus criminal basis, general equity and matrimonial matters will hereafter be referred to as civil.

[13] The participating judges in the New Jersey civil project and their locations were: Assignment Judge Philip A. Gruccio, Judges L. Anthony Gibson, Manuel Greenberg, Robert H. Steedle (now retired), Gerald Weinstein, Richard Williams, Michael R. Connor and Marvin N. Rimm (Atlantic County); Judge Nathan Staller (Cape May County, now retired); Judges Edward Miller and Frank Testa (Cumberland County); and Judge George Farrell (Salem County).

The participating judges in the criminal project include a total of ten judges in Colorado and three judges in New Jersey. The project in Denver involved a total of three judges at any one time, but, due to the rotation of judges throughout the Court at the beginning of each year, a total of six judges participated in that Court.[14] In New Jersey, the project was initially limited to one judge handling criminal matters in Cumberland County. However, the project was expanded to include two additional judges in Atlantic County.[15]

The objective of this joint project between ICM and the ABA Action Commission to Reduce Court Costs and Delay was to contribute to the knowledge about the specific advantages and disadvantages of telephone conferencing for civil litigants, criminal defendants, attorneys, judges, and court staff. Moreover, the project served to document the prospects and problems of introducing a planned change in court management.

The remainder of this report is divided into six chapters. Chapter II is a description of the hearings conducted by telephone conferencing and the procedures used in arranging and scheduling the hearings. The reactions of attorneys and judges to telephone hearings are analyzed in Chapters III and IV, respectively. Chapter V analyzes the administrative benefits and burdens of telephone hearings in civil and criminal cases. In Chapter VI the implementation of telephone hearings is described. Chapter VII offers concluding remarks on the overall utility of telephone hearings. In addition, included in Appendix A is a practitioner's guide to telephone conferencing entitled, "Telephone-Conferenced Court Hearings: A How-To Guide for Judges, Attorneys, and Clerks". Appendix B is a discussion on the effects of telephone conferencing on court practices and procedures.

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[14] The participating judges in the Colorado criminal project included: Judges Leonard P. Plank, Warren O. Martin, Sandra I. Rothenberg, Lynn M. Hufnagel, Paul A. Markson and Robert P. Fullerton (Denver); Judges William D. Neighbors and Richard W. Dana (Boulder); and Judges Robert W. Ogburn, and O. John Kuenhold (Alamosa).

[15] The participating judges in the New Jersey criminal project included: Judge Steven Kleiner (Cumberland County); and Judges Manuel Greenberg and Robert Neustedter (Atlantic County).

CHAPTER II

THE NATURE OF TELEPHONE HEARINGS AND CONFERENCING PROCEDURES

Introduction

Before the effects of telephone conferencing on the participants can be properly assessed, one must know exactly how the innovaton was applied. Although the applications in Colorado and New Jersey reflect the characteristics of the pilot courts, there is sufficient diversity among them to make them relevant to a large proportion of state trial courts across the country. Thus, the purpose of this chapter is to provide basic descriptive data on the matters handled by telephone in the Colorado and New Jersey test sites and the manner in which these hearings were scheduled, arranged, and conducted.

Type of Court Business Handled by Telephone in the Test Sites

In both civil and criminal cases there was a wide range of matters handled by telephone that would otherwise have been handled in court. The diversity of the matters indicates the adaptability of telephone conferencing to the particular circumstances and individual cases in the different test sites. However, there are also some general patterns of utilization which suggest that telephone conferencing can be used on a regular basis to handle both routine and complex matters.

Because telephone conferencing was used on a regular basis, many of the situations which often arose in in-person hearings also occurred in telephone hearings. For example, telephone hearings involved both two attorneys and multiple attorneys; they involved single as well as multiple motions; they were used to handle contested and uncontested matters. For example, from Denver District Court data, approximately 20 percent of the telephone hearings involved more than two attorneys; more than 25 percent involved multiple motions; and 65 percent of the attorneys who had particirated in a telephone hearing characterized the matter being heard as contested.

In addition, telephone conferencing was able to accommodate situations in which one attorney appeared by telephone and another attorney appeared in person. This "split hearing" generally arises when, for example, one attorney is already at the courthouse on other business, and, rather than return to his or her office in another location, the attorney will ask to participate in person. Another reason this occurs is the proximity of the lawyers' offices--an attorney whose office is located near the courthouse may appear in person, while an out-of-town lawyer

may ask to appear by telephone. A common reason that split hearings arise in criminal cases is the general all-day presence of the district attorney at the courthouse. Thus, the situation in criminal cases is often one in which the prosecutor appears in chambers with the judge, and private counsel or a public defender appears by telephone. Yet, there were situations where the district attorney also appeared by telephone. The ability to handle this type of situation is affected by a combination of the mutual trust of the bench and bar and the technology of the procedure, which allows for the participation of other people, in addition to the judge.

The telephone conferencing of civil and criminal matters has been used in a variety of instances. The procedure has proven to be a suitable alternative to in-court hearings in various circumstances, including the following:

- hearings involving out-of-town lawyers who would have to travel a considerable distance to appear in court;
- routine or uncomplicated matters where there is no compelling reason for the lawyers to come to the courthouse. Although travel may not be an essential consideration here, the judge or lawyers may simply prefer to dispose of the matter by telephone;
- emergency situations, where a matter must be resolved quickly and it would be difficult for the attorneys to get to the courthouse on short notice.

Types of civil matters handled in telephone hearings. In civil cases, telephone conferencing was used primarily to handle pretrial motions. Overall, about 70 percent of the civil telephone hearings involved pretrial motions; the remaining 30 percent included--in order of their frequency--matters such as:

- post-trial motions
- pretrial conferences
- settlement conferences

The high utilization of telephone conferencing in the disposition of civil motions indicates the willingness of judges and attorneys to handle legal arguments by telephone. Evidentiary matters were handled much less frequently by telephone, which perhaps reflects an overall feeling of the participants that evidence and testimony may be more difficult to handle in a telephone hearing.

The range of pretrial motions handled by telephone included substantive motions, although the majority were procedural and discovery-related in nature. This reflects the fact that procedural and discovery motions are generally scheduled for oral argument. The types of pretrial motions that were handled in telephone hearings are listed below in order of their frequency:

- Discovery-related (e.g., compel discovery, for protective orders, for sanctions)
- Continue, extension of time
- Summary judgment
- Amend pleadings
- Dismiss or strike
- Change of venue
- Vacate order
- Consolidate/add/substitute parties or claims
- Intervene
- Miscellaneous (e.g., stay proceedings)

The proportion of oral arguments handled by telephone varied depending on how the jurisdictions chose to use telephone conferencing. In the New Jersey courts, where its use was made more presumptive as a way of handling certain matters, over 70 percent of oral arguments were handled by telephone. In Denver District Court, the major metropolitan court in Colorado, where its use was less presumptive, close to 40 percent of oral arguments were handled in telephone hearings.[1] In the other Colorado jurisdictions, the proportion of oral arguments handled by telephone was considerably lower because the procedure was used primarily only when a hearing involved out-of-town counsel.

Telephone conferencing was used in a number of instances to fit the situation at hand. Following are some examples:

- One judge who had to catch an early morning plane used the telephone from his home to hear arguments and make a ruling on a motion. The attorneys, who were present in the judge's chambers, used the speakerphone to argue the motion.
- Telephone conferencing was used to consider an emergency application for an order to show cause. The hearing involved nine attorneys, three of whom were out-of-state and would have found it practically impossible to appear in person within the allotted time period.

[1] In two of the courtrooms in Denver District Court where telephone conferencing was offered, a total of 71 civil motion hearings were conducted during the month of April 1982. Twenty-seven of these hearings were handled by a telephone conference.

- Testimony in a divorce case was taken by a Colorado judge via the telephone. The party giving the testimony was located on a military base in Seoul, Korea.

- In a case where a jury verdict was held up pending a ruling on a question from the jurors, the judge used the telephone to make a ruling on the matter. The attorneys remained in their offices and the jury was able to proceed immediately with its deliberation.

Types of criminal matters handled in telephone hearings. The criminal court business that was handled in telephone hearings also included substantive, procedural, and discovery-related matters. Telephone conferencing was used to handle a range of matters at various stages of the criminal process, including (in order of their frequency):

- Municipal court appeals
- Entry of a plea
- Sentencing
- Motions (e.g., discovery-related motions, motion to expunge prior criminal record, motion to sequester a jury, motion to continue a jury trial)
- Show cause hearings on bond forfeiture
- Questions from a jury
- Bail review hearings
- Witness testimony
- Miscellaneous (e.g., issuance of a court order, filing of government papers, discussion of amended statute, disposition hearing, habeas corpus return)

In criminal telephone hearings the defendant was either not required to be present, had waived appearance, participated in the hearing by appearing in court, or participated in the hearing by telephone. In some cases, defendants on bond participated by telephone, along with their attorneys, from their attorneys' offices. In other cases, incarcerated or hospitalized defendants appeared by telephone or appeared in court. In situations where the defendant appeared by telephone and his attorney was in another location, they were allowed to confer in private over the telephone, either prior to, during, or following the hearing.

The determination of the criminal matters to be handled in telephone hearings involved careful consideration by the judges, as well as input by the attorneys involved. In some cases the judges would suggest using the telephone to expedite a hearing. At other times the attorneys would request that the matter be

handled by telephone. Telephone conferencing was used regularly to a certain extent but not exclusively in handling a given type of criminal matter. The one exception to this was the handling of municipal court appeals in New Jersey, where it was the presumed mode for handling such matters.

As in civil cases, the use of telephone conferencing was found to be beneficial in a variety of situations. Hearings were both prearranged days in advance and handled spontaneously as situations arose. Following are some specific instances when telephone conferencing was applied in criminal cases:

- One judge, unable to appear in court because of illness, conducted her entire day's schedule of miscellaneous matters by telephone from her home. The prosecutor, defense attorneys, and defendants, who were scheduled to appear in court that day, participated in the hearings from the judge's chambers where a speaker phone was activated.

- A telephone hearing was conducted in which a defendant appeared by telephone from the state mental hospital. Because of the lack of bed space in the hospital, if the defendant were to have traveled to court to appear in person, his bed would have been given to someone else despite the fact that he was to return.

- A statement was given over the telephone by a defendant who was incarcerated in an out-of-state federal detention center. The defendant was then given a suspended sentence by the judge.

- Testimony was taken by telephone from a nurse in a hearing on defendant's motion for a new trial. The defendant, public defender, and district attorney were present in the judge's chambers. The nurse underwent examination and cross-examination during the forty minute hearing.

- The telephone was used to make an official court record of a victim's wishes regarding the sentencing of a defendant. The victim was asking for a more lenient sentence than the judge would have imposed. The victim was able to make her statement by telephone from her office without taking time off from work.

Telephone Conferencing Procedures

Because the pilot courts offered telephone hearings on a regular basis, the judges and court staff designed certain procedures to give all of the participants a clear sense of the matters that were to be handled. If telephone conferencing had been implemented on a more limited basis, the concern for establishing guidelines might not have been such a salient issue. Thus, the remaining portion of this chapter describes how telephone

conferenced court hearings were arranged, including procedures followed in special situations.

Conducting telephone hearings. Telephone hearings were typically conducted in the courtroom or in the judge's chambers, the location depending largely on the location of the conferencing equipment. For the majority of civil telephone hearings, the judge's chambers were used. Coordination between the judge and the staff required for a particular telephone hearing (e.g., court reporter, division clerk, or law clerk) was not unlike an in-court hearing. If the hearing was to be a matter of record, a court reporter was present, or, if the court had access to an audio-recording system, this equipment was used to record the proceeding.

The civil matters were generally handled in chambers for several reasons including: to achieve greater effectiveness in the judges' non-bench time; to facilitate the handling of matters arising spontaneously; and to conduct court business at a time convenient for the court. Similar considerations led most of the criminal court judges to operate in this same manner except for the Cumberland County judge who preferred to handle matters in open court.[2]

Setting up the conference call. In civil cases, initiating and setting up the telephone hearing was the responsibility of either a staff member or the attorney for the moving party. In most of the project locations, court staff, rather than the attorneys, were responsible for setting up the conference call. Initiation of the conference allowed more judicial control over the timing of the hearing and eliminated the necessity of routing the call through a telephone company conference operator when attorneys did not have conferencing equipment. However, depending upon the sophistication of the equipment, a staff member was sometimes required to contact a conference operator for assistance if the hearing involved more than two outside parties. When this was the case, the operator then scheduled the case in the next available time slot. In New Jersey, when the hearing involved more than two outside parties, many of the judges required the moving party to arrange the call with the conference operator and to initiate the call at the scheduled time.

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[2] There is no logistical reason why the criminal hearings cannot be conducted in the judge's chambers because the necessary equipment is also located in chambers; nor would there be any administrative problems since the court reporter, for example, has recording equipment that is transferrable to any location. The courtroom clerk, however, may find it more difficult in chambers only if there is not adequate space for the records and files handled by the clerk. Although conducting a telephone hearing in chambers does not bar the public from participation, conducting it in the courtroom may present easier public access and, in some cases, particularly criminal, a better public image.

Making the court the call-initiator clearly placed more demands on the court staff members because they were the ones usually charged with setting up and preparing the hearing for the judge. An exception to this was in Cumberland County where the criminal judge set up the conference call without the assistance of a secretary or court clerk. This procedure evolved because of the manner in which criminal telephone hearings were scheduled and conducted. Criminal telephone hearings were conducted in the courtroom; the telephone and speakerphone were located on the bench in front of the judge. Telephone hearings (usually four to six) were scheduled in 15-minute time periods.[3] The judge proceeded from one scheduled event to the next. In civil cases, because most of the telephone hearings in New Jersey were conducted in chambers, if the secretary had responsibility for setting up the call (depending upon the judge, either the secretary or law clerk had responsibility for placing the call), she did so from her desk telephone and then indicated to the judge in his or her chambers that the hearing was ready to proceed.

A major consideration in determining where the conference call was to originate was whether the court had access to a WATS line. This arrangement enabled the court to absorb more easily the operating costs associated with long-distance telephone calls. Because New Jersey had access to this type of system, the question of call-initiation was resolved with little difficulty. It was decided that the cost was too much, however, in Alamosa because it, as well as the Boulder and Denver districts, did not have access to a WATS system. The judges in Alamosa required the moving party to initiate the conference call. However, other possibilities exist to cope with long-distance calls. For example, in Denver District Court and Boulder where the courts initiated the calls, the courts generally placed the call collect. (In the Washington State Court of Appeals, the court used a flat fee rate in billing each attorney for long-distance calls.[4])

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[3] Because the prosecutor is often located in the courtroom, setting up the conference call involves dialing only one number, a simpler procedure than setting up a call with at least two outside parties.

[4] State of Washington's Rule of Appellate Procedure 17.5(c) on telephone argument states that "(T)he expense of the call will be shared equally by the parties, unless the appellate court directs otherwise in the ruling or decision on the motion." In practice, "(T)he cost of a telephone argument, usually $10.00, is borne by the moving party or the party who requests telephone argument if the moving party appears in person. This charge represents approximately one-half hour's conference time on the court's SCAN system." (Correspondence to Paul Nejelski [former ABA Action Commission staff director] from Michael F. Keyes, Commissioner, The Court of Appeals of the State of Washington, Division III, dated September 14, 1979.)

Characteristics of telephone hearings. The conduct of telephone hearings was similar to in-court hearings. The judge introduced the case, maintained control over the hearing, and generally the moving party first presented his or her argument. Each attorney identified him or herself prior to speaking. Because voices cannot always be readily identified without visual contact, attorney identification enabled the court reporter to identify each speaker for reporting purposes.

Self-identification prior to speaking was not always sufficient. Poor audibility, as well, sometimes frustrated court reporters in their effort to record the exchanges clearly. The result in both test states was that an overwhelming number of court reporters believed that telephone hearings were more difficult to record than in-person hearings.

Another notable difference of telephone hearings was their length. As found in both New Jersey and Colorado, the average telephone hearing[5] was often shorter in duration than the average in-court hearing.

The role of equipment. Regular and effective use of telephone procedures by the judge and staff required that appropriate equipment be available. The minimum equipment requirements include a six-button telephone with a conferencing capability.[6] The lack of a conferencing capability in the courthouse

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5 Based on data collected on individual motion hearings in Denver District Court, the average amount of time taken in single motion hearings is 12.7 minutes during telephone conferences and 15.5 minutes during in-court sessions. The time for multiple motion hearings is 16.2 and 19.1 minutes, respectively.

6 In addition to the basic equipment requirements of a telephone with conferencing capabilities (and a speakerphone), there are a variety of equipment devices available to the courts wishing to implement telephone conferencing. For example, on the market today are automatic dialers and speed calling features that allow attorneys' telephone numbers to be stored in a memory unit, amplifiers--used if the transmission sound is weak due to multi-party calls, and signaling equipment, e.g., from the secretary's desk to the judge's desk. Also available are portable telephone conferencing units. The portable units can be connected to telephone outlets in different rooms rather than be attached to a particular telephone line.

