



HOLD THE LINE:

**Impacted Voices on the Use
of Video Proceedings in Criminal Court**

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Summary

Video proceedings are often dehumanizing and can create disparate outcomes, but they are also sometimes necessary to mitigate the challenges of getting to court for many of those impacted by the criminal legal system. This paper reports on participatory research conducted among individuals directly and indirectly impacted by the criminal legal system, asking them about reactions to the use of video proceedings in court. The overwhelming response was: *it depends*.

We know from the existing scholarship that video proceedings in court come with a host of negative impacts including higher bonds,¹ increased likelihood of deportation in immigration cases,² decreased perceptions of credibility for those appearing on video,³ as well as impeding attorney-client communication.⁴

But access to justice, even simply access to the courthouse, can look different if you are living in rural versus urban America, if you are confined pretrial versus being released, or if you are an hourly worker versus full time. Most individuals involved in the criminal legal system, whether as victims or as the accused, are living at or below the federal poverty level. Disproportionately they don't always have access to paid employment leave, regular child care, reliable transportation, or financial resources to travel. When it comes to video proceedings, they are facing a frustrating choice: Do I risk the known consequences and dehumanizing aspects of video proceedings, or do I risk not getting

¹ Shari Seidman Diamond et al., "Efficiency and Cost: The Impact of Videoconferenced Hearings on Bail Decisions," *Journal of Criminal Law and Criminology* 100 (2010): 893.

² Ingrid V. Eagly, "Remote Adjudication in Immigration," *Northwestern University Law Review* 109 (2015): 966; and Frank M. Walsh and Edward M. Walsh, "Effective Processing or Assembly-Line Justice - The Use of Videoconferencing in Asylum Removal Hearings," *Georgetown Immigration Law Journal* 22 (2008): 271-72.

³ Anne Bowen Poulin, "Criminal Justice and Videoconferencing Technology: The Remote Defendant," *Tulane Law Review* 78 (2004): 1118.

⁴ Eric Bellone, "Private Attorney- Client Communications and the Effect of Videoconferencing in the Courtroom," *Journal of International Commercial Law and Technology* 8 (2013): 44-45.

to court or losing my job if I do? This paper explores the difficult choices faced by those most impacted by the criminal legal system regarding video conferencing.

Methodology

NLADA held two in-person focus groups and three virtual feedback sessions on using video in judicial proceedings with the express purpose of hearing from individuals directly or indirectly impacted by the judicial system. This was defined as having gone through the judicial system themselves (directly impacted) or as family members of those directly impacted (indirectly impacted). The focus group was developed, facilitated, and analyzed by Dr. Zaria Davis, a trauma-informed participatory researcher who is directly justice impacted.

In preparation for the focus groups, NLADA examined previous roundtable discussions for system actors. Dr. Davis used the questions raised during that roundtable to develop a set of prompts centered on identifying the advantages and disadvantages of video proceedings for impacted individuals.⁵ Dr. Davis met with community leaders in Illinois, Wisconsin, and Tennessee to identify potential participants and get feedback on the project.

One in-person focus group was held at a national conference in Savannah, Georgia, and the other was held in Chattanooga, Tennessee. In addition to these in-person focus groups, NLADA had three virtual feedback sessions which were run as “pair sharing.” There were six participants involved in the virtual pair sharing. Among the total participants there were 10 people who identified as having federal cases and 13 who had state cases. (Within these were participants that had both.) Two participants were family members and were thus indirectly impacted.

A total of 20 impacted individuals participated in this project, 35% Black men, 30% Black women, 15% white women, 5% Latino men, 5% Latina women, 5% Asian women, and 5% Native American. The age range for the impacted men was between 35-49, impacted women between 31-63, and family 42-57.

⁵ Each focus group and online meeting included an introduction and the following prompts by Dr. Davis: “I am contracted with National Legal Aid and Defenders Association (NLADA) to explore the use of video proceedings from the perspective of people directly impacted by the criminal legal system. There have been roundtables to discuss this issue from the perspective of system actors. This focus group opens the door for NLADA to hear directly from individuals impacted by the system. We are asking for 1-2 hours of your time. All people will be anonymous in the report, unless you request to be identified.” The broad prompts were: “What are the advantages and disadvantages? We will explore the list provided. Please share what you think the impact would be regarding engagement with the attorney. Please feel free to share your story. What do you feel the use of video would have on the outcome of a case? What would be the best method for the court to take if utilized?”

