

STATE OF MINNESOTA

IN SUPREME COURT

C1-84-2137

**ORDER FOR HEARING TO CONSIDER
PROPOSED AMENDMENTS TO THE RULES
OF CRIMINAL PROCEDURE RELATING TO
IMPLEMENTATION OF ITV PROTOCOL**

In October 1999, the Court approved a pilot project for the limited statewide use of interactive television (ITV) in certain *criminal matters*. The Court implemented this project using an ITV protocol previously approved by the Court for an ITV pilot project in the Ninth Judicial District. In April 2006, the Judicial Council recommended that the Court approve for statewide use a revised protocol as set forth in Attachment A to this order. Upon receipt of this recommendation, the Court noted that implementation of the revised protocol could potentially conflict with provisions of the Minnesota Rules of Criminal Procedure, and referred the matter to the Advisory Committee on Rules of Criminal Procedure for recommendations as to draft rules implementing the protocol and comments relating to use of ITV in criminal matters. The committee submitted its report on February 2, 2007. The committee's report is Attachment B to this order.

IT IS HEREBY ORDERED that a hearing be held before this court in Courtroom 300 of the Minnesota Supreme Court, Minnesota Judicial Center, on May 15, 2007, at 2:00 p.m., to consider the proposals for implementation of a *protocol for statewide use of ITV in criminal matters*.

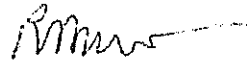
IT IS FURTHER ORDERED that:

1. All persons, including members of the Bench and Bar, desiring to present written statements concerning the subject matter of this hearing, but who do not wish to make an oral presentation at the hearing, shall file 12 copies of such statement with Frederick Grittner, Clerk of the Appellate Courts, 305 Judicial Center, 25 Rev. Dr. Martin Luther King, Jr. Boulevard, St. Paul, Minnesota 55155, on or before May 7, 2007; and

2. All persons desiring to make an oral presentation at the hearing shall file 12 copies of the material to be so presented with the aforesaid Clerk together with 12 copies of a request to make an oral presentation. Such statements and requests shall be filed on or before May 7, 2007.

Dated: March 8th, 2007

BY THE COURT:



Russell A. Anderson
Chief Justice

OFFICE OF
APPELLATE COURTS

MAR 8 2007

FILED

ATTACHMENT A
STATE OF MINNESOTA

PROPOSED PROTOCOL FOR THE USE OF ITV
FOR CRIMINAL MATTERS IN THE DISTRICT COURT

Preamble

Although in-person hearings in criminal cases are preferred, service to defendants, other parties and the public may be enhanced by the use of interactive video in specified criminal matters. The opportunity for more timely access to the court (e.g., for earlier appointment of counsel and review of release conditions), options for less costly appearances by witnesses, and more efficient use of judicial resources are some of the potential benefits.

1. **General Provisions.** In specified criminal actions and proceedings, the Court may conduct hearings and admit oral testimony communicated to the Court on the record by live audio-visual means.
2. **Definitions.** The following terms used throughout this protocol are defined as follows:
 - a. *ITV* – interactive video teleconference;
 - b. *terminal site* – any location where ITV is used for any portion of a court proceeding;
 - c. *venue county* – the county where pleadings are filed and hearings are held under current court procedures
3. **Approved Case Types.**
 - a. **Felony and Gross Misdemeanor.** ITV may be used to conduct the following criminal hearings:
 - i. **Rule 5 and Rule 6 Hearings.** A defendant in custody may be brought before any available judge of the district by ITV for a Rule 5 or Rule 6 hearing if no judge is available in the venue county.
 - ii. **Rule 8 and Rule 13 Hearings.** A defendant may be brought before any available judge of the district by ITV for a Rule 8 or Rule 13 hearing if no judge is available in the venue county.
 - iii. **Rule 11 Hearings.** A defendant may be brought before any available judge of the district by ITV for the purpose of waiving an omnibus hearing.
 - iv. **Restitution Hearings.** A defendant being held in another county may be brought before any available judge of the district by ITV for a restitution hearing.
 - v. **Other.** Any hearing where the court and parties agree