Recently introduced is the tall, cylindrical-shaped microphone. Whereas speakerphones are most adaptable in judges' chambers, this microphone can be used in courtrooms with high ceilings susceptible to poor voice transmission. These and other auxiliary items are available from American Bell as well as approximately 1,500 independently-owned companies offering telephone conferencing equipment for purchase or lease.

does not preclude the use of telephone hearings; it does mean, however, that the attorney must then initiate the call or that the assistance of a conference operator must be obtained by the court staff member responsible for the call.

A speakerphone, which amplifies the voices throughout the room, allows the court reporter to hear and record adequately the proceeding. In addition, this device enables the judge greater freedom of movement when listening to the argument. A microphone picks up the voice of the judge (and other participants appearing in the courtroom or chambers) and conveys it to the parties on the telephone.

Most conferencing equipment allows staff members who set up the conference calls to place one party on hold while dialing the next party from a separate line. This ability to alternate between lines,[7] however, did not exist in all of the project sites in Colorado. For example, in the Denver District Court, the division clerk dialed the number of the first party, put them on the line, and then depressed the button and dialed the second telephone number. This type of equipment did not allow a separate conference between the judge and one of the telephone parties, unless the other party hung up.

Each equipment configuration described above presents few problems, but only if the staff, as well as the judge, understands the set-up in place and is aware of how it operates. Technical problems, although few, arose for the staff members responsible for setting up the hearings in the project courts. When problems did occur, they generally included disconnections and poor volume. Well over one-half of the staff members who were asked about possible problems with the equipment stated that problems rarely or never occurred during the conduct of a telephone hearing. Only a few stated that these types of problems always or often occurred.

Conclusion

The pilot courts demonstrated the feasibility of conducting a wide range of business on a regular basis. In both civil and criminal courts, telephone hearings proved to be a suitable method for handling a variety of non-evidentiary hearings in urban,

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7 There were several reasons why a more sophisticated conferencing system was not installed in all Colorado locations. Foremost, a simpler and, therefore, more economical system was preferred because the project, which paid for the installation and operating changes during the test period, was to be supported chiefly by grant funds. Secondly, a more complex system had been previously installed in some Colorado state agencies and received unfavorable reactions from the users. The telephone company, therefore, decided to forego temporarily the installation of this system, the Comkey, in the courts.

suburban, and rural court settings. The ability of the courts to resolve a broad range of matters reflected in large measure their effort to design and implement procedures to govern the scheduling, arranging, and conducting of the hearings. Clearly, the procedures took into account the needs of the participants in these particular jurisdictions. Some other jurisdictions may wish to adopt all or part of the procedures used in the test sites, the experience of Colorado and New Jersey raises a more general observation. The ability to implement the innovation and test its purported advantages first required judges and court staff to design procedures that made the telephone hearings orderly, convenient, and congruent with existing practices. The willingness of the judges and staff to think through the implications of conducting court hearings by telephone provided the essential foundation for the subsequent assessment of specific hearings by attorneys, judges, and staff.

CHAPTER III

ATTORNEYS' REACTIONS TO TELEPHONE HEARINGS

Introduction

Changes in court procedures intended to reduce cost and delay are traditionally assessed in terms of objective, system-level measures. Yet, as Church (1982) argues, this approach leaves open the question of how the putative reform affects other key factors, such as attorney satisfaction, the quality of representation, and fairness.

Attorneys were the key subjects in this study because they were in a better position to estimate time savings, cost savings, and the effectiveness of representation than other participants. Judges have only indirect knowledge of the lawyers' time savings and little or no information on corresponding cost savings that are passed on to litigants and criminal defendants. Judges can assess the quality of the proceeding from their vantage point but they cannot gauge how the lawyers view the proceeding. Litigants are frequently not present at court proceedings and, hence, generally lack the information on which to assess the quality of telephone hearings. Defendants in criminal cases may be present but their general lack of participation in most hearings lessens their ability to detect the possible effects associated with the implementation of this innovation. For all of these reasons, the preponderance of the systematic empirical information in this study was based on structured interviews with civil and criminal attorneys in the Colorado and New Jersey tests sites.

Survey Design

Interviews with both the civil and criminal attorneys were conducted by telephone. A total of 1,517 interviews were conducted during the projects; 734 interviews were with attorneys who had participated in at least one telephone hearing and 783 were with those who had participated in only in-court hearings during the study period.

Two distinctive survey designs were utilized. The first design solicited responses about telephone hearings in general. That is, attorneys were asked to compare, for example, the quality and cost of telephone hearings to in-court hearings. Attorneys who had never participated in a telephone hearing were asked to estimate how telephone hearings would compare to in-court hearings along these same dimensions.

The second type of interviewing procedure involved an intensive survey of attorneys who had participated in either a

telephone hearing offered in selected courtrooms in Denver District Court or an in-court civil motion hearing offered in the Court's other courtrooms within a one-month period.[1] Trained interviewers went to the courthouse each day and monitored the motion hearings. In this survey attorneys were questioned about a specific hearing in which they had recently participated. Questions were modeled after those used in the former design, but rather than giving comparative assessments, attorneys were asked to evaluate a particular hearing, regardless of whether it was conducted by telephone or in person. No mention of telephone hearings was made. (This survey is hereinafter referred to as the Denver District Civil Court Survey.)

The questionnaires in both designs contained open and closed -ended questions. The most common question format was a five-point Likert scale with options ranging from "agree strongly" to "disagree strongly" or parallel responses.

Research Issues

The intent of the attorney interviews was to answer key questions concerning the quality and suitability of telephone hearings and the cost implications associated with the new procedure. These questions included:

(1) How satisfied are the users (i.e., attorneys who participated in telephone hearings) with the procedure?

(2) Does telephone conferencing affect the quality of the hearing?

(3) What factors, including the quality of the hearings, are associated with the attorney's degree of satisfaction with the innovation?

(4) Are split hearings (i.e., one attorney on the telephone and the other one in chambers) viewed any differently from telephone hearings where all counsel are on the telephone? Do those on the telephone feel that they are at a disadvantage? Are they more likely to be dissatisfied with the procedure?

(5) What are the time savings?

[1] In Denver, telephone hearings were offered (in addition to in-court hearings) in selected courtrooms only; the remaining courtrooms continued to offer only the traditional in-court approach. This procedure was followed to achieve an approximation of the classical experimental research design. Because Denver randomly assigns cases to different courtrooms, the courtrooms in which telephone conferencing was tried constituted an experimental group, and the other courtrooms a control group.

(6) Are there cost savings to civil litigants and criminal defendants?

(7) Do criminal attorneys see telephone hearings as advantageous or disadvantageous to defendants?

(8) Do users view telephone hearings any differently than those who did not participate in the telephone hearings?

(9) Are the reactions of attorneys practicing in one court different from those practicing in other courts?

(10) Are the views of civil litigators concerning telephone conferencing's effects different from those of criminal attorneys?

Findings

Satisfaction. A persistent finding from all the surveys was the reported satisfaction with telephone conferencing by a high percentage of attorneys who participated in one or more hearings. The Colorado and New Jersey civil and criminal hearings data indicated that 85 percent (627/734) of the attorneys were "very satisfied" or "satisfied" with the procedure. Table 3-1 presents the data from these surveys.

Most of the attorneys expressing dissatisfaction with civil telephone hearings had participated in hearings in the New Jersey pilot courts and in Denver. An explanation for this may be the nature of the pilot tests themselves. That is, unlike Alamosa and Boulder where attorneys selectively chose to participate by telephone, both Denver and New Jersey courts implemented telephone hearings on a more regular basis. The fact that telephone conferencing was used more extensively and used presumptively to handle certain motions in these courts most likely increased the chance of finding some attorneys who would be dissatisfied with the procedure.

As Table 3-1 indicates, overall satisfaction levels expressed by attorneys participating in criminal telephone hearings were higher than those expressed by attorneys participating in civil telephone hearings. The reason for the high satisfaction levels here may also be a result of the judges offering telephone conferencing on a selective basis for matters of limited complexity. Additionally, because of concerns for defendants' constitutional rights, the judges were hesitant to impose telephone hearings on unwilling attorneys. This, of course, serves to eliminate yet another opportunity for an attorney to be dissatisfied with telephone hearings.[2]

[2] The dissatisfaction of attorneys participating in criminal telephone hearings is difficult to explain because only six expressed dissatisfaction with the procedure.

Table 3-1

Attorney Satisfaction with the Conduct of Telephone Hearings

Colorado Attorneys

Satisfaction Level	Civil		Criminal	
	Number	Percent	Number	Percent
Very Satisfied	214	54.5	27	67.5
Somewhat Satisfied	121	30.8	12	30.0
Neither Satisfied nor Dissatisfied	3	0.8	1	2.5
Somewhat Dissatisfied	33	8.4	0	0
Very Dissatisfied	22	5.5	0	0
Totals	393	100.0	40	100.0

New Jersey Attorneys

Satisfaction Level	Civil		Criminal	
	Number	Percent	Number	Percent
Very Satisfied	131	52.6	27	51.9
Somewhat Satisfied	77	30.9	17	32.7
Neither Satisfied nor Dissatisfied	2	0.8	2	3.8
Somewhat Dissatisfied	27	10.8	5	9.7
Very Dissatisfied	12	4.9	1	1.9
Totals	249	100.0	52	100.0

The Denver District Civil Court survey presented corroborative evidence that telephone conferencing did not produce attorney dissatisfaction. According to Table 3-2, there was no statistically significant difference between the satisfaction that attorneys who participated in telephone conference calls had with the "way in which the hearing was conducted" and the satisfaction of those who participated in in-court proceedings. That is, telephone conferencing did not make an attorney any more or less satisfied than if the matter had been argued in court.[3]

This general finding was based on a comparison of all hearings conducted by telephone conference with all hearings conducted in person within the time frame of the study period. As a result, it did not answer questions about the respective satisfaction levels with particular subsets of motion hearings (e.g., highly contested summary judgment motions in "high stakes" cases). The basic reason why such subsets were not compared was that the total number of hearings is not sufficiently large to permit such refined breakdowns. However, this general finding was maintained when other factors were introduced and overall comparisons were made from the survey data.

There are several conditions under which a telephone hearing might be more (or less) satisfying than an in-court proceeding. Hence, the overall satisfaction with telephone conferencing may mask the special circumstances when the innovation is deemed unsatisfactory. For this reason, satisfaction was more closely examined by taking into account the following eight variables:

(1) Outcome of the hearing - winners vs. losers.[4] This distinction may reveal if losers are more dissatisfied when their motions are denied under the new procedure. As expected, attorneys who won their motions were more likely to be satisfied with the hearing than were attorneys who lost. However, winners in in-court hearings were no more satisfied than winners in telephone hearings and losers in telephone hearings were no more

[3] The data from the Denver District Court survey were analyzed with the use of the Chi-square test of significance. All findings in which the observed Chi-square value had a greater than 0.05 were considered to be non-random. If a pattern emerged from the application of the Chi-square test, a contingency correlation coefficient was then applied to determine the strength of the association.

[4] Attorneys were divided into two groups: (1) winners, and (2) losers, based on the following criteria: (1) an attorney was determined a winner if he/she filed the motion and the motion was granted, or if opposing counsel filed the motion and the motion was denied; (2) an attorney was determined to be a loser if he/she filed the motion and the motion was denied, or if opposing counsel filed the motion and the motion was granted.

Table 3-2

Attorney Satisfaction Under Different Hearing Modes

Denver District Civil Court Survey

	Experimental Courtrooms Telephone Hearings	Control Courtrooms In-Court Hearings	
Satisfied	89.8	87.9	
Dissatisfied	10.2	12.1	
Totals	100.0	100.0	
	N=59	N=182	N=241

Chi-Square of 0.03 significant at .86
Contingency Coefficient = .03

The question was: In general, how satisfied were you with the way the hearing was conducted? Were you:

1. Very Satisfied
2. Somewhat Satisfied
3. NOT SURE
4. Somewhat Dissatisfied
5. Very Dissatisfied

(For purposes of analysis, the above categories were collapsed into two categories, satisfied and dissatisfied, and the "NOT SURE" responses were excluded.)

dissatisfied than losers in in-court hearings. (Data supporting this conclusion and the inferences made about the other seven factors are available in Appendix E.)

(2) Number of motions - single vs. multiple motions. This factor might indicate whether participants in hearings involving more than one motion are more dissatisfied when they argue by telephone.[5] However, our findings indicate that this distinction makes no difference in attorney satisfaction with the way in which either type of hearing was conducted.

(3) Type of motion - substantive, procedural, or discovery-related.[6] This categorization should indicate whether attorneys are more dissatisfied when they have to argue substantive motions by telephone. Although there was slight variation in attorney satisfaction between each type of motion argued, the level of satisfaction was the same for telephone and in-court hearings for each type of motion.

(4) Conflict - contested vs. uncontested motions.[7] This

[5] With the exception of this factor, the Denver District Civil Court findings reported here were based on hearings involving only one motion.

[6] The three general categories included the following kinds of motions: (1) "substantive" category included motions to dismiss, to strike, for summary judgment, for judgment, for preliminary injunction/temporary restraining order; (2) "procedural" category included motions to continue, for extension of time, to amend, to consolidate, to join parties, to intervene, to sever, for stay, for change of venue, for default judgment, to vacate, to withdraw as counsel, to quash, for substituted service, other miscellaneous; (3) "discovery-related" category included motions to compel, for protective order, for sanctions.

[7] This distinction was based on the attorneys' assessment of the degree to which the motion was contested. Contested refers to situations where the respondent said the motion was "very contested" or "somewhat contested" and uncontested refers to situations where the respondent said the motion was "somewhat uncontested" or "very uncontested". However, prior to interviewing attorneys, the research staff used certain "objective" criteria to eliminate those attorneys who participated in "uncontested" hearings. "Uncontested" was defined as hearings in which only one attorney appeared or if only one attorney argued the motion. In addition, a number of completed interviews were excluded from the analysis when attorneys responded that the procedural motions (e.g., to continue) were "very uncontested" and that their chances for prevailing on the motion were either very good or very poor.

factor should indicate if attorneys are more dissatisfied when they argue contested motions by conference call. While the findings indicated that attorneys are more likely to be dissatisfied when the hearings involve contested motions, the fact that the hearing was handled by telephone rather than in-person did not make a difference.

(5) Likelihood of prevailing. This factor was included to see if attorneys who believe that they do not have a good chance of winning were more (or less) likely to be dissatisfied[8] when they have to argue by telephone. However, evidence from the survey suggested that how the attorneys perceived their chances of winning prior to the hearing had virtually no effect on their satisfaction levels regardless of how the motion was handled.

(6) Climate - The attorney is comfortable vs. uncomfortable with the judge during the hearing.[9] This variable was included to determine if attorneys were more dissatisfied with telephone hearings when they feel uncomfortable. As expected, attorneys were more apt to be dissatisfied with hearings in general when they felt uncomfortable with the judge. The method of conducting the hearing, however, did not make a difference.

(7) Equipment problems. This variable was important to consider because attorney dissatisfaction with telephone hearings may be greater when there are technical difficulties.[10] The findings, however, indicated that whether or not there were equipment problems during the telephone hearings had no effect on satisfaction levels.

(8) Distance and travel time. This factor was considered because attorneys who travel short distances and save little time may have the least to gain by handling a matter by telephone and, therefore, may be more likely

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8 The attorney's chances of prevailing on the motion were based on self-reports. Answers to a question about the chances of prevailing were dichotomized into "good" and "poor" categories.

9 This factor was derived by dichotomizing attorney responses to a question about how comfortable they felt with a judge into "comfortable" and "uncomfortable" categories.

10 Equipment problems were based on the attorneys' assessments.

to be dissatisfied.[11] Our findings indicated that this was not the case. Attorneys who saved the least amount of travel and time by handling a motion by telephone were just as likely to be satisfied with telephone hearings as were those who saved considerable travel and time.

The results indicate that under none of these eight conditions is the satisfaction different for hearings conducted by telephone from that for hearings conducted in person.[12] Thus, satisfaction with telephone hearings was not limited to special circumstances but occurred under the variety of conditions that arose when the courts offered telephone hearings on a regular basis.

Quality of the hearings. The Denver District Civil Court survey provided perhaps the most valid test of telephone conferencings's effects on the quality of the proceedings. Again, the reason for this was because rather than asking attorneys to make general comparisons of telephone hearings to in-court hearings or to estimate how telephone hearings might compare to in-person hearings, they were asked to assess a particular hearing in which they had recently participated. Attorneys were asked to assess a specific in-court or telephone hearing along four key dimensions: (1) the attorney's ability to present an effective oral argument; (2) the attorney's abilty to answer questions from the judge; (3) the judge's understanding of the issues; and (4) the judge's control over the hearing. These four factors capture at least a major part of the meaning of the concept of "quality" when the idea is applied in the context of the method of holding hearings.