Findings

“The agency should be given to the person who is being dragged through that trauma.”

The most repeated theme throughout these conversations was that each impacted individual should have the right to choose whether to use video proceedings in their case. Participants recognized that video proceedings might alleviate obstacles in accessing court but also create new barriers to access to justice. Video proceedings can compound the existing dehumanization of the criminal legal system. For example, participants stated that video fails to capture emotion and seemed to distort the court’s perceptions of them. Video proceedings make it difficult to communicate effectively with counsel.

Technology can be a significant barrier in rural communities or with unhoused individuals, and video proceedings limit access to services often located inside the court itself. Nevertheless, participants recognized that video proceedings are also sometimes necessary to mitigate the challenges of accessing court. Video proceedings may be desirable when compared to the difficulties of physically appearing repeatedly in courts that are far away or when going to court requires taking off work, finding childcare, and/or transportation. For all these reasons, participants in these focus groups expressed the need for the accused to be afforded the right to weigh the consequences and choose whether video proceedings are appropriate for their case.

The Challenges

“As a Black woman, I need you to see me. I need you to listen to me articulate. I want you to feel my pain. Skin to skin. I don’t want you to see it through a machine.”

Overwhelmingly, participants in these focus groups identified loss of humanity, loss of personal touch, and lack of family and community support as the most significant disadvantages to video proceedings.

“I just really feel like if it is just video, I think we would lose a piece of humanity. There is a disconnect for me when I watch TV. I don’t feel as involved. ...we already have a loss of humanity in the court systems. I really see [video] disconnecting even further[.]”

“It takes the realness away from it. Things scooped into one box and judged based on what’s on the video. In person, you see body language, emotions, and family engagement.”

Existing research supports these participants’ experiences. Psychology professor Sara Landstrom describes a “vividness effect” that comes with live testimony. Landstrom notes, “It can be argued that live testimonies, due to face-to-face immediacy, are perceived as more vivid than, for example, video-based testimonies, and in-turn are perceived more favourably[.]”⁶ When decision makers interact with the accused through the barrier of technology, “they are likely to be less sensitive to the impact of negative decisions on the defendant.”⁷ Participants repeatedly identified the importance of proximity in their experiences.

“[With video] there is extra distance with you and the courtroom. You can’t tell who is communicating with who. Communication is more than just words. It could be feelings, how he engage with family. Feelings removed. wham, bam, thank you, Ma’am, over with.”

Participants noted the challenge video proceedings posed, not only to communication, but to the attorney-client relationship itself.

“The attorney-client relationship is shot if you are trying to go through a trial or major motion, judgement hearing, anything that entails you to be involved in your defense, is severely hampered if you are limited to video.”

Studies reveal that people in many contexts evaluate those with whom they work face-to-face more positively than those with whom they work over a video connection.⁸ This applies to the attorney-client relationship as well.

Disconnection to family and community also came up repeatedly as a disadvantage to video proceedings. Court dates are often the only way for the judge and the prosecution to see how much support an individual may have from their family and their community.

“When the community shows up for people in those processes, the judge looks at that and treats them completely different than when they don’t have anyone there.”

⁶ Sara Landstrom, “Children’s Live and Videotaped Testimonies: How Presentation Mode Affects Observers’ Perception, Assessment and Memory,” *Legal and Criminological Psychology* 12 (2007): 335; See also Richard E. Nisbett and Lee Ross, L. *Human Inference: Strategies and Shortcomings of Social Judgment*. (Englewood Cliffs, NJ: Prentice-Hall, 1980).

⁷ Anne Bowen Poulin, “Criminal Justice and Videoconferencing Technology” at 1118.

⁸ Diamond et al., “Efficiency and Cost,” 884–85, 898–900.

When these proceedings come with a public access link, often there is no opportunity for the family or community members to appear on camera or otherwise be recognized by the court.

“When a person goes to prison, the whole family goes, the family is impacted.”

The mother of an incarcerated son who has had video proceedings in his case reported,

“I haven’t seen my son. When you come to court and expect to see him and you don’t see him. They don’t face the camera towards you. I didn’t know it was like that with the system until I got there that day. When I went to support my son, only hear his voice but can’t see him.”

Nor could he see her.

Infrastructure and access were two other barriers identified by participants. Many participants shared that they or their families had inconsistent internet access points. This is particularly problematic in rural jurisdictions. A participant who now serves as a community advocate shared:

“People in rural areas don’t have access. We had to drive people 25-30 minutes to get people to the library so they could attend court via video. People couldn’t get from rural places to a place with the internet during Covid.”