- b. **Misdemeanor.** A defendant may be brought before any available judge of the district by ITV for any of the following:
 - i. Arraignment;
 - ii. Plea;
 - iii. Sentencing;
 - iv. Restitution hearing;
 - v. Any hearing where the court and parties agree.
 - c. **Petty Misdemeanor and Criminal Offenses Deemed Regulatory Offenses.** A defendant may be brought before any available judge of the district by ITV for all hearings, including trials, related to petty misdemeanors and those criminal offenses deemed to be regulatory offenses or administrative offenses.
4. **Request for rehearing/in person hearings.**
- a. **Rule 5 or Rule 6 Hearing.** When a defendant appears before the Court by ITV for a Rule 5 or Rule 6 hearing, the defendant may request to appear in person before a judge. If the request is made, the hearing will be held within three business days of the ITV hearing and shall be deemed a continuance of the ITV hearing.
 - b. **Other Hearings.** In all proceedings other than a Rule 5 or Rule 6 hearing the defendant, defense attorney, or prosecuting attorney may submit an objection in writing on or before the time of the hearing to request to appear in person. The presiding judge shall determine whether the objection is granted.
 - c. **Multi-county Violations.** When a defendant has pending charges in more than one county within a district, any or all appearances authorized in this protocol may be heard by ITV by any judge of that district. Cases from other districts may be heard upon any necessary Supreme Court authorization.
5. **Standard Procedures.** In any proceeding conducted by ITV under this section:
- a. Parties who are entitled to be heard shall be given prior notice of the manner and time of the proceeding. Any participant other than the court electing to appear by ITV at a terminal site other than the venue county shall give notice to the Court and to other parties of the terminal site location from which the appearance will be made. The court and counsel shall use reasonable efforts to confer with one another in scheduling ITV hearings or proceedings so as not to cause, delay or create scheduling conflicts. Unless otherwise ordered by the court, a participant electing to appear at a terminal site other than the venue county, or the party on whose behalf the participant is appearing, shall be responsible for any additional use or other fees over and above those normally incurred by the court in the venue county in connecting from one court site to another court site within the judicial district or collaboration area.

- b. Witnesses, victims and other interested persons may, subject to the constitutional rights of the defendant, testify by ITV at all hearings, including contested matters.
- c. Regardless of the physical location of any party to the ITV hearings, any waiver, stipulation, motion, objection, decision, order or any other action taken by the Court or a party at an ITV hearing has the same effect as if done in person.
- d. The court administrator of the venue county will keep court minutes and maintain court records as if the proceeding were heard in person.
- e. All proceedings held by ITV will be governed by the Minnesota Rules of Criminal Procedure, the General Rules of Practice and state law, except as herein provided.
- f. Courtroom decorum during ITV hearings will conform to the extent possible to that required during traditional court proceedings. This may include the presence of one or more bailiffs at any ITV site.
- g. The court shall insure that the defendant has adequate opportunity to speak privately with counsel, including, where appropriate, suspension of the audio transmission and recording or allowing counsel to leave the conference table to communicate with the client in private.
- h. No recording shall be made of any ITV proceeding except the recording made as the official court record.

6. Location of Participants. During the ITV hearing:

- a. The defendant's attorney shall be present at the same terminal site from which the defendant appears, except in unusual or emergency circumstances, and then only if all parties agree on the record.
- b. Where the right to counsel applies, the use of ITV should not result in a situation where only the prosecutor or defense counsel is physically present before the judge unless all parties agree.
- c. Subject to part (b), the judge may be at any terminal site.
- d. Subject to part (b), the prosecutor may be at any terminal site.
- e. The court clerk shall be in the venue county unless otherwise authorized by the presiding judge.
- f. Witnesses, victims and other interested parties may be located at any terminal site that will allow satisfactory video and audio reception at all other sites.