Overall, the vast majority of attorneys interviewed in the survey viewed the quality of motion hearings positively, regardless of the hearing mode. A slight deviation from this was found concerning attorney attitudes on their ability to present an effective oral argument to the judge--a higher percentage of attorneys evaluated the telephone hearings negatively on this particular quality dimension than the other three quality issues. However, this quality dimension was also generally viewed more negatively than the remaining three issues by those attorneys participating in in-person hearings. As shown in Table 3-3, along all four quality dimensions, there were no statistically significant differences in how the attorneys rated the hearing under the two alternative modes.

The fact that the quality of the hearing was unaffected by the use of telephone conferencing instead of in-court proceedings

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11 Distance and travel time saved were based on the attorneys' estimates.

12 For a display of the data on which these findings are based, see Appendix C.

Table 3-3

Attorney Assessments of the Quality of Civil Motion Hearings Conducted by Telephone and In Court

(Denver District Court Attorneys)

	Ability to Present an Effective Oral Argument[1]		Ability to Answer Questions from the Judge[2]	
	Telephone	In Court	Telephone	In Court
Agreed	80%	87.9%	94.3%	98.2%
Disagreed	20%	12.1%	5.7%	1.8%
	n=55	n=174	n=53	n=167
	$\chi^2 = 1.58$*		$\chi^2 = 1.04$	

	The Judge's Understanding of the Issues[3]		The Judge's Control Over the Hearing[4]	
	Telephone	In Court	Telephone	In Court
Agreed	89.5%	94.0%	98.3%	99.5%
Disagreed	10.5%	6.0%	1.7%	.5%
	N=57	N=184	N=60	N=185
	$\chi^2 = .77$		$\chi^2 = .001$	

* None of the Chi-square (χ^2) values are statistically significant at the .05 level.

1 The question was: To what extent do you agree or disagree that you were able to present an effective oral argument to the judge during the hearing?

2 The question was: To what extent do you agree or disagree that you were able to answer questions from the judge during the hearing?

3 The question was: To what extent do you agree or disagree that the judge understood the issues that were presented at the hearing?

4 The question was: To what extent do you agree or disagree that the judge had control over the hearing?

does not imply that quality is unimportant to the attorneys. On the contrary, the degree of satisfaction that attorneys had with the way in which either type of hearing was conducted was influenced by these criteria. That is, whether the attorney agreed (or disagreed) that the hearing was conducted properly predicted whether the attorney was satisfied (or dissatisfied) with the hearing. The fact that this finding was maintained in both the telephone hearing and the in-court hearing groups suggested that attorney satisfaction was contingent not on the hearing mode, but rather on how attorneys assessed these quality issues.

The finding from the Denver District Civil Court survey that the attorney's satisfaction was shaped by the conduct of the hearing rather than the hearing mode is supported by the other civil and criminal attorney interviews. Correlations between measures of satisfaction and each of the quality indicators are computed for the participants in the telephone hearings. As Table 3-4 shows, there are moderate and strong correlations between how well civil telephone hearings are conducted and satisfaction of the participants.

On the other hand, as Table 3-4 demonstrates, there is a more mixed relationship between attorneys' perceptions on these particular quality dimensions and their satisfaction with criminal telephone hearings. Although some of the quality issues predict whether or not an attorney was satisfied with the telephone conferencing of crimnal matters, others do not. For example, in Colorado, the judge's understanding of the issues was a poor predictor. The attorney's ability to answer the judge's questions was a poor predictor in New Jersey. Although only certain of the quality factors account for satisfaction in criminal cases, we found that they were virtually the only predictors. As in civil cases, a systematic analysis of other variables failed to identify any other sources of satisfaction.

Split hearings. In criminal cases, the hearings may frequently be split (i.e., one attorney appears in person while the other attorney is on the telephone) because the institutional attorneys (district attorney and public defender) are frequently at the courthouse. The consequences of the split hearing are important because it was believed that attorneys on the telephone may feel that lawyers appearing before the judge would be at some advantage. The extent to which this supposition is true is important to determine because if split hearings are not permitted, this prohibition will considerably reduce the application of the technology.

Split hearings were common occurrences in both the civil and criminal areas. Almost 35 percent of the attorneys who participated in civil telephone hearings responded that they had, on at least one occasion, participated in a split hearing; approximately 80 percent of the attorneys who participated in criminal telephone hearings had participated in a split hearing. These percentages varied somewhat between the two states.

Table 3-4

Correlations Between Attorney Satisfaction With Telephone Hearings and Their Views on the Way Telephone Hearings Are Conducted

	COLORADO ATTORNEYS			NEW JERSEY ATTORNEYS		
	Civil			Civil		
	First* Wave	Second Wave	Criminal	First Wave	Second Wave	Criminal
Ability to Present Effective Oral Argument	.63**	.-22	.47	.56	.55	.70
Ability to Answer the Judge's Questions	.57	.50	.42	.69	.56	-.01
Judge's Understanding of the Issues	.44	.59	.-14	.48	.70	.76

* The first wave refers to interviews conducted approximately six months after implementation of telephone conferencing and the second wave refers to interviews conducted fourteen months after implementaton.

** The gamma measure of association is the basis for all the coefficients reported in this table. The use of statistical correlations tells us how closely related are the different factors (e.g., attorney satisfaction with telephone hearings and their views on the ability to make an effective oral argument by telephone). The more closely related are the factors, the higher the correlation. A rule of thumb in interpreting the strength of the correlation is as follows: 1.-.6 indicates a strong relationship; .59-.3 is a moderate relationship; .29-.1 is a weak relationship; and .0 indicates that the factors are virtually unrelated. The sign of the correlation, i.e., plus or minus, indicates the direction of the relationship between the factors; if the variables are positively or inversely related. A positive association means that the more an individual agrees with one position, the more he agrees on another. An inverse association means that if an individual agrees with one position, he disagrees with another. For example, in Table 3-4 the responses of Colorado attorneys in the first wave civil survey indicate that if attorneys believe that they can argue effectively by telephone they will be satisfied with the telephone hearings. This is reflected in a high correlation of .63. On the other hand, the ability to present an effective oral argument by telephone is not a good predictor of attorney satisfaction in the third wave survey of civil attorneys. This is reflected in a low correlation of .-22. In fact, the minus value suggests that many attorneys were satisfied with the procedure and yet negative on this particular quality issue when the hearing is conducted by telephone.

The attorneys agreed that the split hearing gave an advantage to the attorney appearing in person. A majority of the attorneys whose opponent appeared in person believed that the attorney who was in court was at some advantage. Moreover, a majority of those who appeared in person believed that the personal appearance gave some advantage, including the ability to have eye contact with the judge and the ability to be a more effective adversary.

Yet, this perceived advantage may not be a critical factor in how attorneys assess telephone hearings. This is especially true in civil cases where a higher percentage of counsel who participated in a split hearing were satisfied with telephone conferencing than were those participating in hearings in which all the lawyers participated by telephone. In fact, a slightly higher percentage of attorneys who had "appeared" by telephone in a split hearing were satisfied with telephone conferencing than were those attorneys who had appeared in court in a split hearing, as shown in Table 3-5.

Although we cannot explain why attorneys who feel that they are disadvantaged when appearing by telephone in a split hearing are still satisfied with the hearing, certain factors may be responsible. In civil cases, for example, where most split hearings are prearranged, attorneys may simply feel confident and comfortable about presenting their side, and thus, in addition to avoiding travel time to court, may feel that they in no way jeopardized their case. In criminal cases where many of the telephone hearings are spontaneous, the fact that attorneys are not forced to appear in court simply because opposing counsel is in court, and the ability to dispose of the matter quickly, may be the overriding factors. In addition, the fact that the criminal bar is generally made up of a small group of attorneys who know each other and who frequently practice before the same judges may give these attorneys a feeling of confidence that outweighs the disadvantage that some may feel by not being physically present.

Effects on criminal defendants. Although attorneys may appreciate the opportunity to save time by using telephone conferencing, and believe that telephone hearings are properly conducted, criminal attorneys may still have reservations about the innovation because of how it affects defendants. Discussions with private counsel and public defenders revealed several potential problems, including the impersonal nature of a telephone hearing, the lack of the opportunity to discuss matters with a client in custody, and the weakening of an already fragile relationship between counsel and client. Obviously, if telephone conferencing produces these consequences, its utility is seriously brought into question.

Yet, we anticipated that the attorneys who participated in telephone hearings would more likely see advantages to the procedure and less likely see disadvantages. The rationale for this supposition was that the actual hearing would be considerably different from what the attorneys imagined. That is, the

Table 3-5

Degree of Satisfaction with Telephone Hearings on Regular or Split Hearing Basis
(Colorado and New Jersey Attorneys)

	Views of Attorneys who Appeared in Only Regular Telephone Hearings		Views of Attorneys who Appeared in Court During Split Hearings*		Views of Attorneys who Appeared by Telephone During Split Hearings*	
Degree of Satisfaction	Civil Hearings	Criminal Hearings	Civil Hearings	Criminal Hearings	Civil Hearings	Criminal Hearings
Very Satisfied	55.1	69.2	50.9	80.0	51.9	52.4
Somewhat Satisfied	27.4	30.8	36.0	20.0	38.1	31.0
Neither/Not Sure	0.8	0	0.6	0	0.6	7.1
Somewhat Dissatisfied	11.5	0	7.4	0	5.6	7.1
Very Dissatisfied	5.2	0	5.1	0	3.8	2.4
TOTALS	100.0 N=383	100.0 N=13	100.0 N=175	100.0 N=10	100.0 N=160	100.0 N=42

* These categories are not exclusive, i.e., some attorneys who appeared in court during split hearings also appeared by telephone in other split hearings.

Table 3-6

Advantages and Disadvantages to Criminal Defendants When Hearings in the Case are Handled by Telephone (Colorado and New Jersey Attorneys)

	Attorneys Who Had Participated in a Criminal Telephone Hearing		Attorneys Who Had Not Participated in a Criminal Telephone Hearing	
Advantages	Number of Attorneys Mentioning Factor	% of Total Number of Attorneys	Number of Attorneys Mentioning Factor	% of Total Number of Attorneys
Saves Time and Money	78	83.0	13	68.4
Expedites Hearings	31	33.0	4	21.1
Avoids Necessity of Defendant Having to Appear in Court	10	10.6	2	10.5
Provides Better Communication between Attorney and Client	5	5.3	2	10.5
		N=94		N=19
Disadvantages				
Promotes Distortion of Justice to Defendant	35	37.2	10	52.6
Attorneys can Better Represent their Clients in Person	32	34.0	4	21.1
Need for Defendant to be Personally Involved to Understand	21	22.3	7	36.8
Inability of Judge and DA to Humanize Defendant	21	22.3	5	26.3
		N=94		N=19

Table 3-7

Attorney Travel Time Avoided (in minutes) by the Use of Telephone Conferencing

Civil Cases	Criminal Cases
98	80
N = 800	N = 79

phone hearing would prove to be as orderly as any in-court proceeding. Table 3-6 indicates that the "users", i.e., attorneys who participated in telephone hearings, did, in fact, see more advantages and fewer disadvantages to defendants than "non-users", i.e., attorneys who had participated in in-court criminal hearings only.

Time and cost savings. When hearings are conducted by telephone, attorneys in civil and criminal cases save both travel and waiting time. Table 3-7 indicates the amount of travel time that attorneys estimated they saved by participating in a telephone hearing. The amount of travel time saved was slightly less in criminal cases because of the closer proximity of the majority of the institutional attorneys (public defenders and district attorneys) to the courthouse.

The avoided travel time was augmented by avoided waiting time at the courthouse. Table 3-8 indicates the amount of time attorneys spent waiting for telephone and in-court hearings to begin. The amount of time spent waiting for telephone hearings to begin was virtually the same in civil and criminal cases, and was considerably less than the estimated amount of time spent for in-court hearings to begin.[13] The amount of travel and waiting time saved by institutional attorneys takes on an added dimension when these particular savings are viewed in light of increased efficiency and the corresponding potential for savings of tax dollars.

The cost savings to litigants and criminal defendants was not an automatic translation of time savings for lawyers to a proportionate reduction in fees charged. Numerous factors inhibit a perfect translation. The highest hurdle was the lawyer's fee structure. Cases handled on a contingency fee or flat fee basis were less likely to be adjusted because of reduced time.

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13 Interview data suggested that time spent waiting at the courthouse for in-court hearings to begin was more likely to be unproductive compared to time spent waiting for telephone hearings. More than eighty percent of the civil attorneys said that they spent part of the time unproductively waiting for in-court proceedings to begin while only about twelve percent spent some time unproductively waiting for telephone hearings.

Table 3-8

Average Time Spent Waiting (in minutes) for Hearings to Begin

Colorado and New Jersey Attorneys

Civil		Criminal	
Telephone Hearings	In-Court Hearings	Telephone Hearings	In-Court Hearings
12	40	7	44
N = 638	N = 366	N = 79	N = 41

Table 3-9

Estimated Cost Savings to Litigants and Criminal Defendants by Attorneys who Charge Less for Hearings Conducted by Telephone

	Civil	Criminal
Average	$136	$175
Range	$3 - $1,000	$25 - $999
	N = 416	N = 41

Cases handled on an hourly basis, on the other hand, typically reflected the time savings. A non-hourly fee structure was most frequently used by private criminal attorneys. Thus, the percentage of the private criminal attorneys who responded that they passed on cost savings to their clients was sixty-two percent compared to seventy-nine percent of the private civil attorneys. Nevertheless, when court proceedings were handled by telephone, the savings were notable in both civil and criminal cases. As Table 3-9 indicates, of those attorneys who claimed to pass on savings to their clients, the savings averaged over $130 per hearing, the exact amount depending on the courts.

Although these estimates are subject to errors in calculation by the attorneys, there are several reasons for believing that they are honest estimates and not deliberate attempts to inflate the savings. One reason is that they do vary and do not suggest an attempt to follow a "party line" in claiming a standard fee reduction. Second, the variation in savings coincided with the travel time that was likely to be saved. That is, the

variation in dollar savings was related in a rational way to a definite source of dollar savings. Third, most attorneys charging on a non-hourly basis indicated that their fees would not be lowered; they did not make unrealistic estimates of cost savings.

Conclusion

In both civil and criminal cases, a high percentage of the attorneys who have participted in telephone hearings were satisfied with the way in which the hearings were conducted. Interviews with the attorneys suggest that they were satisfied because they believed telephone conferencing did not impair the quality of the proceedings. That is, they believed that they were able to make effective representations by telephone. In criminal cases, furthermore, more attorneys saw advantages to defendants than disadvantages.

Among the advantages in civil and criminal cases are cost savings to civil litigants and criminal defendants, respectively. In addition to these cost savings, there are benefits to taxpayers in the form of greater efficiency, i.e., less travel and waiting time, for institutional attorneys such as district attorneys, public defenders, city and county attorneys, and attorneys general.

CHAPTER IV

JUDGES' REACTIONS TO TELEPHONE HEARINGS

Introduction

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

The willingness of the bench to use telephone conferencing cannot be assumed given the expectations that the most direct beneficiaries of the procedure are the attorneys who save travel and waiting time. Additionally, telephone conferencing's effects on the quality of the hearing are an important consideration to the bench. If telephone conferencing threatens the quality of hearings, then few judges are likely to risk losing quality simply to save attorneys' travel time.

Personal interviews were conducted with the participating judges in order to study the effects of their views on the use of telephone conferencing in the individual courtrooms. Judges were interviewed after the civil and criminal projects had been underway for approximately one year. It was believed that after one year the judges would be in a better position to respond to our inquiries. Altogether, twenty-two participating judges were interviewed in the two states.

Advantages and Disadvantages of Telephone Hearings

The judges clearly believed that an advantage of telephone conferencing was its contribution to the greater operational efficiency of the court. Both civil and criminal court judges agreed that this included two basic advantages: (1) scheduling flexibility, and (2) time savings. However, this general consensus was shared more widely among New Jersey civil judges than the Colorado civil judges. Moreover, in civil as opposed to criminal cases, virtually all the New Jersey civil judges agreed that hearings can be held at more convenient times when conducted by telephone conference, continuances due to the unavailability of counsel occur less often, and the time spent waiting for the attorneys is shorter when the hearing is conducted by telephone rather than in court.

A majority of the Colorado civil judges agreed that they spent less time waiting for counsel when the hearing was conducted by telephone rather than in court. Half of the judges agreed that telephone hearings could be conducted at more convenient times than in-court hearings. The judges were less positive on two other benefits: only three judges believed that continuances due to the unavailability of counsel occur less often when a matter is scheduled for a telephone hearing, and three agreed that the total amount of staff time was less as a result of the new process.