But the problem of access is not unique to rural America. Unhoused persons and individuals that lack internet because of finance or because of infrastructure are also forced to look for public access points.

All of these challenges of communication and access are compounded when those appearing in video court proceedings are not English language speakers, or require interpretation services.

The research confirms what these participants were experiencing: that remote video proceedings can undermine the attorney-client relationship,⁹ alter the perceived credibility of witnesses,¹⁰ lead participants to disengage with the judicial process, and ultimately result in changed outcomes in cases.¹¹

⁹ Diamond et al., “Efficiency and Cost,” 884–85, 898–900.

¹⁰ Diamond et al., “Efficiency and Cost,” 884–85, 898–900. Discussing a study in which three out of six surveyed immigration courts, judges identified instances where they had changed credibility assessments made during a video hearing after holding an in-person hearing

¹¹ Diamond et al., “Efficiency and Cost,” at 893, discussing A Cook county study of criminal bail hearings found that defendants whose hearings were conducted over video had substantially higher bond amounts set than their in-person counterparts, with increases ranging from 54 to 90 percent, depending on the offense; and a study of immigration courts found that detained individuals were more likely to be deported when their hearings occurred over video conference rather than in person.

Advantages of Video Proceedings

“The anxiety of going through [reception and intake at jail]... You have to go back through the whole system of being stripped out, being checked out, being put on the van, however they going to treat you on the van, going into the holding cage all day, just to get whatever you get from the judge and you have to travel all the way back with that. The stress and the mental thing is on an all-time high just because of the moment that you just went through versus going straight to a video and get that done.”

Some participants who had been incarcerated before trial spoke about the intense challenges of preparing for and being transported to and from jail for court proceedings.

“Someone inside doesn’t want to go through the transfer, shackling, and holding.”

“You have to get up early in the morning, shackled up, walk around the cold tunnel, sit in a cell all day long. They get you up at 3 or 4 am. You may not have court until 3 pm.”

For individuals not in custody before trial, video proceedings also offered advantages related to traveling to court. One participant shared that she lived a great distance from the courts and couldn’t afford to keep driving back and forth. She stated that she did the drive back and forth for four years, which cost her thousands of dollars. Sometimes she had to spend money trying to get there, only to have court dates were postponed or moved with little or no notice. Women in the group who were primary caregivers and low-wage earners shared that taking off of work can be challenging, while missing court can snowball quickly and lead to warrants. A video option would provide them the opportunity to participate in the way that they are able, and less disruptive of their families and their finances. Video proceedings were also seen as a benefit for some folks with mobility, health and mental health challenges. The research again supports these experiences. Videoconferencing technology can reduce the time and expenses associated with traveling, transportation, childcare, and other day-to-day costs that individuals incur when they go to court.¹²

¹² John Greacen, *Remote Appearances of Parties, Attorneys, and Witnesses*, Self-Represented Litigation Network, 2017, 3–4; and see also Camille Gourdet et al., *Court Appearances in Criminal Proceedings Through Telepresence: Identifying Research and Practice Needs to Preserve Fairness While Leveraging New Technology*, RAND Corporation, 2020, 4–5, https://www.rand.org/pubs/research_reports/RR3222.html (discussing advantages and disadvantages of remote proceedings in criminal cases).

Moreover, video hearings could increase access to justice in rural areas and legal deserts. In at least one study, video proceedings meant that “legal aid has a presence in counties from which they would be absent if video were not there as an option.”¹³ In this 2007 study on the use of videoconference technology in Montana, researchers found that the use of video court proceedings in both civil and criminal hearings enabled legal aid organizations to serve previously underserved parts of the state.¹⁴