7. Equipment and Room Standards.

- a. All hearings will be conducted in a courtroom or other room at the courthouse reasonably accessible to the public, either in person or via ITV. Restitution hearings

may be conducted in a reasonably accessible room at a location determined by the presiding judge.

- b. If the hearing requires a written record, a court reporter shall be in simultaneous voice *communication* with all ITV terminal sites, and shall make the appropriate verbatim record of the proceeding as if heard in person.
- c. To optimize picture clarity, the room should have diffused lighting (e.g., through louvered grids) and window shades to block external light. To optimize viewing, monitors should be placed in a darkened area of the room and be of sufficient size and number to allow convenient viewing by all participants. Cameras and microphones should be sufficient in number to allow video and audio coverage of all participants, prevent crowding of participants, facilitate security, and protect confidential communications. To minimize blurred video images, courts should use the highest affordable quality of cameras, processors, and transmission line speed, and the presiding judge shall control and minimize movement of participants.
- d. It is important to ensure that the presiding judge, counsel, witnesses and other participants speak directly into their microphones. This is particularly important for softly spoken persons. The presiding judge must advise parties to move closer and/or speak directly into microphones if this problem becomes apparent.
- e. Audio and visual must be synchronized and undistorted.

Drafting Committee Comments - 2006

The Preamble recognizes that the Confrontation Clause reflects a preference for face to face confrontation at criminal trials. *Maryland v. Craig*, 497 U.S. 836, 849, 110 S.Ct. 3157, 3165, 111 L.Ed.2d 666 (1990); *United States v. Gigante*, 166 F.3d 75 (2nd Cir. 1999); *State v. Sewell*, 595 N.W.2d 207, 212 (Minn.Ct.App. 1999) review denied Aug. 25, 1999; see AMERICAN BAR ASSOCIATION STANDARDS FOR CRIMINAL JUSTICE, SPECIAL FUNCTIONS OF THE TRIAL JUDGE, STANDARD 6-1.8(a) (Third ed. 2000) ("trial judge should maintain a preference for live public proceedings in the courtroom with all parties physically present"). In certain criminal proceedings where the confrontation clause is either not implicated or is waived or otherwise satisfied, the use of interactive video teleconference (ITV) may be an appropriate means to administer justice fairly, effectively and efficiently.

The typical ITV scenario envisioned by this protocol is that of a judge being in one terminal site such as a courtroom in county A, and the parties at another terminal site, such as a courtroom in county B. This has been the experience of the Ninth Judicial District in its pilot project, where the process has allowed judges to promptly handle proceedings in a different courthouse where a resident judge is not otherwise available. The success of the pilot project is reported in NATIONAL CENTER FOR STATE COURTS, COURT SERVICES DIVISION, ASSESSMENT OF THE INTERACTIVE TELEVISION PROGRAM IN THE NINTH JUDICIAL DISTRICT OF MINNESOTA (Sept. 1999).

Other possible scenarios where ITV use is contemplated include situations where the judge,

lawyers and defendant are at one terminal site in a courtroom and a witness or other participant is located at another terminal site (e.g. a hospital or a terminal site in another jurisdiction). The frequency of ITV use in such situations will likely be dictated by confrontation clause analysis (discussed further, below). For reasons of fairness, section 6.b. of the protocol discourages use of ITV in situations where the judge and prosecutor are at one terminal site such as a courtroom, and the defendant and defense counsel are at another terminal site, such as a jail, unless all parties agree.

To help meet the constitutional requirement of a probable cause determination within 48 hours of a warrantless arrest, *County of Riverside v. McLaughlin*, 500 U.S. 44, 111 S.Ct. 1661, 114 L.Ed.2d 49 (1991), section 3.a.i. of the protocol allows use of ITV for rule 5 and 6 hearings. These hearings encompass reading of charges, appointment of counsel, and establishing release conditions for all case types, and guilty/not guilty pleas in misdemeanor cases. Release conditions are the key because if the defendant is released, the 48-hour time limit for a probable cause determination does not apply. MINN.R.CRIM.P. 4.03, subd. 1.