The criminal judges in both states tied the benefits to the court more closely to the nature of the business handled by telephone than did the civil judges. In New Jersey the benefit of scheduling flexibility meant convenience in rescheduling hearings. Matters handled by telephone were generally scheduled on the specific days that they would have been scheduled for in-court hearings. The judges found that they were able to reschedule these hearings in the event that they or counsel were not available at the scheduled time. Instead of having to reset the matter for the next regularly-scheduled date for such matters, the matter could be heard by telephone within a day or two of the original hearing date.

The Colorado criminal judges described the time savings as arising from an increased capacity to resolve matters more expeditiously. For emergency matters, the judges could hear the matters without delay and make immediate rulings because the attorneys could remain at their offices instead of traveling to the courthouse. Telephone conferencing enabled the judges to settle a matter at the time a request for a hearing was made. The ability to hear and resolve matters as they arose also eliminated the need for attorneys to file papers with the court; the result was fewer matters set for future hearing dates. Consequently, the Colorado judges were more willing to use the telephone in this way than in handling motions and other matters on a pre-arranged basis.

The civil and criminal judges in both states believed that a notable benefit to the court is that telephone hearings do not seem to last as long as in-court hearings. There are several factors that may explain the reduced length of a telephone hearing. One factor is that, according to the judges, interruptions among the attorneys for both sides are less common during telephone hearings than in-court hearings. In addition to there being fewer interruptions, judges believe that attorneys appearing by telephone tend to deliver briefer and more concise presentations of the legal issues than when appearing in court. Finally, because in-court proceedings may serve as a "social" gathering of lawyers and judges, they often extend beyond the actual content of the hearing itself. Dialogue other than that regarding the matter at hand tends to occur to a lesser degree during a telephone hearing.

The disadvantages to the court varied somewhat between the two states and between civil and criminal judges. The New Jersey civil judges tended to see fewer major limitations to telephone conferencing than their Colorado counterparts. Some of the judges mentioned as a disadvantage the absence of visual effects, that is, the lack of "eye contact" or "body language"; several respondents, however, disputed this by claiming that body language serves no substantive purpose. Some of the remaining disadvantages that the New Jersey judges associated with telephone conferencing include: attorneys are more difficult to control during a telephone hearing; attorneys are less formal at a telephone hearing; and the public would view telephone hearings as not fulfilling their expectations of a judicial procedure. The New Jersey judges, however, identified no single dominant disadvantage in handling civil matters by telephone.

In contrast, the Colorado civil judges identified the failure of attorneys to identify themselves before speaking as a prevailing disadvantage, especially when more than two attorneys appear by telephone. The inability to distinguish voices presents a problem for the judge as well as for the court reporter. The judges noted, however, that this problem can be remedied by the strict adherence by the lawyers to the guidelines set down by the judge during the preliminary stage of the telephone hearing.

Another disadvantage cited by half of the Colorado judges concerns difficulties that certain judges have in successfully integrating telephone hearings into the existing procedures in their particular courtrooms. For example, one judge who scheduled telephone hearings in between in-court hearings reported that it was disruptive for him to leave the bench to take a call in chambers. Another judge noted some difficulty assembling the necessary papers with the case file for a telephone hearing; at an in-court hearing copies of any papers missing from the case file would be provided by counsel. These types of problems, however, can be corrected by certain administrative techniques. For example, the judge who sets telephone hearings in between in-person hearings could instead set aside a block of time either before or after in-person hearings in which to conduct matters by telephone. The problem of having all the necessary papers available at the time of a telephone hearing may be resolved by more explicit instructions to staff.

The criminal court judges tended to see fewer disadvantages with telephone conferencing than did the civil judges. However, there were three groups of criminal court judges, each with a distinct set of views on telephone conferencing. One group of judges simply could not see any disadvantages to the court, counsel, or defendants. The disadvantages that were mentioned revolved around the possible weakening of the relationship between counsel and clients. One possible explanation for judges perceiving fewer disadvantages in criminal cases is that the technology and the court matters to which is applied are more closely linked in the minds of the criminal judges than they are for civil judges. They feel confident that telephone conferencing

had been properly applied and that potential problems of confrontation and complexity were not at issue. Because the hearings conducted by telephone were handled in the same manner as they would have been had they been held in court, the judges believed that telephone conferencing had no negative effects.

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

A third group of judges used the technology sparingly and generally found it difficult to separate it from the applications. These judges found the technology to be of limited value because they could not easily see how and when it could be applied.

Quality of the Hearings

The civil and criminal judges had similar views on telephone conferencing's effects on the quality of the proceedings. Table 4-1 shows the responses of the judges when they were asked to compare telephone hearings to the traditional in-court hearings along several dimensions: their understanding of the issues, their ability to control a telephone hearing, their ability to ask questions, counsel's ability to present an effective argument, and counsel's ability to answer questions. Most of the judges said that telephone conferencing did not change the proceedings for better or for worse. The judges unanimously agreed that telephone hearings did not affect their understanding of the issues pertinent to the hearing. Furthermore, they overwhelmingly agreed that their abilty to ask questions during a telephone hearing was the same as for in-court hearings.

Although there appears to be somewhat less of a consensus regarding the remaining dimensions, a plurality of the judges interviewed believed that their control over a telephone hearing, counsel's ability to answer questions, and counsel's preparation efforts are all the same when compared to an in-court hearing. Of the remaining judges, those with positive views are counterbalanced by those with a more negative appraisal. For example, as one judge, commenting positively on counsel's ability to

Table 4-1

Colorado and New Jersey Judges' Views on the Quality of Telephone Hearings as Compared to In-Court Hearings (Criminal and Civil Judges)

Dimensions	Much Greater	Somewhat Greater	Same	Somewhat Less	Much Less	TOTALS
Judges' Understanding of the Issues	0	4	18	0	0	22
Judges Control Over the Hearing	1	2	11	7	1	22
Judges' Ability to Ask Questions	0	1	17	4	0	22
Counsel's Ability to Answer Questions	0	5	13	4	0	22
Counsel's Ability to Present an Effective Oral Argument	0	2	12	6	1	21*

*One judge did not respond to this question.

answer questions, said, "They (counsel) are more relaxed and at ease in their own law offices". Several of the judges interviewed attributed this reduction in nervousness to telephone conferencing. On the other hand, of those judges who responded that attorneys' ability to argue effectively was lessened by telephone conferencing, one reason mentioned was that counsel appeared not to be as "psyched up" for a telephone hearing as they are for an in-court hearing. It is interesting to note, however, that during the course of his interview, another judge said that counsel are more "psyched up" for a telephone hearing than they are for an in-person hearing.

Effects on Criminal Defendants

The judges's views on telephone conferencing's effects on criminal defendants parallel their sense of the overall advantages and disadvantages. The benefits cited quite explicitly include the potential financial savings in the form of lower fees

to individuals with retained counsel. An additional benefit mentioned was the possibility of defendants having to take off less time from work because of the more certain time schedule for telephone hearings. Again, our explanation is that these judges are confident with the applications that they had made, and, therefore, think only of hypothetical instances where the defendant might suffer because the hearing was handled by telephone.

Conclusion

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

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

CHAPTER V

EFFECTS OF TELEPHONE HEARINGS ON COURT OPERATIONS

Introduction

The introduction of telephone hearings must be seen in the context of the individuals who have a direct influence on the scheduling and conduct of criminal and civil hearings: namely, the support staff, including secretaries, law clerks, division or court clerks, court reporters, and bailiffs.[1] The manner in which the procedures associated with telephone hearings are integrated into existing administrative rules and practices affects the tasks that the court staff are expected to perform. Reciprocally, the way in which the court staff adapt to the new procedure affects how telephone hearings are scheduled, arranged, and conducted, and thereby contributes to their convenience, flexibility, and time savings.

To the judge and court staff, the use of telephone hearings as an alternative to in-court hearings may be viewed as enabling them to schedule and dispose of their workload in a more efficient manner. The benefits of using telephone conferencing are, however, more directly reaped by the judge than by the staff members. For example, the judge may see telephone conferencing as a tool to increase control over and coordination of his or her caseload. The courtroom staff, on the other hand, are affected by the administrative consequences of telephone conferencing; that is, the daily tasks essential to conducting telephone hearings, such as scheduling the conference call, placing the calls to all the parties, dealing with technical problems (e.g., disconnections, inadequate audibility), and making a record of the proceeding. The responsibility for carrying out these tasks usually rests with the court staff.

The purpose of this chapter is fourfold: First, it is intended to describe the tasks and the corresponding division of labor associated with telephone hearings. Second, it describes shifts of responsibilities between and among staff members as a result of the technology's incorporation. Third, it discusses possible changes in the overall workload of court staff members.

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[1] The term "courtroom workgroup" has been used to describe this group of court staff members. Eisenstein and Jacob (1977) and Nimmer (1978) applied the term in the context of high-volume criminal courts. We believe that this concept is useful in other settings including lower criminal courts and both high volume and low volume civil courts. Moreover, it provides a framework for understanding the administration of telephone conferencing.

Finally, it is intended to highlight problems encountered in administering telephone hearings. This information should assist judges and court managers who wish to gain a better understanding of the mechanics of establishing and operating a new procedure such as telephone conferencing and how this relates to their most basic resource--personnel. It is indeed important to be aware of the administrative work involved to insure that, in the course of introducing and implementing telephone hearings, the process itself is coherent and orderly.

This chapter draws upon the experiences from the various project sites, including the information on telephone conferencing procedures discussed earlier in Chapter II, and provides an account of the common administrative responses. In each site, there was a concern with the impact of telephone conferencing on the staff. The importance of the administrative consequence was, in fact, an issue in how the innovation was implemented, as the next chapter indicates.

The two topical areas covered in this chapter are: (1) the scheduling of telephone hearings; and (2) the effect of telephone hearings on a court's overall caseflow system.

Court Scheduling

Introducing a telephone technique into a court's scheduling system requires varying adjustments to be made within the court or courtroom, depending upon its past scheduling practices. The specific administrative adjustments depend on the following: (1) the type of calendaring system employed by the court; (2) the procedure used for notifying attorneys of the scheduled hearing dates and times; and (3) the overall scheduling practices of a particular judge or court, such as designating one day a week or one week per month for motion hearings. The first item--calendar type--provides a framework for defining the scheduling responsibilities of court staff.

Calendaring system. The most common types of court calendars used today are the individual calendar, the master calendar, or a combination of the two. In an individual calendaring system, a case is assigned upon filing to a particular judge who then, with the workgroup as a unit, proceeds to handle that case through to disposition. In a master calendar system, the judge may be designated to handle all civil or criminal motions that are filed with the court whereas another judge may be assigned strictly to trials.

The individual calendaring system is used in both the New Jersey and Colorado project courts. The manner in which telephone hearings are scheduled in these courts thus reflected significantly each judge's own habits and preferences. When telephone hearings were introduced, the same staff member responsible for scheduling in-court hearings became, in most instances, responsible for scheduling telephone hearings. In one project site, for example, the secretary, after receiving from the judge

a list of dates and times available for motion hearings, called the attorney(s) for the moving party, announced the available times, and left it up to the attorneys to select one of the given alternative choices. In other project courts, this same task was the responsibility of the division clerk or law clerk.

The ease or difficulty associated with scheduling telephone hearings can affect the overall workload of each staff member. Based on a survey of staff members from all project locations, a majority of those responding who were involved in civil telephone hearings believed that their workload had not changed because of the implementation of the new technique for scheduling and conducting hearings.[2] Almost one-half stated that their workload requirements were similar to those for in-court hearings; just under one-third believed that their workload was less when compared to the work associated with in-court hearings.

Law clerks in both states who responded that their overall workload had increased because of telephone conferencing believed that it was more difficult to schedule a matter for a telephone hearing than it was for an in-court hearing. In New Jersey, for example, scheduling a telephone hearing involved having attorneys choose one of several possible hearing dates and times; an in-person hearing, on the other hand, would be scheduled for a specified motions day. Court staff attempting to schedule telephone hearings sometimes found attorneys to be evasive, not willing to decide on a specific time. This type of situation requires the staff member to be firm, exerting control over the scheduling process, yet accommodating enough to avoid attorney scheduling conflicts.

Working under an individual calendaring system presents an opportunity for the judge's staff to influence the types of matters handled by telephone conference. Experienced staff can sometimes suggest to the judge specific matters that they believe could be placed on the telephone hearings calendar. Their direct contact with attorneys also allows them to suggest that a hearing be held by telephone. Court staff members' encouraging the use of telephone hearings by conveying the judge's positive view of telephone hearings was found to influence significantly the volume of matters handled by telephone.

The scheduling of court matters for telephone hearings is essentially the same in a master calendar system. The judge assigned to handle motions will arrange telephone hearings with

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[2] Interviews were conducted with participating court staff members and judges on the civil projects in March 1982. Fifty-seven individuals were interviewed and, with the exception of the Denver District Court, all interviews were conducted by telephone. For more information, see Working Paper #1, ICM-ABA Action Commission Telephone Hearings Project, R. Hanson, L. Olson, and M. Thornton (September 1, 1982). All other references to the survey made in this chapter are derived from this paper.

the court staff in the same way as in the individual calendaring system. However, the master calendar system may limit the benefits of scheduling flexibility for a couple of reasons. First, if the judge simply substitutes telephone hearings for all in-court hearings, the prospect of end-on-end telephone calls may be unappealing. Second, if the judge tries selectively to choose certain in-court hearings for telephone hearings, this may disrupt the judge's workflow. Because the calendaring of telephone hearings entails advising the attorney in advance of a time period during which to expect the call, a judge may feel captured by the calendar, reluctant to take a recess which would throw the calendar off its preannounced schedule.

Notification of telephone hearings. How the court notifies the participants of a scheduled hearing varies by court and type of jurisdiction. In civil cases, notification procedures vary from one situation to the next. For example, in some instances a staff member will inform the moving party of a particular date and time and the moving party, in turn, notifies by mail all other parties of the specified time. In other instances, a court staff member gives a list of available times to an attorney who then contacts opposing counsel; after a date and time is agreed upon, the court is recontacted with the specific scheduling information; the moving party is required to submit written notices to all concerned parties. In still other cases, such as in Alamosa, the judge and attorneys will often conference by telephone in order to determine a date and time for a hearing. The moving party then submits a written notice to all attorneys in the case, sending the original to the court clerk.[3]

The introduction of telephone conferencing as an alternative to in-court hearings may add a step in scheduling and notification procedures. When past practices included so-called "motions days", there was no need for a staff member to contact each attorney regarding his or her motion hearing; it was clear to the court staff and the attorneys that a motion filed would be argued (if oral argument was deemed necessary by the judge) on the next "motions day" following its filing. Although telephone hearings can be arranged in this same manner, for maximum utilization and flexibility, the "motions day" procedure does not have to be followed. This was the case in New Jersey. That is, because the judges chose to schedule telephone hearings throughout the week rather than follow the procedure as for in-court motion hearings, specific dates and times had to be set and agreed upon by all parties. On the other hand, telephone hearings do not have to be set for a time certain. For example, the duties of the tax court

[3] Forms have been specifically designed for telephone hearings. When the use of a telephone hearing depends on the request of one or both attorneys, it is specified on the court form, or in the case where no forms are required, the telephone is used as a source of communication for both scheduling and notification of hearing dates and times.

judge and the judge handling equity matters in Atlantic County involve a minimum amount of required bench time; as a result, each judge's staff notifies the attorneys scheduled to argue a matter by telephone that the judge will be available in chambers to receive calls during a certain two to three hour time frame. In other courts, procedures for scheduling and notifying the attorneys of civil hearings may remain virtually unchanged. With the introduction of telephone hearings, however, the attorneys and court are now able to set matters to be heard by one of two alternative modes.

In criminal hearings, procedures for contacting and notifying each party may differ from civil hearings because of the nature of the participants--the public defender (or private counsel) and the prosecutor. Here, the court usually assumes full responsibility for notifying the parties. Again, notification of the scheduled court events to be conducted by telephone hearing can be made in the same manner as in-court hearings. However, the first few times that matters were scheduled for telephone hearings in Cumberland County, for example, the secretary who notified each attorney in the same manner usually done for in-court hearings received questions from attorneys and their secretaries regarding the telephone hearing procedure.

In Colorado, the telephone conferencing of criminal matters is less a regular procedure than in New Jersey, although when matters are prescheduled for a telephone hearing, the same procedures are followed as for in-court hearings. In other words, the attorneys are present and notified by the judge verbally of the date and time for the next hearing date. A request for a telephone hearing can be made at this particular time. Many of the telephone hearings arise spontaneously rather than having been prearranged, in which case the judge or division clerk has the sole responsibility for contacting each of the participants.