Conclusion

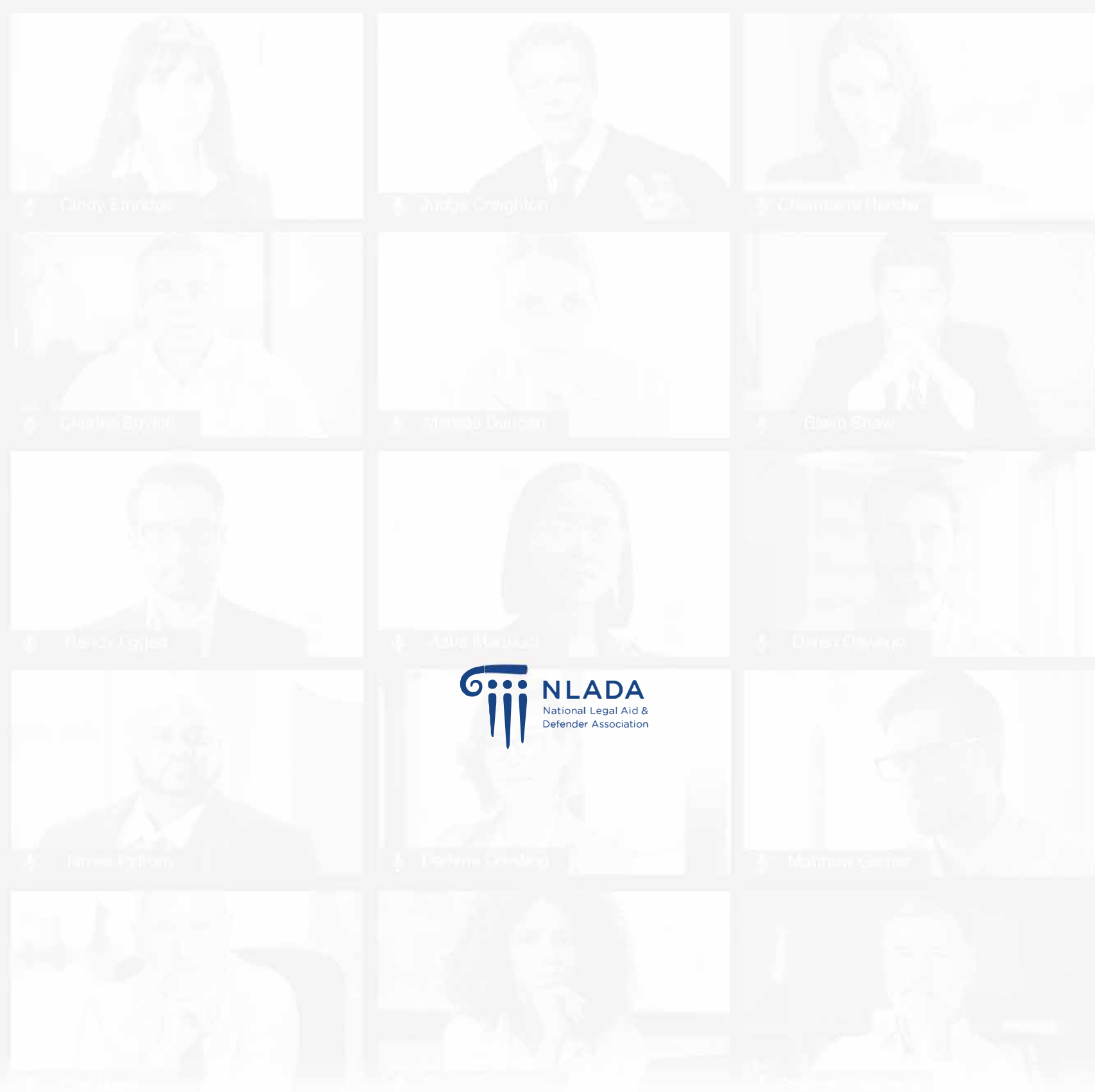
“Forced on video when I might want to show up with community and family. People should have agency to make that choice on if they want to do in person or not.”

Repeatedly, participants expressed a need to have agency to decide how to appear in court. Participants identified the myriad of challenges and even harms that can result from video appearances. Competing with this, however, were all the things that make getting to court so difficult, especially for folks living in poverty. Finding ways to increase access to courts not only for individuals who are accused of crimes, but for victims and the community as well, should be a priority for system actors. However, we cannot do so at the expense of justice. And those impacted by the system should be able to decide for themselves whether the benefits of video proceedings outweigh the risks.

“Just like you have an option of a plea or trial, you should have the same option [with video].”

¹³ Richard Zorza, *Video Conferencing for Access to Justice: An Evaluation of the Montana Experiment*, Legal Services Corporation, 2007, 12, <https://docplayer.net/3126017-Video-conferencing-for-access-to-justice-an-evaluation-of-the-montana-experiment-final-report.html>.

¹⁴ Id; Montana, one of the largest and least populated states, had only 84 lawyers in the entire eastern portion of the state in 2004.



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