Although a prior task force on ITV use recommended that there should be no ITV appearance without a meaningful, voluntary waiver of an in-person appearance by the defendant, *Final Report of the Minnesota Supreme Court Task Force on Closed Circuit Television*, Dec. 1991, at page 19 (S.Ct. file no. C0-91-1421), the vast majority of other jurisdictions known to use ITV in criminal matters (see summary of ITV use in other jurisdictions at end of these comments) currently authorize the use of ITV for rule 5 and 6 purposes without the defendant's prior consent. Section 4.a. of this protocol attempts to strike a balance between the need to meet constitutional probable cause requirements and a defendant's desire to have an in-person proceeding by allowing the defendant an automatic right to continue the rule 5 or 6 proceeding in-person, coupled with the requirement that the in-person portion of the hearing must be held within three days of the ITV proceeding.

The drafting committee is mindful of the concerns raised by public defenders of the potentially dehumanizing impact of the use of ITV particularly for minority and indigent defendants who are already vulnerable to biases inherent in our criminal justice system. In greater Minnesota, however, time, distance, and lack of judicial resources may pose a more serious threat to the fair administration of justice than in the metro area where time and distance are not an issue and racial disparity has been well documented. See, e.g., *Final Report, Minnesota Supreme Court Task Force on Racial Bias in the Judicial System*, May 1993, at pages 21-23. Thus the protocol merely authorizes, but does not mandate, the use of ITV. The extent to which the protocol is implemented in each judicial district is best left to the sound discretion of the trial bench.

Section 3.a.ii. also allows use of ITV for rule 8 and 13 hearings, which encompass reading of charges, pleas, and demand or waiver of omnibus hearing in felony and gross misdemeanor cases. Under section 4.b. of the protocol, any objection to use of ITV at a rule 8 or 13 hearing must be submitted in writing at or before the hearing, and the presiding judge has discretion to determine whether the objection will be sustained.

Section 3.a.iii. of the protocol authorizes waiver of omnibus hearings by ITV, and this waiver typically occurs at the rule 8 hearing. The omnibus hearing encompasses evidentiary issues, which may require testimony. Section 3.a.iv. authorizes use of ITV for such hearings if the court and parties agree.

Section 3.b. of the protocol permits wider use of ITV in misdemeanor and petty misdemeanor cases, as a defendant is authorized to appear by counsel in such cases under MINN.R.CRIM.P. 5.04, subd. 1, and there is no right to a jury trial in petty misdemeanors, which are not considered a crime. MINN.R.CRIM.P. 23.05-.06.

The requirement of notice of ITV sessions in section 5.a. is necessary in order to allow participants to object under section 4. This protocol presumes that the court as a scheduling matter will typically initiate use of ITV, with notice to the parties. Once a matter is scheduled as an ITV session, the protocol permits participants to elect the terminal site from which they will participate, subject to the limitations in section 6. Participants electing to appear at a terminal site other than the venue county must be aware that they, or the party on whose behalf they are appearing, will be responsible for any additional use or other fees over and above those normally incurred by the court in the venue county in connecting from one court site to another court site within the judicial district or the local telecommunications collaboration area. Thus, where a witness is to appear on behalf of the prosecution or defense from a terminal site other than the venue county, the prosecution or defense would be responsible for paying any additional costs required in connecting that terminal site to the venue county. If indigence of a party or participant is an issue in this regard, that matter is left to the sound discretion of the court.