Overall scheduling habits of the courts. Some in-court practices are not easily integrated with telephone hearing procedures. For example, telephone hearings may offer little apparent benefit in criminal matters where prosecutors are generally located very near the courthouse and where a large proportion of defense work is handled by a public defender's office whose members are in court virtually on a daily basis. A similar situation may occur on the civil side where a small group of lawyers may handle a majority of civil cases in a court and thus be in court for various hearings throughout the week. This will often be the situation in courts which designate a certain day or week to conduct motion hearings or other types of matters. In each situation, through the cooperation of judges and attorneys, a shift in scheduling practices may make telephone conferencing a feasible alternative. For example, scheduling all matters suitable for telephone conferencing on a specific day may permit a public defender to avoid travel to the courthouse and work on cases at the office. This type of scheduling has occurred in Cumberland County, New Jersey. The crucial factor there was the familiarity with the institutional office's practices and that of the private

bar and the ability and willingness of the judge and calendaring clerk to rearrange their own sequence and method of handling matters so that telephone hearings became a practical alternative to in-court hearings.

There was minimal change in the scheduling habits of the Colorado project courts after telephone hearings were implemented. For example, civil motion hearings, whether by telephone or in-person, continued to be scheduled throughout the week in Denver District Court and on specified "motions days" in Boulder County and Alamosa.[4] The scheduling of criminal hearings also remained virtually unchanged; judges and staff members did not alter their regular docketing procedures. A rearrangement in the court's docketing systems, however, may have produced time slots convenient for both prosecutors and public defenders to remain in their offices and conduct pending business by telephone. For example, if matters which necessitated in-court appearance by attorneys could be set on particular days, this would create a greater opportunity for the judge and staff to conduct matters by telephone on other days, when it might be convenient for the attorneys to remain in their offices. This is difficult to arrange, especially in a smaller-sized court and bar. Regardless of its size, however, the administrative effort requires constant communication between the judge and other staff members and the prosecutors, public defenders and private counsel.

Effect on Caseflow System

Employing telephone conferencing is a strategy the judge and courtroom staff use to further their overall objective of processing cases through the court system. This technique can serve as one of several management tools designed to dispose of caseloads quickly and judiciously. However, as the benefits of using telephone conferencing are more visible to the judges, any advantages to the staff from utilizing telephone hearings must be examined in the context of the judge and the overall caseflow effects. Several areas and situations in which telephone hearings have a convincing and beneficial impact on case management come under the umbrella of scheduling flexibility. One area in which scheduling flexibility is pronounced is the day and time a telephone hearing can be held.

Day and time. In-court hearings are often set between the hours of 9:00 a.m. and 3:00 p.m. Telephone hearings, on the other hand, are conducted not only between 9:00 and 3:00 but any

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[4] Continuing this practice of scheduling and conducting telephone hearings only on designated in-court motion days in the Twelfth District may have restricted somewhat the use of telephone conferencing in these courts. Continuing the practice of motions days may have limited the benefit so often cited in our surveys of judges--the flexibility to conduct hearings by telephone at times when hearings are generally not conducted.

time and on any day. Thus, hearings can be scheduled and conducted at times and on days not normally available for the traditional in-court hearing. The workload of the staff is thereby spread throughout the day and week rather than concentrated, as around a motions day. Judges in the project sites have taken advantage of the technology by conducting matters during recesses from the bench.

Despite the implementation of telephone hearings, the New Jersey courts maintained their use of a motions day, but generally only for matters that required in-court hearings. Thus, where in the past the entire day was devoted mainly to motion hearings, the use of telephone conferencing for a major portion of their motion workload requiring argument has freed up part of the day so that other matters, e.g., trials, can also be conducted. When motion hearings are held on one specified day, the accumulation of motions filed from the date of the last motions day to the next motions day more often than not required an entire workday to be set aside in order to prepare for the oral arguments. In contrast, motions handled throughout the week by telephone conferencing--before, after, and during bench time breaks--enabled judges and court staffs to pursue their workday in a more efficient manner. Civil motions are disposed of at "downtimes" rather than consuming scarce bench time.[5]

In some situations, problems arise when the judge is on the bench past the time at which a scheduled telephone hearing is to begin. The judge's secretary, division clerk, or law clerk will typically call the attorneys in the case(s) scheduled for a telephone hearing and inform them of the delay. When the delay is of a short duration, this is not a problem. When, on the other hand, delays of this nature are excessive and continuous, telephone hearings are not as attractive to the judge, staff, or participating attorneys.

Telephone hearings held at unscheduled times require the appropriate staff, particularly the court reporter, to be "on call" at all times; when this occurs, staff must be able to set up and conduct the hearing on short notice. The overall benefit to the staff, and particularly the judge, is that matters handled spontaneously by telephone hearings are matters that would otherwise not be resolved, eventually coming before the judge and staff at another time and day.

Resolution of conflicts. One of the key advantages of telephone conferencing is that it can be used to avoid a variety of problems that typically result in continuances of scheduled hearings.

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[5] In addition to telephone hearings affecting the motions practices, active use of Rule 1:6-2 has had a major impact (infra, Chapter VI).

The most common problem is a scheduling conflict with the attorneys involved. Scheduling a hearing to take place by telephone permits a matter to be heard at a time when the parties could not assemble at the courthouse. For example, in New Jersey's Atlantic Vicinage, where the local bar members typically practice in two federal as well as several state trial courts, telephone conferencing permits a scheduled hearing to take place despite the fact that an attorney might have another hearing in a distant courthouse set for the same day. The attorney is able to take the call either in his or her office or in the distant courthouse. In addition, because travel time does not have to be factored into the schedule, telephone hearings can often be set on short notice. In that way, conferencing has been used to accelerate the date set for hearing when the original date presented a conflict with other engagements of counsel.

On some occasions, telephone conferences have also been used to avoid judge-initiated postponements. On two occasions in the Denver District Court, judges were able to use the telephone procedures from their homes when they were unable to come to the courthouse. One judge, unable to attend court because of illness, prevented the continuation of her entire docket for that particular day. On another occasion, a judge was able to hear arguments and rule on a motion from his home before an unexpected trip out of town.

Multi-party hearings. Multi-party telephone hearings--some involving up to five attorneys--occurred quite frequently in both project states (e.g., one out of every five telephone hearings in Denver). In fact, in multi-party hearings, it may even be easier to find a date and time acceptable for a telephone hearing than for an in-court hearing.

Status conferences. Telephone conferencing procedures enhance a court's case management capability. In New Jersey and Colorado, judges involved in the civil telephone conferencing project used the procedure to conduct "status calls". Although the use of telephone hearings for this type of matter is not done on a regular basis in either state, it enables the judges to discuss the status of cases with counsel on short notice.

Emergency matters. One of the more common uses of telephone hearings is to conduct matters arising unexpectedly but needing immediate action. The availability of telephone conferencing equipment enables the court to dispose of these matters in the most expedient manner. All participants can be assembled for a telephone hearing in much less time than it would normally take if the hearing was to be conducted in court.

Conclusion

In this chapter, we have focused upon the administration of telephone conferencing as it was introduced in Colorado and New Jersey. The various court staffs were able to adjust and adapt the new technology into their standard courtroom operations.

Scheduling, placing and conducting telephone hearings were found not to require any major shifts in the duties of individual staff members. For example, the same individual responsible for scheduling in-court motion hearings is likely to retain this responsibility for telephone motion hearings. On the other hand, although telephone conferencing procedures need not involve additional tasks, it requires different ones. Where telephone hearings are initiated by the court, someone must dial the telephone numbers and make certain that all parties are connected and ready to proceed with the hearing. This task is typically assigned to those individuals who, in the courtroom, have the equivalent responsibility of "calling the calendar," i.e., the court clerk or law clerk.

The use of telephone conferencing does not significantly change the overall workload of court staff members. Where individual workload levels are perceived to be greater, the reasons associated with this change are not because of the technology but related to other factors such as the lack of identification by attorneys participating in a telephone hearing. Court reporters may perceive telephone hearings to be a burden on their workload in cases where attorneys fail to identify themselves before speaking or problems of audibility persist. Although technical problems can threaten the successful operation of telephone hearings, they rarely occur to any serious degree.

The importance of the courtroom staff in the execution of telephone conferencing has broader implications for the area of court reform. The literature emphasizes the need for individuals seeking to achieve desired changes to recognize and work with the major court participants affected by procedural change. Too often, the impact that the procedural changes have on court personnel is overlooked, or given scant attention. When major court reform programs such as delay reduction are implemented, it is widely recognized that much of the work required, for example, the monitoring of caseflow, will depend on the availability and quality of the court staff. Telephone conferencing requires no less. Its success hinges on the support and competence of court personnel.

For this reason, it is crucial that court staff members be involved and participate in the implementation of the innovation into the normal procedures of the courtroom. In addition, the technology should be phased into the existing staff organization and procedures rather than attempting to alter court staff operations dramatically; this minimizes any potentially negative impact. Through staff participation alone, the change will be perceived less as a threat to their organization than as an asset. Phasing the telephone conferencing procedure into existing ones helps to cushion the change while maintaining the support and active cooperation of the staff.

CHAPTER VI

IMPLEMENTATION

Introduction

The preceding chapters describe a procedure which is viewed favorably by a high proportion of all of the involved participants--judges, attorneys, clients, court staffs--as a suitable alternative to handling hearings in court. When seen from that perspective, the successful adoption of telephone conferencing would appear to be automatic. However, implementation is rarely an easy task. The failure to achieve desired goals (i.e., reducing attorney travel time and waiting time) is often perceived as the failure of the theory behind the innovation itself when, in fact, it is not the new policy which is flawed but rather the policy has failed to be implemented.

Several factors make implementation a difficult task, and implementation in the courts particularly difficult. First, the translation of goals such as reducing delay into working procedures is difficult in all policy areas. Operationalizing an innovation may fail due to a limited awareness of existing procedures and an inability to integrate the innovation into these procedures (Pressman and Wildavsky, 1973).

Second, government bodies, including the courts, are not designed to be responsive to innovation. Unlike large private firms that frequently have their own research and development units, courts are structured in such a way that "there is little capacity to design new programs," or the energy to put them into effect (Hayes, 1973). Courts, as organizations, are charged with the disposition of large numbers of cases, a fact which fosters certain operational procedures. New procedures are routinely resisted because they threaten disruption of the workflow, at least in the short-run. Even where the potential exists to improve the quality or efficiency of the caseflow process, it is frequently ignored should any extra work be involved to implement the change (Feeley, 1983; Nimmer, 1973).

Examples of these implementation problems were observed during the exploratory research and served to highlight a third concern particularly relevant to the current undertaking. The field tests of telephone conferencing represented an attempt at the implementation of the procedure on a courtwide basis that would result in routine use by all judges. Earlier examinations were replete with accounts of multi-judge jurisdictions in which only one or two judges used telephone conferencing. Never was it the case that all judges in a multi-judge setting employed the procedure regularly. There were also instances of discontinuation of

the procedure by a new judge on a bench despite the regular use of telephone conferencing by the preceding judge. In situations such as these where usage is episodic, adoption of the procedure is an individual undertaking. Implementation of telephone conferencing becomes a much greater concern when the procedure is to be introduced systemwide as a policy change.

The purpose of this chapter is to describe the decision-making process attendant to the implementation of telephone conferencing for systematic use in court proceedings. The first section is a discussion of three key factors which had an impact on the decision-making process. This is followed by a recounting of the major activities undertaken to implement telephone conferencing in the project sites. The chapter's concluding section analyzes the differences in the success of the implementation activities and outcomes in the project sites in terms of the key factors.

Finally, guidelines have been developed for judges, lawyers, and court clerks interested in adopting the innovation. Information on how to introduce telephone conferencing is presented in a separate section of the report (see Appendix A - "Telephone-Conferenced Court Hearings: A How-To Guide for Judges, Attorneys, and Clerks").

Key Factors Affecting the Implementation Process

In examining the implementation of telephone conferencing, certain key factors clearly emerged as affecting the success of the introduction of the change into civil and criminal proceedings in both project states: the judicial role, the administrative structure, and the involvement of key participants as change agents.[1] These factors affect not only the decision-making and initiation processes of implementation but also the profile which the new procedure ultimately takes and usage patterns.

Judicial role. Judges are the formal authority in the courtroom. Although actual power may be shared with other participants (e.g., prosecutor and plaintiffs and defense attorneys), the judge is acknowledged to be in charge of the working environment as well as the disposition of legal matters. In turn, the courtroom judge plays a critical role in the implementation of a new procedure in the courtroom. By comment or action, the judge communicates the degree of acceptability (or unacceptability) of a new procedure and thereby sets the tone for actual usage.

The impact of the judicial role was in evidence in New Jersey and Colorado, in both the civil and criminal projects. For example, some of the judges interviewed during the exploratory

[1] The appearance of these factors and their impact on the implementation process are consistent with the experiences of others. See, for example, Rogers and Shoemaker (1981).

study objected to conducting a hearing in which one attorney appeared in chambers and the other attorney argued by telephone, a situation which is referred to as a split hearing. When these instances arose, some of the objecting judges would require the attorney in the courthouse to use a telephone in another part of the courthouse and "appear" by telephone, or would postpone the hearing altogether. Therefore, the number of reported split hearings was very low. In contrast, none of the judges in the Colorado and New Jersey test sites was opposed to the arrangement, and the occurrence of split hearings was considerably higher than expected. Utilization of telephone hearings was also higher when the bar was aware of the judge's favorable predisposition toward the procedure. One civil judge in Colorado frequently expressed satisfaction with telephone conferenced hearings to those gathered in open court for oral argument. He openly encouraged attorneys to use the procedure not only by his comments but also by his actions: telephone hearings were given priority scheduling in the first calendar slots; attorneys coming to the courtroom for in-court hearings had to wait for the completion of the telephone hearings. The result was greater willingness on the part of attorneys to request the procedure and therefore higher usage.

Another aspect of the judicial role which affects the implementation process is the judge's perspective--expectations "about the functions which are meant to be fulfilled by the occupant of this position" (Boyum, 1979). The judge's perspective towards his or her role affects which activities or procedures are emphasized and which are de-emphasized. In this way, the individual judge's orientation toward judicial duties will affect the introduction of planned change into the courtroom. Moreover, the work habits of the support staff are frequently tailored to suit the expectations of the judge. In turn, their acceptance and application of a new procedure will be in terms of their work perspectives, which are usually in tandem with that of their boss (Boyum, 1979). For example, one civil judge in New Jersey was particularly adept at moving cases along and prodding the attorneys toward settlement. Satisfied with the application of the procedure for motion hearings, the judge saw the potential of telephone conferencing as a case management tool and immediately expanded his use of telephone conferencing to status conferences, pretrial hearings, and settlement conferences. He also made it known to the attorneys appearing in his court that, if problems arose in a matter which might delay the case, he was available to the attorneys by telephone at all times to resolve these minor disputes. In turn, his law clerk was aware of his efforts to manage and move cases toward disposition, and the clerk began handling motion papers on a daily rather than weekly basis--a move which allowed the judge to dispose of hearings by telephone more expeditiously.

In contrast, judges in Alamosa viewed the procedure as benefiting only those attorneys located great distances from the courthouse. They and their staffs generally suggested the

procedure only for those matters involving long-distance calls, thereby limiting its utilization.

Administrative structure. The administrative structure within court settings is the mechanism through which change is communicated. The field tests in Colorado and New Jersey indicated that certain administrative structures serve as better communication networks, and therefore facilitate courtwide attempts at implementation.

In New Jersey, trial courts are divided administratively into jurisdictions or vicinages. The Chief Justice, the head of the state's judicial system, appoints an assignment (or presiding) judge to oversee each vicinage and serve as liaison with other vicinages and with the state court's administrative body. The position of assignment judge is accepted as a position of authority by the state's trial court judges, who have come to expect certain activities from that office, including the initiation of procedural changes.

Colorado's trial courts are also headed by presiding judges appointed by the Chief Justice, but the position does not seem to carry as much authority as it does in New Jersey. Judges maintain a considerable amount of independence in Colorado, particularly in terms of courtroom procedures. Therefore, the presiding judges perceive their roles as suggestors or communicators, not initiators.

The impact of the different administrative structures was most apparent during the initial meetings when decisions were made regarding which judges would participate, what matters would be handled by telephone, and which procedures would be used. For example, in the civil project in New Jersey, the presiding judge decided these matters with limited consultation with the other judges. These same decisions involved all the participating judges in each of the three civil sites in Colorado, thereby prolonging the implementation process. Despite the longer time period, the project was no stronger in Colorado than in New Jersey where the process proceeded at a much quicker pace.

Change agents. The third factor which affected the implementation process was the involvement of the change agents--those who oversee the initiation of a change, introduce the new procedure, and monitor its performance. In implementing telephone hearings, three groups of change agents emerged: the presiding judge in a test site, the line judges charged with employing the new procedures, and local and state bar leaders. The perspectives and experiences of these individuals and their relationships with each other affected not only their views toward the new procedure but also their actions as individuals charged with the task of implementing change.

Although the state administrative office of the courts in both Colorado and New Jersey are among the most highly regarded in the country, their involvement in the telephone conferencing

project was primarily to assist in the selection of test sites and to introduce the Institute for Court Management and Action Commission project staff to the local judges. In both states, the administrative office tended not to be involved in daily monitoring of the new procedure, but left that in the hands of the local judges and court staff.

Finally, the ICM and ABA Action Commission telephone conferencing proj ct staff played a role in encouraging state and local officials to consider the innovation. Plans were prepared by project staff on how key implementation activities were to be accomplished. Moreover, the staff were available to offer technical assistance in resolving equipment or procedural problems. However, despite the presence of the project staff, the responsibilities for implementing the new procedure rested with the state and local officials. Thus, the discussion below highlights the project staff's observations about the state and local official activities from the perspective of participants in the implementation process.

Presiding judges. The presiding judges in all of the project sites in both states were involved in the implementation phase from the start. In their capacity as judicial administrators, it was anticipated that they would play a leading role in the undertaking. However, the degree of the involvement of the individual judges in the telephone conferencing implementation varied, as did their impact on the process.

In Colorado the project was initially viewed as an idea associated with the Institute for Court Management and the American Bar Association rather than a state or local undertaking, and the personal interest which attends a home-grown idea developed only as telephone conferencing became more of a standard operating procedure. This contrasted with the experience in New Jersey, where the presiding judge took a more active role in the telephone conferencing implementation from the start. His interest in telephone conferencing, grounded in part in his own experiences with the procedure and its potential if used regularly, had led him to decide to introduce a more systematic application of telephone hearings before the project staff contacted him. It was not surprising, then, that he was involved directly or indirectly in meetings at every stage of the process, and was considered by state, local, and project staff people to be the individual in charge of implementation.

Line judges. The line judges--those charged with notifying individual attorneys of telephone hearings, overseeing the courtroom staff's adoption of the procedure and employing it--were obviously critical to the implementation process. For this group, previous experience with the procedure affected their approach to implementation and utilization patterns. The judges in New Jersey were familiar with telephone conferencing. For them, implementation did not have to include detailed training, because the change was to increased usage rather than introduction of a new procedure. The experiences also simplified the formulation

of procedures and notification of attorneys. The judges in Colorado generally had not been exposed to telephone conferencing. Their uncertainty about telephone conferencing and how it would work made implementation a more time-consuming process, requiring more effort from each of the participating judges and staffs.

State and local bar leaders. Finally, the leadership of the local bars in the project sites was also involved. Many of the project judges met with key bar members to solicit their advice and support for the undertaking as well as their assistance in notifying the bar. In addition to these positive contributions, the involvement of bar officials reduced the potential of active bar opposition to the telephone hearing procedures. Implementation proceeded more smoothly in locations where the bar was fully informed and participating in the implementation than in those in which the bar was not involved.

Implementation Activities

The process of implementing telephone hearings in the selected project sites evolved into three clusters of activities: (1) a determination of matters appropriate for telephone conferencing; (2) the formulation of procedures for conducting the telephone hearings; and (3) the notification of the members of the bar. This section discusses the decision-making process involved in these implementation activities as well as the final decision outcomes for both civil and criminal projects in Colorado and New Jersey.

Before discussing these three activities in detail, two general observations may highlight their significance. First, the issue of identifying the matters appropriate for telephone conferencing arose because the courts had decided to offer the new procedure on a regular basis in all courtrooms. If the decision had been to use telephone conferencing only upon request, there would have been less need to define the set of matters that would be likely candidates for telephone hearings.

Second, the sequence in which civil and criminal telephone hearings were introduced was important. In both states, civil telephone conferencing preceded its application in criminal cases. Because the judges and lawyers had some civil experience, the decision-making process went more smoothly in the criminal courts.

Civil and criminal matters appropriate for telephone hearings. The determination of which civil matters were suitable for conduct by telephone conference in New Jersey began at the state level. The first meetings in New Jersey were organized by officials from the state's Administrative Office of the Courts (AOC). Their goal was to revise motion practice throughout the state to reduce the number of matters disposed of by oral argument in open court, a practice which regularly required considerable judicial resources. Telephone conferencing was one way to accomplish this

goal. The project was supported by the state's judicial hierarchy as a means to an end; therefore, not only were there no official restrictions on the types of matters which could be handled by telephone. In fact, there was an official encouragement to handle as many matters as possible by the new procedure.

The next round of meetings was held to determine which matters were to be handled by telephone conference and to develop the procedures for the judges to use in conducting the telephone hearings. By design of the vicinage's presiding judge, the decision-making group was limited to himself, the trial court administrator, and a representative of the AOC. This arrangement, made possible by the presiding judge's administrative authority and firsthand experience with the procedure, obviously streamlined the decision-making process. Over the course of two meetings, a plan was formulated which addressed the identification of matters appropriate for telephone conferencing and the procedures to be used. Under the new system, motions and other pretrial civil matters could be disposed of in one of three ways: by decision on the papers, by telephone hearing, or by argument in court. Rather than specifically identifying those matters suitable for telephone hearings, the presiding judge chose to permit each individual judge to determine the basis for each motion decision (i.e., a decision rendered on the papers, on the telephone argument, or on the in-court argument), with the following guidelines: handle as many matters on the papers as possible, but where oral argument is necessary, a telephone hearing is the presumed mode. Three exceptions to the telephone hearing option were: oral arguments involving multiple parties, litigants not represented by counsel, and testimony to be conducted in court; the first and second to avoid confusion, and the third to permit judges to assess witnesses' demeanor.

Because the decision-making team was limited in size, these decisions had to be communicated to the judges within the project site. The presiding judge handled this task personally in two stages: first informally, by mentioning the upcoming project to individual judges during the course of other conversations; then formally, by presentation to the combined bench at a vicinage judicial meeting.[2] This approach allowed the presiding judge to handle questions and dispel any fears on an individual basis, thereby securing the involvement of the judges prior to the official notification and implementation of the procedure.

The identification of appropriate matters for telephone hearings proceeded quite differently in the civil project in

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[2] The decision not to reduce to writing the guidelines for appropriate matters and procedures was due possibly to the fact that the judges were somewhat familiar with telephone conferencing, having used it to handle weekend juvenile and other emergent matters, as well as civil motions during the gasoline shortage of 1979.

Colorado. First, telephone conferencing was introduced into separate jurisdictions in Colorado. In essence, this translated into three separate implementations of the new procedure. Second, the Colorado State Court Administrator's Office (SCAO) played an active role in the implementation process at least initially, but shared the responsibility with the Colorado Judicial Planning Council. When the staff member in the SCAO, who was also the chief staff person for the JPC, resigned her position, her replacement did not play as active a role. Finally, the participating judges in each of the Colorado project jurisdictions were all involved in the decision-making process. Therefore, it usually took several meetings in each site over a period of several weeks to reach a consensus because of the dynamics of group decision making as well as logistical considerations (i.e., arranging meetings at times convenient for the various participants).

In Denver, a series of meetings was held among the judges over a three-month period before agreement was reached. Although Alamosa is a two-judge court, the preliminary planning was handled by the chief judge, who made the decisions relatively quickly.

The Boulder judges proceeded differently from those in other Colorado sites. Although they were able to agree rather quickly that telephone conferencing was appropriate for virtually all types of matters, they were more hesitant about the circumstances under which the procedure should be used. Because they viewed the procedure as a time-saving device benefiting attorneys, they finally decided to restrict its use generally to hearings involving out-of-town counsel. This restriction obviously limited the degree of utilization of telephone conferencing in the Boulder courtrooms.

The decision-making process was equally important in the implementation schemes in the criminal project sites, but its content varied significantly from the civil decision-making process. Consensus as to suitable matters and procedures in the New Jersey and Colorado civil sites involved only judges. In contrast, in the criminal court setting the decision-making group was expanded in each project site to include the other major participants in the criminal courtroom workgroup: the prosecutor and the public defender.

The criminal project in New Jersey initially involved only one judge handling all criminal court activity in one county--Cumberland. Although his involvement was due in part to the encouragement of the presiding judge, neither the presiding judge nor the Administrative Office of the Courts offered any guidelines as to appropriate matters or procedures for telephone hearings. The criminal judge met immediately with the county prosecutor and two assistant prosecutors to identify specific matters and procedures. This meeting resulted in the identification of six specific criminal court matters as appropriate for telephone hearings: motions for additional discovery, motions to extend the time for discovery, motions to review rejections into the pretrial intervention program, motions to expunge a prior

criminal conviction, applications for bail reduction, and appeals from the lower court. The telephone hearing option would also be available for certain emergency matters which did not fall into these categories (e.g., a doctor's testimony on the need to move an individual from a holding institution to a hospital). Because these matters would generally involve private counsel, the judge decided not to meet with the attorneys in the public defender's office. Representatives of the private defense bar were also not consulted at this point in the planning because the judge anticipated cooperation from this group, the main beneficiary of the new procedures.

Several months later, the two criminal judges handling pretrial criminal matters in Atlantic County followed a similar decision-making process but with far different results. The judges and prosecutor met to determine what matters could be handled by telephone conference and decided that the procedure would be appropriate for any criminal matter not requiring testimony.

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

The Boulder judge participating in the criminal project was willing to handle several types of business by telephone. He met first with the district attorney to specify the matters, then with the district attorney and the public defender to make the list final and to discuss procedures. The list developed at the first meeting--arraignments, requests for preliminary hearings, bond hearings, and certain motions--posed no problems to the public defender in theory, but telephone conferencing was questioned on other grounds. Although the public defender's office handled a significant volume of the matters designated appropriate for telephone hearings, the daily in-court obligations of the individual defenders suggested that the occasions in which they could participate in a telephone hearing to avoid travel to the courthouse would be limited.

Six criminal judges, including the presiding judge of the Criminal Division, participated in the project in Denver. Meetings were held first among the judges, then included representatives of the district attorney's and public defender's offices. Although several of the participants expressed reservations about the procedure, all were willing to try it. The first meeting resulted in a list of matters which were deemed suitable for telephone conference: arraignments, certain motions, hearings

for the appointment of counsel, and requests for forthwith hearings.

Procedures for conducting hearings. The second major activity in the implementation of telephone conferencing was the design of appropriate procedures for conducting the telephone hearings (i.e., guidelines regarding the scheduling, initiation, protocal, and recording). In both the civil and criminal projects in both states, decisions regarding the procedures were made at the meetings held to identify suitable matters. The decision-making groups and processes, therefore, were very similar for both activities.

The presiding judge in New Jersey again played a leading role in the determination of procedural policy in the civil project, and the outcome resembled the result achieved earlier in identifying prospective telephone matters. Just as specific matters were not itemized, procedures were not detailed. The presiding judge once again chose to leave the particulars to the individual judges, with three broad guidelines:

- Hearings should be conducted during judicial "downtimes" (i.e., before and after times generally spent on the bench).
- The court could absorb the long distance charges of calls to out-of-town attorneys by using the state WATS line.
- The decision regarding hearing mode would rest with the judge, with telephone hearings accorded presumptive status over in-court hearings.

Surprisingly, similar procedures were developed by the eleven New Jersey judges participating in the project. Though they initially tried to adhere to the schedule suggested by the presiding judge (that is, 8:30-9:00 a.m. and 4:00-4:30 p.m.), most judges quickly abondoned that guideline as too restrictive, preferring to schedule hearings at other times which were mutually convenient for the attorneys and themselves.

As in civil matters, the presiding judge chose not to become involved in the procedural decisions in the criminal area. The criminal court judges, once they had agreed to participate, were left with the decisions of what to handle by telephone and how. As discussed above, the judges met with members of the prosecutor's office to arrive at a consensus. Resolutions of the procedural decisions in both criminal court locations were achieved at the same meetings which designated the appropriate matters. Even in the criminal settings, the preliminary decisions established general guidelines which served as the framework for the development of step-by-step procedures. It was decided that telephone conferences would be available only for those matters falling into the categories identified as appropriate. Having passed that initial hurdle, a matter would be scheduled for a telephone hearing only with the consent of the prosecutor and

defense counsel. Defense counsel would be instructed to have the defendant present at the respective law office so that he/she might participate, if necessary, in the proceedings.[3] The final ground rule established at the initial meeting was that the court reporter would record all argument, with the record reflecting the presence of the defendant.

In Colorado, it was considered for several reasons to be in everyone's interest to develop formal procedures which were reasonably consistent within and among the three civil sites and the three criminal sites. First, with no previous telephone conferencing experience, the judges were reluctant to strike out on their own without procedural guidelines. Second, because many members of the bar practiced before several judges in both Boulder and Denver, there was concern that attorneys would be confused if three or four different procedures were employed. Finally, guidelines were one way to insure protection of a criminal defendant's constitutional rights.

As in New Jersey, the procedures were discussed in conjunction with the appropriate matters by the same groups of individuals mentioned in the preceding section. Because the decision-making process was a group activity in Colorado, additional meetings were sometimes required to decided on the procedures once the appropriate matters were determined.

Some of the civil procedures were similar across the jurisdictions. For example, telephone hearings were to be set in the same manner as in-court hearings in a particular courtroom. Because telephone conferencing was introduced into different jurisdictions, however, some civil procedures did vary from court to court, even from judge to judge. For example, there was a difference in the times when telephone hearings would be conducted. Two civil judges in Denver District Court scheduled telephone hearings as the first business of the day. The clerks would usually set hearings in fifteen-minute intervals, depending upon the nature of the matter. At the completion of the telephone hearings, the judges would then proceed with the in-person hearings scheduled for the day. Six months into the project, however, a different judge was assigned to one of these courtrooms. Although the new judge scheduled telephone hearings in the early morning, his policy was to hear some in-court matters prior to the telephone hearings. Consequently, the judge would have to leave the bench to conduct a telephone hearing in chambers. In addition to the inconvenience this posed for the judge, a scheduled telephone heaing would sometimes be delayed when an in-court hearing extended beyond its anticipated time limit.

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[3] The fact that several defense attorneys in the area appear to have speakerphones allows defendants to hear the proceedings while sitting in the attorney's office.

For the most part, the procedures developed by the criminal judges were similar to the procedures adopted by all three courts in the civil project. For example, telephone hearings were to be set in the same manner as in-person hearings. Like the civil procedures, a twenty-four hour notice to the court generally had to be given by a party wishing to appear in person. Finally, as in the civil project, the court would place the calls to the attorneys, except for Alamosa where attorneys were generally required to initiate the conference call.

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

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

Notification of the bar. Prior to implementation, state bar officials in Colorado and New Jersey were contacted[4] to discuss the planned introduction of telephone conferencing. In both states, the bar representatives were supportive of the project. Because of the potential benefits of reduced travel and scheduling flexibility for attorneys, they anticipated active support from the general bar as well. Once the appropriate matters were identified and the procedures were designed, it remained for the local bar members to be notified of telephone conferencing.

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[4] The Colorado officials included the Chair of the Judicial Planning Council, the Chair of the Litigation Section of the Colorado Bar Association, and the Planning Director for the State Court Administrator's Office. Meetings in New Jersey were held with the Executive Director, President, and Chair of the Civil Trial Bar Section of the New Jersey Bar Association.

In Colorado, the civil judges in each of the pilot courts chose different approaches to informing the bar of the availability of telephone conferencing and in eliciting support for the project. In Alamosa, there is a close and informal relationship between the bench and small local bar. The presiding judge encouraged the project with bar members, arranging for a presentation to be made at a local bar meeting. Members of the project staff attended the meeting and informed attorneys of the new procedure soon to be available in the District courthouses in Alamosa and Del Norte. Copies of the notice and guidelines prepared by the judge were distributed at the meeting and attorneys were encouraged to comment. This information was also mailed by the court to the individual bar members.

Although a similar relationship exists between the judges and attorneys in Boulder, the civil judges chose not to involve the bar in the initial planning stages. The project staff offered to make a presentation of telephone hearings at a bar meeting, but this was declined by the judges. In addition, the judges thought that it would not be necessary to inform attorneys of the telephone conferencing procedure by way of a special notice, and initially wanted only to add the procedure as an option to an already existing form. (A form letter is mailed out to the parties notifying them of how the court wishes to handle the matter, that is, by oral argument or solely on the basis of the supporting papers.) Eventually, however, a special notice informing attorneys of the availability of the new procedure was prepared by the judges and distributed to Boulder bar members.

In Denver, early reactions of the civil judges regarding the extent of bar involvement were similar to those of the Boulder judges. The project staff suggested that telephone conferencing be put on the agenda for a Denver Bar Association meeting, but the idea was given a lukewarm reception by the judges. Initially, the judges decided that notices would be available for distribution in the three civil pilot courtrooms only. The Court Clerk's office later assumed responsibility for enclosing a copy of the notice to attorneys when their[5] cases were assigned to any of the three experimental courtrooms.