Section 5.b. recognizes that witness testimony during an ITV session is subject to constitutional rights, such as a defendant's right to confront witnesses. In the typical ITV scenario envisioned by this protocol the witness would be physically present at the same site as the defendant. Where the witness is located at another site and the defendant objects, however, a confrontation analysis is required. Witness testimony by ITV in a criminal trial was upheld by the Minnesota Court of Appeals in *State v. Sewell*, 595 N.W.2d 207 (Minn.Ct.App. 1999) review denied Aug. 25, 1999. In this case the court found that ITV testimony of a witness who was under medical restriction not to travel because he was recovering from surgery for a broken neck was the functional equivalent of a videotaped deposition under R.Crim.P. 21. The court applied a confrontation clause analysis, indicating that once the unavailability of the witness and the necessity of the witnesses' testimony have been established, the reliability of the testimony is determined by looking at four features:

The salutary effects of face-to-face confrontation include:

1. the giving of testimony under oath;
2. the opportunity for cross examination;
3. the ability of the fact finder to observe demeanor evidence; and
4. the reduced risk that a witness will wrongfully implicate an innocent defendant when testifying in his presence.

Id. at 595 N.W.2d 212-213. It should be noted, however, that the United States Supreme Court rejected on confrontation grounds a proposal to modify FED.R.CRIM.P. 26 allowing witness testimony by ITV when: (1) the requesting party establishes compelling circumstances for ITV testimony; (2) appropriate safeguards for the ITV transmission are used; and (3) the witness is unavailable within the meaning of rule 804(a)(4)-(5) of the Federal Rules of Evidence. 71 CRIM. LAW REPORTER No. 5 at 133 (BNA 2002) (comments of Justice Scalia).

Witnesses testifying from another state or nation raise special confrontation clause concerns because an oath is only effective if the witness can be subjected to prosecution for perjury upon making a knowingly false statement. *See, e.g., Harrell v. State*, 709 So.2d 1364, 1371 (Fla. 1998) *cert. den.* 525 U.S. 903, 119 S.Ct. 236, 142 L.Ed.2d 194 (1998) (permitting foreign tourists assaulted and robbed while visiting Florida to testify from Argentina by satellite; court found that extradition treaty between the United States and Argentina subjected the witnesses to a potential perjury prosecution), cited with approval in *State v. Sewell, supra*, at 595 N.W.2d 212.

Reliability can also be affected by off-camera activity. The U.S. Navy-Marine Corps Court of Criminal Appeals decided in *U.S. v. Shabazz*, NMCM 98 00309 (Nov. 5, 1999), that the defendant's sixth amendment confrontation rights were violated when the witness was coached by an off-camera person.

The emphasis on decorum in section 5.f. recognizes that rules of decorum such as Minn.Gen.R.Prac. 2.01-2.03 encompasses not only acceptable standards of behavior and procedural formalities, but the physical dignity of the courtroom, including display of flags and appropriate attire. A terminal site that lacks the physical dignity of a courtroom should be avoided because it has the potential for fostering disrespect for the criminal justice process. AMERICAN BAR ASSOCIATION STANDARDS FOR CRIMINAL JUSTICE, SPECIAL FUNCTIONS OF THE TRIAL JUDGE, STANDARD 6-1.8(d) (Third ed. 2000).

The requirement in section 5.g. that the defendant and the defendant's counsel must be provided adequate opportunity to speak privately is related to the requirement in section 6.a. that the defendant and defendant's attorney must be located at the same terminal site (except in rare cases and then only upon agreement of all parties) is necessary to ensure that the defendant's right to counsel are not infringed. An identical requirement has been imposed for use of ITV in commitment proceedings. Rule 14, Special Rules of Procedure Governing Proceedings Under the Minnesota Commitment and Treatment Act.