In New Jersey, the Atlantic Vicinage presiding judge believed that the organized bar needed to be involved, but he preferred to work at the local level rather than through the state body. To that end, he discussed the project with the "Committee of Four Southern Bar Associations" a group composed of the four

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[5] Two articles describing the project were published in the Denver Docket, a publication of the Denver Bar Association (see, "Court to Hear Motions by Phone," December 1980, Vol. 4, No. 9, and "Denver Court Innovations Start March 1st," March 1981, Vol. 4, No. 12). Overall publicity on the project was accomplished through a number of articles in local newspapers in all three site areas.

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presidents-elect of the vicinages' county bar associations which was then chaired by the presiding judge's former law partner. The judge did not make direct presentations to the attorneys, preferring to leave that task to the county bar leaders. He did, however, author a memorandum to all members of the bar in the Atlantic Vicinage outlining the project and the procedures which was posted in each county courthouse.

Publications were also used to notify the bar of the new procedure. Short pieces appeared in daily newspapers throughout the state, and a more detailed article on the project was published in the monthly publication of the New Jersey Bar Association, The New Jersey Law Journal, in which comments were solicited from the statewide bar readership.[6]

Individual judges throughout the four counties also contacted members of the local county bar groups. For example, the judge handling matrimonial matters in Atlantic County met with the relatively discrete matrimonial bar and discussed several procedural options before deciding which procedure to employ.[7] Another judge discussed the new procedure at the monthly meeting of the Cumberland County Bar Association, while another invited the Salem County Bar Association President to meet with the project staff during their first visit to the county. Attorneys located outside of the four counties who conducted court business in the Atlantic Vicinage were generally informed of the new procedure by law clerks and/or secretaries at the time hearings were scheduled.

Because the key criminal legal practitioners--district attorneys and public defenders--were involved in the planning stages, notification of the bar of the criminal program was not elaborate. The exception was in Cumberland County, New Jersey. Vicinage attorneys were notified of the criminal telephone conferencing program by a presentation by the criminal court judge at the Cumberland County Bar Association meeting, and through articles in the Cumberland Bar Bulletin, The Docket (Atlantic County Bar Association), and The New Jersey Law Journal, each of which listed the matters deemed appropriate for telephone hearings and set forth the procedures. An article in an Atlantic City newspaper on the first criminal telephone hearings[8] served to inform attorneys in the surrounding counties of the pilot project.

[6] See "Supreme Court to Revamp Motion Practice," New Jersey Law Journal, February 5, 1981, p. 1.

[7] The matrimonial judge asked the members of the bar active in matrimonial matters whether they wanted the decision determining the hearing mode (i.e., in court or telephone) to rest with him or the attorneys. Perhaps, surprisingly, the majority preferred to leave that decision with the judge.

[8] The Atlantic City Press, October 30, 1981, p. 17.

Conclusion

Although many judges across the country employ telephone conferencing for a variety of matters, the potential savings are greatest when the applications are frequent, regular, and widespread. The Colorado and New Jersey field tests demonstrate that telephone conferencing requires careful attention to how the new procedure is introduced. Despite its simplicity, the innovation is not automatically integrated into existing procedures and practices. The implementation process, so critical to the success of the innovation, varied among jurisdictions, reflecting the needs and interests of those affected by the change.

Although this chapter has drawn attention to the differences in the implementation plans, there were some elements common to all undertakings. Other jurisdictions interested in conducting telephone hearings may benefit by incorporating them into their own efforts. First, the introduction of telephone conferencing on a courtwide basis requires that the judges and court staff address and resolve three fundamental questions: what matters are appropriate for telephone conferencing, what will the procedures be, and how will the bar be notified of the change. Whether the answers are detailed or general, formalized or suggested, the court must be willing to take control of the process. Second, specific telephone hearing procedures (e.g., who places the call, when the call is scheduled, how attorneys are notified) should be decided by the individual judges. This allows the judges to adapt telephone conferencing to their individual routines and maximize the flexibility afforded by the use of telephone conferencing. Finally, the availability of the telephone conferencing tool allows judges and court staffs to rethink procedures and alter routines to their benefit, and that of the bar, civil litigants, and criminal defendants.

CHAPTER VII

CONCLUSIONS AND RECOMMENDATIONS

The objective of this project was to gain more valid information on telephone conferencing's effects on the time, cost, and quality of court proceedings. Field tests in civil and criminal courts in Colorado (Alamosa, Boulder, and Denver Districts) and New Jersey (Atlantic, Cumberland, Cape May, and Salem Counties) were designed to gauge attorneys' and judges' reactions when the innovation was introduced on a regular basis. Additionally, we hoped to gain a clearer sense of the process required to implement the new procedure and to estimate the administrative benefits and burdens associated with using telephone conferencing in lieu of in-court proceedings.

Basically, the results suggest that telephone conferencing is both feasible and desirable in civil and criminal cases. The key findings are as follows:

(1) A high proportion of the attorneys who participated in telephone hearings were satisfied with the procedure. Evidence indicates that attorneys were as satisfied with telephone hearings as they were with in-court hearings.

(2) Attorneys were satisfied with telephone hearings because they believed that telephone conferences did not impair their ability to represent their clients in three critical dimensions including (a) their ability to answer the judge's questions, (b) their ability to make an effective oral argument, and (c) the judge's understanding of the issues.

(3) Attorney satisfaction with telephone conferencing was higher in criminal cases than in civil cases. However, this finding may have reflected more selective applications in criminal cases.

(4) Most attorneys believed that there were advantages to criminal defendants with the use of telephone conferencing, but some also saw disadvantages, especially to defendants in custody.

(5) Telephone conferencing was applied in all of the test sites with various types of civil motions--substantive, procedural, and discovery-related, including multi-party and multiple motion hearings.

(6) Applications in criminal cases were more court

specific. For example, municipal court appeals were handled routinely by telephone in New Jersey. In Alamosa, a very large geographic jurisdiction, the travel requirements provided incentives for the public defender and district attorney to handle arraignments and motions by telephone. In Denver District Court, the Court handled a variety of matters arising spontaneously, such as motions and questions from a jury, as well as scheduled matters including evidentiary hearings.

(7) The time savings for attorneys varied across courts but the waiting time saved added appreciably to the total savings in all settings. The reported cost savings to civil litigants and criminal defendants averaged over $130 per hearing.

(8) Judges viewed the procedure as providing the court with enhanced scheduling flexibility and some time savings. They saw telephone conferencing as neither impairing nor improving the quality of the hearings. They did not see the innovation as a threat to the interests of criminal defendants.

(9) Judges were the critical actors in implementing the new procedure. Although they sought input from the bar, they were responsible for determining the set of matters to be handled by telephone and the telephone hearings procedures.

(10) The administrative requirements for arranging, scheduling, and conducting telephone hearings were satisfied without imposing an undue burden on court staff. However, the success of the innovation depended to a great extent on the willingness of the staff to shift responsibilities because telephone hearings required a somewhat different division of labor than in-court hearings.

The success of telephone conferencing is also measured by the institutionalization of the procedure and its adoption by other courts. In Colorado, telephone conferencing is now used, to some extent, in 19 of the state's 22 judicial districts. Many of these jurisdictions began using telephone conferencing in response to the preliminary results from the test sites. In New Jersey, other vicinages have also adopted telephone conferencing and the New Jersey Supreme Court has established a statewide court rule allowing the procedure. Additionally, ICM and the ABA Action Commission have provided technical assistance to over fifty jurisdictions outside of Colorado and New Jersey which wanted information on initiating telephone conferencing programs.

On the basis of these and related findings, there are three basic recommendations for action and research. First, trial courts of general jurisdiction should be encouraged to use tele-

phone conferencing in civil cases. All types of motions--substantive, procedural, and discovery-related--appear to be amenable to telephone conferencing. Although the court may prefer to use telephone conferencing on an occasional basis where there is a definite opportunity to save time and money, maximum savings will be gained when the procedure is used presumptively.

Second, trial courts of general jurisdiction should be encouraged to experiment with telephone hearings in criminal cases. The set of matters to be handled cannot be prescribed a priori but need to be tailored to the characteristics of individual jurisdictions.

The means by which these first two recommendations are carried out should involve a coordinated plan developed by the institution with statewide court administrative responsibilities. In many states, this means the state administrative office of the courts. We suggest that the state court administrator formulate a bench-bar committee of presiding trial judges as well as a practicing committee to work out guidelines for introducing the innovation. Although specific plans will be best designed at the local level, the statewide committee will serve as a key stimulus for change, help to ensure the desired level of uniformity, and communicate the results of telephone conferencing to state legislators, citizens, and the media.

Third, there is a need to consider the role of telephone conferencing in appellate courts. Pre-argument conferences, motions, and oral arguments are possible candidates for telephone hearings. Research is needed to determine the advantages and disadvantages in this context especially in light of the potential savings in attorney time.

Fourth, the fact that the simple technology of telephone conferencing can save money for litigants and criminal defendants without sacrificing their rights or impairing the quality of the hearings suggests the need for more systematic analysis of more complex technologies such as closed-circuit television, videotaped testimony in trials, and video-conferencing. Future work in these areas should be able to build upon aspects of the research on telephone conferencing. Issues of participant satisfaction, cost savings, and implementation guidelines can be formulated by drawing upon the experiences of the telephone conferencing projects.

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APPENDIX B

EFFECTS OF TELEPHONE CONFERENCING ON THE HANDLING OF COURT BUSINESS

The introduction of telephone hearings in Denver District Court provided the opportunity to address what effects, if any, the use of telephone conferencing has on the way courts conduct their business. Because the Denver field test involved the use of telephone conferencing on a regular basis, it was possible to study its consequences on the kinds of matters brought before the court, how the court conducts hearings on these matters, and the outcomes of the hearings.

A concern that some observers have about telephone conferencing is that it may produce certain undesirable consequences. Because this innovation may make it easier to handle certain matters, it is argued, telephone conferencing may contribute to the filing of frivolous motions and thereby place greater demands for hearings. Moreover, a shift in the outcomes of court hearings, such as more frequent denials of certain motions, is possible because some matters may be more difficult to understand by telephone.

In determining the effects telephone conferencing may have on the way courts handle business, we focused on civil pretrial motions. The reason for selecting civil motions is that they constitute a higher proportion of matters handled in telephone hearings than other civil matters such as settlement conferences, applications for temporary restraining orders, or criminal matters. If telephone conferencing affects the volume and outcomes of court proceedings, then these effects should be most observable for those matters most frequently subject to telephone conferencing.

An assessment of the effects that telephone hearings have on the procedures for handling civil motions and civil motion practice requires a working knowledge of civil motions and how courts handle them. A review of the literature, however, revealed that there was little information available on motion practice and that the information that did exist focused primarily on the strategic uses of specific kinds of motions (e.g., Faruki, 1980; McCarthy and Cronin, 1980). Additionally, as we discovered in the exploratory research, courts generally do not maintain records on motions such as the number filed, the number decided on the papers, and the number set for oral argument. Therefore, to answer our questions on telephone conferencing's effects on motion practice, we pulled together information on the nature and handling of motions in the individual pilot courts prior to the introduction of telephone hearings.

Rules Governing the Filing of Civil Motions. State and local court rules govern the way civil motions are handled. For example, rules will generally dictate whether supporting papers

must be filed with a motion, when motions are heard, and on whose request they will be set.

In the Atlantic Vicinage, prior to the telephone conferencing project, motions were heard on a set motions day--each Friday in the Chancery Division and every other Friday in the Law Division. Supporting papers were required with each motion and any response thereto. All contested, as well as a variety of uncontested motions, were heard in open court on the appropriate motions day. In February, 1981, at the time when telephone conferencing was introduced, the Court began actively invoking New Jersey Civil Rule 1:6-2 which allows a judge to decide motions on the basis of the supporting papers alone. Judges were encouraged to apply this rule, the effect of which has been to reduce the proportion of motions argued orally. It was presumed at the time that motions requiring oral argument would be resolved by a telephone conference.

In Colorado, because the project operated in three district courts which are separate administrative units, the practices and procedures governing motions varied from district to district. For example, there was a difference in when motions were handled: in Alamosa and Boulder, certain days were designated each month for the hearing of motions; in Denver, judges generally set aside time each day throughout the week to hear motions. When telephone conferencing was introduced in Colorado, the pilot courts continued to calendar motions in the same manner as before the project.

Additionally, each Colorado district has its own rules governing which motions require the filing of supporting memoranda and what happens after a motion is filed. For those motions requiring supporting briefs, the judge may deny the motion on the basis of the supporting briefs, ask that a brief in opposition be filed by the opposing party, or set the matter for oral argument. If an opposition brief is filed, the judge may then enter an order either granting or denying the motion on the basis of the memorandum briefs or set the motion for oral argument. In all three Colorado courts, these particular rules did not change. That is, lawyers were still required to submit briefs along with certain motions; and the judges continued to use their own discretion in handling these, as well as other kinds of motions.

Judicial Practices in Handling Civil Motions. There are as many ways to handle motions as there are judges. This is especially evident in Colorado where judicial preferences vary across the jurisdictions and even among judges in the same court.[1]

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[1] In contrast, there is much more consistency in handling motions among the New Jersey judges who, prior to telephone hearings, all heard oral argument on most motions and, following the introduction of telephone hearings, because of invoking Rule 1:6-2, decided most motions on the papers alone.

For example, even though the filing of supporting papers permits a judge to dispose of these types of matters without oral argument, judges vary in the method they choose to resolve these motions. Some judges will decide almost all on the basis of the papers alone; others prefer to hear oral argument from counsel.

When motions do not require the submission of supporting papers, judges in Denver and Alamosa will generally grant oral argument upon the request of the moving party. In contrast, the Boulder judges use much of their own discretion in deciding what matters will be argued orally. Two of the Boulder judges decide almost all of these motions without oral argument; the third judge, who attributed his practices to his newness on the bench, sets most of these types of motions for oral argument.

Motion Activity Prior to the Introduction of Telephone Hearings. To determine the effects that telephone hearings have on the resolution of civil motions, baseline data were collected in Denver District Court prior to the implementation of the telephone conferencing projects.[2]

Information sought from the baseline study was an overall sense of the kinds of motions filed. Motions were divided into three separate categories--substantive, procedural, and discovery-related.[3] Table B-1 reflects the frequencies of the different types of motions filed. As we expected, many more procedural motions were filed (almost twice as many as substantive), while discovery motions were relatively limited. A further breakdown of the data indicates that the types of motions filed varied somewhat by judge. As Table B-2 shows, however,

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[2] Data were collected on a total of 1701 motions during six months in 1980 for three selected judges. (These judges were chosen because they would be the same three judges who would be participating in the field tests of telephone hearings in Denver District Court). The collection process involved a systematic selection of motions resolved in every other month throughout the year; included are data from the months of February, April, June, August, October and December. The judges selected for the baseline study include Judges Susan Barnes, John Brooks, Jr., and Robert Fullerton. Two of these judges, however, were replaced midway into the telephone conferencing project.

[3] These categories were developed along the lines of the categories used in Connolly and Lombard, 1980. The frequencies of the types of motions found in our research are similar to the frequencies found in their study.

Table B-1

Frequencies of Types of Civil Motions Decided in Selected Courtrooms Prior to the Introduction of Telephone Hearings in Denver District Court*

	Number	Percentage
Substantive (for summary judgment, for judgment, to dismiss, to strike, for preliminary injunction/temporary restraining order)	535	31.5
Procedural (to continue, for extension of time, to amend, for default/default judgment, to consolidate, to join parties, to intervene, to sever, for stay, for change of venue, to vacate, to withdraw as counsel, to quash, for substituted service, miscellaneous)	982	57.7
Discovery-Related (to protect, to compel, for sanctions, to take deposition, for more definite statement, etc.)	184	10.8
Totals:	1,701	100.0

* Baseline motion data were compiled from the courtroom minute orders of three Denver District courtrooms in the civil division. Data were collected during a total of six months in 1980. The courtrooms selected for the baseline study were the courtrooms of the three judges who had volunteered to participate in the telephone conferencing field experiment in Denver District Court.

Table B-2

Relationship Between Types of Civil Motions Decided and Judge in Selected Courtrooms Prior to the Introduction of Telephone Hearings in Denver District Court

Motion Type	Judge A		Judge B		Judge C	
	Number	Percent	Number	Percent	Number	Percent
Substantive	215	29.9	204	40.3	116	24.3
Procedural	408	56.9	256	50.6	318	66.7
Discovery-Related	95	13.2	46	9.1	43	9.0
TOTALS	718	100.0	506	100.0	477	100.0

N = 1,701

Chi Square of 38.7 significant at .001
Contingency Coefficient = .15

there is only a weak association between the types of motions and the different courtrooms.[4] This relationship faintly suggests that lawyers adjusted their motion practices depending on the judge hearing the case.