The prohibition on recording ITV sessions set forth in section 5.h. is identical to that applicable to telephone hearings under Minn.Gen.R.Prac. 115.09. This requirement is consistent with the directives of the Minnesota Supreme Court regarding use of cameras in the courtroom. *See In re Modification of Section 3A(10) of the Minnesota code of Judicial Conduct*, No. C4-87-697 (Minn.S.Ct. filed April Jan. 11, 1996) (order reinstating experimental program for audio and video coverage of trial court proceedings); *Order for Interactive Audio-Video Communications Experiment in First Judicial District-Mental Illness Commitment Proceedings*, No. C6-90-649 (Minn.S.Ct. filed April 5, 1995); *Order Re Interactive Audio-Video communications Pilot Program in Third Judicial District Mental Illness commitment Proceedings*, No. C6-90-649 (Minn.S.Ct. filed Jan. 29, 1999); *Order for Interactive Audio and Video Communications, Fourth Judicial District, Mental Health Division, Price and Jarvis Proceedings*, No. C6-90-649 (Minn.S.Ct. filed April 8, 1991). Courts will have to ensure that this prohibition is understood, particularly where an ITV session involves a terminal site that is not a courtroom under the control of the state courts.

Section 6.b., which discourages use of ITV where only the prosecutor or defense counsel is physically present before the judge unless all parties agree, is taken from AMERICAN BAR ASSOCIATION STANDARDS FOR CRIMINAL JUSTICE, SPECIAL FUNCTIONS OF THE TRIAL JUDGE,

STANDARD 6-1.8(d) (Third ed. 2000). Commentary to ABA Standard 6-1.8(d) explains that the presence of only the prosecutor or the defense counsel physically with the judge raises fairness and perhaps even due process issues based on the appearance of undue influences. Thus, where feasible, the prosecutor and defense counsel should appear before the court in the same fashion. Moreover, both defense lawyers and prosecutors have also stressed to the drafting committee the importance of a “meaningful appearance” where the lawyers can discuss the case, the client is there, and often a resolution occurs. If the prosecutor and defense counsel are at different locations, however, resolution of cases may be delayed.

There have been several situations in the Ninth Judicial District pilot project where a defendant charged with a relatively minor type of offense has been eager to proceed with a rule 5 or 6 hearing via ITV rather than spend the better part of a weekend in jail until a judge is physically present in the county. The presence of a prosecutor, via ITV or otherwise, has also been rare in such cases, resulting in a judge-to-defendant only ITV proceeding, with the defendant ultimately being released rather than waiting in jail for the better part of a weekend. The same benefits may be possible even when a prosecutor and defense lawyer are involved at such an early stage, and thus section 6.b. of the protocol allows the parties to agree to use of ITV when they feel the advantages outweigh any perceived fairness concerns.

Section 7.a. recognizes that public access must be considered when arranging ITV sessions. The public should be permitted to attend the session from any courtroom terminal site where one or more of the participants are physically present. The protocol recognizes that there may be situations where one terminal site is not physically suitable for live public presence, and section 7.a. requires public access to that site via ITV in some other room that is reasonably accessible to the public. *See, e.g., In Re: Detention Center Arraignments, Washington County (Minn.S.Ct. April 26, 1996)* (order permitting temporary use of ITV from detention center during court facility remodeling; judge, attorneys, and defendant present in arraignment room; family members victims, advocates, probation officers, and others permitted to view proceedings via ITV from another room in detention facility and then brought to arraignment room to provide information or testimony in presence of judge and defendant if necessary).

Sections 7c-7e of the protocol are based on the collective experience of Minnesota courts and agencies that have implemented ITV. Presiding judges may also want to alert participants to the very slight time delay that may occur between questions and answers during an ITV session.

Use of ITV in Criminal Matters in Other Jurisdictions

ALASKA.R.CRIM.P. 38.2(b) (in custody defendants shall appear by ITV in traffic and misdemeanor cases for arraignment, pleas, non-evidentiary bail reviews, and, with defendant's consent, sentencing; in felony cases for initial appearance hearings, non-evidentiary bail reviews, and not guilty plea arraignments, unless otherwise ordered for cause; in all cases court may order in person hearing upon finding that defendant's rights would be prejudiced by use of ITV).

ARIZ. R. CRIM. P. 1.6 (at court's discretion ITV can be used in initial appearance and not guilty arraignments, for other ITV use written stipulation of parties including that defendant knowingly, voluntarily and intelligently agrees to appear; no ITV use in trial, evidentiary hearing, probation revocation hearing, or felony sentencing).