The baseline data reveal that almost two-thirds of all motions filed were decided on the basis of the supporting papers, without the aid of oral argument. Moreover, as Table B-3 points out, there are variations among the judges in the proportion of motions resolved on the papers or with oral argument although the differences in these proportions were not great.

Table B-3

Relationship Between Method of Resolving Civil Motions and Judge in Selected Courtrooms Prior to the Introduction of Telephone Hearings in Denver District Court

Method	Judge A		Judge B		Judge C	
	Number	Percent	Number	Percent	Number	Percent
Papers	472	65.7	339	67.0	274	57.4
Oral Argument	246	34.3	167	33.0	203	42.6
TOTALS	718	100.0	506	100.0	477	100.0

N = 1,701

Chi Square of 11.75 significant at .003
Contingency Coefficient = .08

The method used to resolve a motion also depended on the kind of motion. As Table B-4 indicates, there is an association between the type of motion--substantive, procedural, or discovery-related--and whether it was resolved with the aid of oral argument or strictly on the supporting papers. A majority of both substantive and procedural motions were resolved on the papers while discovery motions tended to go to oral argument for final resolution. Further analysis revealed that there was a slight variation among the three judges and the methods they chose to resolve the different types of motions, although these differences are not great.

4 The Chi-square test of significance is used to determine if there is a pattern to the data. Chi-square values significant at the .05 level or higher are considered to be evidence that there is some association between the factors under consideration. The strength of the association is measured by the use of the contingency coefficient which ranges in value from .0 to 1.0, with 1.0 indicating a strong relationship and .1 a very weak one.

Table B-4

Relationship Between Method of Resolving Civil Motions and Type of Motion In Selected Courtrooms Prior to the Introduction of Telephone Hearings in Denver District Court

Method	Motion Type: Substantive		Procedural		Discovery-Related	
	Number	Percent	Number	Percent	Number	Percent
Papers	359	67.1	680	69.2	46	25.0
Oral Argument	176	32.9	302	30.8	138	75.0
TOTALS	535	100.0	982	100.0	184	100.0
	N = 1,701					

Chi Square of 135.1 significant at .001
Contingency Coefficient = .27

According to the basline data, the vast majority of motions (eighty-two percent) were granted. Although there was slight variation in the proportion of motions granted by the individual judges, these differences are again weak--each of the judges granted more than seventy-five percent of the motions filed in their respective courtrooms.

The type of motion again, however, seemed to be a factor in whether or not a motion was granted. As indicated in Table B-5, a smaller proportion of substantive motions was granted than procedural or discovery motions. This finding holds true for the individual judges as well--that is, each judge granted a smaller proportion of substantive motions than procedural or discovery motions.

Table B-5

Relationship Between Disposition of Civil Motions and Type of Motion in Selected Courtrooms Prior to the Introduction of Telephone Hearings in Denver District Court

Method	Motion Type: Substantive		Procedural		Discovery-Related	
	Number	Percent	Number	Percent	Number	Percent
Granted	351	69.5	866	89.2	140	81.9
Denied	154	30.5	105	10.8	31	18.1
TOTALS*	505	100.0	971	100.0	171	100.0
	N = 1,647					

Chi Square of 88.7 significant at .001
Contingency Coefficient = .23

*Totals do not reflect fifty-four motions which either had not been decided or the nature of the disposition was not available at the time of data collection.

Finally, the method used to resolve a motion did not affect its outcome. That is, regardless of whether a motion was decided on the papers alone or with the aid of oral argument, roughly the same proportions were granted.

Motion Activity After the Introduction of Telephone Hearings. In determining the effects of telephone hearings on civil motion practice, comparisons were drawn between the above baseline findings on motions and motion data collected after telephone hearings were introduced in Denver District Court.[5] At the time of the Denver District Civil Court survey, only one of the "baseline" judges was still participating in the civil telephone conferencing project. Therefore, all comparisons before and after telephone hearings are based on data collected on this one judge.[6]

Data collected before and after the introduction of telephone hearings indicate that the procedure had minimal effect on civil motion practice along the dimensions of types of motions filed (substantive, procedural, discovery-related), method used to resolve motions (oral argument or on the basis of the papers alone), and the outcomes of motions (granted or denied).

In comparing the types of motions filed before and after the introduction of telephone hearings, virtually no differences surfaced. That is, roughly the same proportion of motions in each of the three categories was filed after the introduction of telephone hearings as was filed before the procedure was introduced.

The method of resolving motions changed slightly after telephone hearings were introduced. As indicated in Table B-6, the proportion of motions resolved by oral argument decreased somewhat; yet the relationship is only weakly associated. This finding, however, does run contrary to the belief that telephone conferencing might increase the demand for oral argument.

In comparing the method used to resolve different types of motions before and after telephone conferencing, a difference did emerge in the method used to resolve substantive motions--that

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5 Data collected after the introduction of telephone hearings were compiled by interviewers during April 1982 for the Denver District Civil Court survey and courtroom minutes for the same time period. The interviewers collected data on oral argument; court records provided data on motions decided on the papers alone.

6 Basing comparisons on data from a single courtroom does pose limitations on our conclusions. However, because the two remaining "baseline" judges had been replaced by two new judges when the post data were collected, a "pure" comparative analysis in these courtrooms could not be conducted.

is, a greater proportion of substantive motions went to oral argument after telephone hearings were introduced than before. However, again the weak association between the variables suggests that factors other than telephone hearings may be responsible for this difference. Additionally, this finding is partially countered by the fact that the judge granted a smaller proportion of oral argument on procedural motions after telephone hearings were adopted.

Table B-6

Relationship Between Method of Resolving Civil Motions in a Selected Courtroom Before and After the Introduction of Telephone Hearings in Denver District Court

Method	Before Telephone Hearings		After Telephone Hearings	
	Number	Percent	Number	Percent
Papers	274	57.4	90	64.7
Oral Argument	203	42.6	48	35.3
TOTALS	477	100.0	139	100.0

N = 615

Chi Square of 6.11 significant at .05
Contingency Coefficient = .10

Overall, telephone conferencing did not affect the outcomes of motions. As Table B-7 indicates, roughly the same percentage of motions was granted after telephone hearings as before the procedure was implemented. (This finding was corroborated by data collected in the Denver District Civil survey. That is, the outcomes of motions handled in telephone hearings were not significantly different from the outcomes of motions handled in court.) One exception to this was found in the outcomes of substantive motions. According to the data, the judge granted thirty percent more substantive motions after the introduction of telephone hearings than before. Although this finding is signficant, it may also be related to the fact that the judge heard twenty-five per cent more oral arguments on substantive motions after telephone hearings were introduced. The oral arguments in these cases, in addition to the briefs, could have prompted the judge to grant motions that he may otherwise have denied on the papers alone.

Conclusion

Examination of the procedures surrounding motions indicate little change in motion practice as a result of telephone conferencing. Neither local court rules which govern certain

aspects of motion practice (such as when motions are heard or which motions require the filing of supporting papers) nor the individual styles of the judges in handling motions was greatly affected when telephone hearings were introduced. Although there were some changes in the proportions of motions that went to oral argument and the proportion of motions that were granted after the project began, these differences are not strongly related to telephone conferencing. This suggests that factors other than telephone conferencing play a significant role in affecting how judges resolve motions.

Table B-7

Relationship Between Disposition of Motion in a Selected Courtroom Before and After the Introduction of Telephone Hearings in Denver District Court

Method	Before Telephone Hearings		After Telephone Hearings	
	Number	Percent	Number	Percent
Granted	384	84.2	116	85.9
Denied	72	15.8	19	14.1
TOTALS	456	100.0	135	100.0

N = 591

Chi Square of 0.12 significant at .73
Contingency Coefficient = .02

APPENDIX C

TABLES ON FINDINGS FROM THE DENVER DISTRICT CIVIL COURT SURVEY

As discussed in Chapter 3, there are no significant differences in the satisfaction of attorneys with telephone conferenced and in-court proceedings. Although not every attorney was satisfied with telephone hearings, the level of satisfaction was no greater in the in-court situation. This appendix presents data corroborating this general relationship by analyzing satisfaction levels under alternative conditions. The findings presented in the tables below indicate that although attorneys are more satisfied under certain circumstances (e.g., they prevail), they (e.g., the winners) are no more satisfied when they participate in a telephone conference than when they appear in court.

TABLE C-1

Denver District Court Civil Survey

Attorney Satisfaction Under Different Hearing Modes

	Experimental Courtrooms Telephone Hearings	Control Courtrooms In-Court Hearings
Satisfied	89.8	87.9
Dissatisfied	10.2	21.1
TOTALS	100.0 N = 59	100.0 N = 182
	N = 241	

Chi Square of 0.03 significant at .86
Contingency Coefficient = .03

The question was: In general, how satisfied were you with the way the hearing was conducted? Were you:

1. Very Satisfied
2. Somewhat Satisfied
3. NOT SURE
4. Somewhat Dissatisfied
5. Very Dissatisfied

(For purposes of analysis, the above categories were collapsed into two categories, satisfied and dissatisfied, and the "NOT SURE" responses were excluded.)

TABLE C-2

Denver District Civil Court Survey

Winner Satisfaction Under Different Hearing Modes

	Experimental Courtrooms Telephone Hearings	Control Courtrooms In-Court Hearings
Satisfied	100.0	93.3
Dissatisfied	0.0	6.7
TOTALS	100.0 N = 23	100.0 N = 60
	N = 83	

Chi Square of 0.49 significant at .49
Contingency Coefficient = .14

Loser Satisfaction Under Different Hearing Modes

	Experimental Courtrooms Telephone Hearings	Control Courtrooms In-Court Hearings
Satisfied	76.2	81.0
Dissatisfied	23.8	19.0
TOTALS	100.0 N = 21	100.0 N = 51
	N = 79	

Chi Square of 0.02 significant at .88
Contingency Coefficient = .05

TABLE C-3

Denver District Civil Court Survey

Attorney Satisfaction Under Different Hearing Modes in Multiple and Single Motion Hearings

	Single Motion Hearings		Multiple Motion Hearings	
	Telephone	In-Court	Telephone	In-Court
Satisfied	88.9	92.9	92.3	84.9
Dissatisfied	11.1	7.1	7.7	15.1
TOTALS	100.0 N = 45	100.0 N = 70	100.0 N = 13	100.0 N = 53

Chi Square of 0.16 significant at .69
Contingency Coefficient = .07

Chi Square of 0.06 significant at .81
Contingency Coefficient = .09

TABLE C-4

Denver District Civil Court Survey

Attorney Satisfaction with Telephone Hearing by Type of Motion in the Experimental Courtrooms

	Substantive	Procedural	Discovery-Related
Satisfied	91.7	97.7	78.6
Dissatisfied	8.3	2.3	21.4
TOTALS	100.0 N = 12	100.0 N = 44	100.0 N = 14
		N = 70	

Chi Square of 5.9 significant at .05
Contingency Coefficient = .28

Attorney Satisfaction with In-Court Hearing by Type of Motion in the Control Courtrooms

	Substantive	Procedural	Discovery-Related
Satisfied	81.4	92.2	84.8
Dissatisfied	18.6	7.8	15.1
TOTALS	100.0 N = 43	100.0 N = 64	100.0 N = 33
		N = 140	

Chi Square of 2.8 significant at .24
Contingency coefficient = .14

TABLE C-5

Denver District Civil Court Survey

Attorney Satisfaction Under Different Hearing Modes in Contested Motion Hearings

	Experimental Courtrooms Telephone Hearings	Control Courtrooms In-Court Hearings
Satisfied	85.7	87.2
Dissatisfied	14.3	12.8
TOTALS	100.0 N = 42	100.0 N = 149
	N = 191	

Chi Square of 0.001 significant at .99
Contingency Coefficient = .02

Attorney Satisfaction Under Different Hearing Modes in Uncontested Motion Hearings

	Experimental Courtrooms Telephone Hearings	Control Courtrooms In-Court Hearings
Satisfied	100.0	93.1
Dissatisfied	0.0	6.9
TOTALS	100.0 N = 17	100.0 N = 29
	N = 46	

Chi Square of 0.13 significant at .72
Contingency Coefficient = .16

TABLE C-6

Denver District Civil Court Survey

Attorney Satisfaction Under Different Hearing Modes
When Perceived Chances of Prevailing on
Motion are Good

	Experimental Courtrooms Telephone Hearings	Control Courtrooms In-Court Hearings
Satisfied	86.1	88.7
Dissatisfied	13.9	11.3
TOTALS	100.0 N = 36	100.0 N = 124
	N = 160	

Chi Square of 0.02 significant at .90
Contingency Coefficient = .03

Attorney Satisfaction Under Different Hearing Modes
When Perceived Chances of Prevailing On
Motion are Poor

	Experimental Courtrooms Telephone Hearings	Control Courtrooms In-Court Hearings
Satisfied	92.9	88.6
Dissatisfied	7.1	11.4
TOTALS	100.0 N = 14	100.0 N = 35
	N = 49	

Chi Square of 0.001 significant at .99
Contingency Coefficient = .06

TABLE C-7

Denver District Civil Court Survey

Attorney Satisfaction Under Different Hearing Modes
When They are Comfortable with the Judge
During the Hearing

	Experimental Courtrooms Telephone Hearings	Control Courtrooms In-Court Hearings
Satisfied	95.9	93.1
Dissatisfied	4.1	6.9
TOTALS	100.0 N = 49	100.0 N = 159
	N = 208	

Chi Square of 0.14 significant at .70
Contingency Coefficient = .05

Attorney Satisfaction with Different Modes When
They are Uncomfortable with the Judge
During the Hearing

	Experimental Courtrooms Telephone Hearings	Control Courtrooms In-Court Hearings
Satisfied	42.9	43.7
Dissatisfied	57.1	56.3
TOTALS	100.0 N = 7	100.0 N = 16
	N = 23	

Chi Square of 0.001 significant at .99
Contingency Coefficient = .01

TABLE C-8

Denver District Civil Court Survey

Relationship Between Attorney Satisfaction with Telephone Hearings and Equipment Problems* During the Hearings

Experimental Courtrooms

	Equipment Problems	No Equipment Problems
Satisfied	88.9	89.8
Dissatisfied	11.1	10.2
TOTALS	100.0 N = 9	100.0 N = 49
	N = 58	

Chi Square of 0.001 significant at .99
Contingency Coefficient = .01

* The question was: "How frequently did equipment problems arise during the hearing?"

1. Always or Almost Always
2. Often
3. About Half the Time
4. Rarely
5. Never

(For purposes of analysis, the above categories were collapsed into two categories: (1) equipment problems included the responses "always or almost always", "often", and "about half the time"; (2) no equipment problems included the responses "rarely" and "never".)

TABLE C-9

Denver District Civil Court Survey

Relationship Between Attorney Satisfaction with Hearing and Distance Saved by Appearing by Telephone

	Metro Denver 0-10 Miles	Surburban Denver 11-40 Miles	41 Miles and Over
Very Satisfied	62.9	45.5	100.0
Somewhat Satisfied	28.5	36.3	0.0
Somewhat Dissatisfied	5.7	18.2	0.0
Very Dissatisfied	2.9	0.0	0.0
TOTALS	100.0 N = 35	100.0 N = 11	100.0 N = 1
		N = 47	

Chi Square of 4.15 significant at 0.84
Contingency Coefficient = .10

Relationship Between Attorney Satisfaction with Hearing and Amount of Travel Time Saved by Appearing by Telephone

	0-15 Minutes	16-30 Minutes	31-60 Minutes	61 and Over Minutes
Very Satisfied	66.7	69.0	40.0	50.0
Somewhat Satisfied	25.0	20.7	40.0	50.0
Somewhat Dissatisfied	8.3	6.9	20.0	0.0
Very Dissatisfied	0.0	3.4	0.0	0.0
TOTALS	100.0 N = 12	100.0 N = 29	100.0 N = 10	100.0 N = 2
		N = 53		

Chi Square of 6.96 significant at 0.86
Contingency Coefficient = .13

APPENDIX D

PAPERS, PRESENTATIONS AND PUBLICATIONS ASSOCIATED WITH THE TELEPHONE HEARINGS PROJECT

Phase I

1. Joy Chapper (1983) "The Implementation of Telephone Hearings", 7 State Court Journal 8.

2. Joy Chapper and Roger Hanson, "Implementing Field Tests of Telephone Hearings and Alternatives to In-Court Proceedings in Civil Cases", paper presented at the 1981 Annual Law and Society Association Meeting, Amherst, Massachusetts.

3. Joy Chapper, Roger Hanson, and Lynae Olson (1982), "Telephone Conferencing: A Guide to Implementation", 11 Court Crier 8, published by the National Association for Court Administration.

4. Roger Hanson, Barry Mahoney, Paul Nejelski, Kathy Shuart, and Marlene Thornton, "Judicial and Attorney Perspectives on Telephone Hearings", paper presented at the 1981 Annual Law and Society Association Meeting, Amherst, Massachusetts.

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