ARK. reports that there is no specific authority for the use of ITV (in absence of the defendant's consent) but some courts may use it for first appearance, plea and arraignment and other such pretrial/preliminary hearings. Email from John Millar, attorney, Administrative Office of the Courts, to Devin Hallin, Office Assistant, State Court Administrator's Office (Nov. 2005). Little Rock Municipal Court uses ITV in bail review proceedings if defense attorney consents. Telephone interview with Mike Kindle, Little Rock Municipal Court Probation (Jan. 16, 2001). ARK. CODE § 16-43-4004, which deals with closed circuit testimony in criminal cases where children 12 and under are involved

CAL. PENAL CODE § 977, 977.1, 977.4 (if defendant agrees, may appear by ITV in misdemeanor and felony for initial appearance, arraignment, and plea, but in domestic violence cases court may order appearance for service of process; if incarcerated in state, county, or local facility, initial appearances and arraignments may be conducted by ITV without defendant's consent).

COLO.R.CRIM.P. 43(e) (ITV may be used for first appearance for purpose of advisement and setting of bail, further appearances for purposes of filing charges or setting preliminary hearing, and unless defendant objects, hearings to modify bail).

CONN. reports that currently there is no use of video technology in criminal cases, although it is used in habeas corpus proceedings. Email from Larry D'Orsi, Deputy Director, Criminal Courts Operation, to ITV Subcommittee staff Mike Johnson (Jan. 2, 2001).

DEL. CT. COMMON PLEAS R.CRIM.P. 10(b) (closed circuit television may be used for arraignments); 43(c)(6) (for Title 21 offense, other traffic offense, a class B or unclassified misdemeanor or a violation, with the consent and waiver of the defendant's appearance, the Court may permit in custody arraignment and/or plea by video phone and impose sentence. DEL. JUSTICE OF PEACE CT. R.CRIM.P 4 (ITV may be used for issuance of warrant).

FLA.R.CRIM.P. 3.130, 3.131, 3.160, and 2.071 (ITV may be used in discretion of court for first appearance and arraignment; bail modifications in felony matters must be in-person; county and circuit judges may take testimony by ITV if defendant makes informed waiver of any confrontational rights that may be abridged by use of ITV).

GA. CODE ANN. § 17-4-47 (video conference may be used to conduct hearings relating to arrest warrant applications and issuance of an initial bond connected with an offense for which an arrest warrant was issued).

HAWAII R. PENAL PROC. 10, 43, (allows use of video teleconferencing for arraignment if defendant waives right to be present); HAWAII R. EVID. 616 (allows use of closed circuit video for testimony of child in any prosecution of an abuse offense or sexual offense alleged to have been committed against a child less than eighteen years of age at the time of the testimony)

IDAHO R.CRIM.P. 43.1 (electronic audio visual devices may be used in the discretion of the district judge or magistrate for a first or subsequent appearance, bail hearing, arraignment and plea in a misdemeanor case, or arraignment and plea of not guilty in a felony case).

INDIANA ADMIN. R. 14 (allows use of video telecommunications for: initial hearings including any probable cause hearing; determination of indigence and assignment of counsel; amount and conditions of bail; setting of omnibus date; *pre-trial conferences*; taking of a plea of guilty to a misdemeanor charge; sentencing hearings when the defendant has given a written waiver of his or her right to be present in person and the prosecution has consented; with the written consent of the parties, post-conviction hearings; and any other hearing or proceeding in which the parties waive their rights of appearance).

KAN. CRIM. PROC. CODE §§ 22-2802 (11); 22-3205 (b); 22-3208 (7); 22-3717 (j); 38-1632 (g)(allows ITV use in discretion of court for review of release conditions, arraignment, motion hearings, parole board proceedings; juvenile detention hearings, and juvenile pre-trial hearings; adult defendants must be informed of the right to be personally present in the courtroom during these proceedings and exercising their right to be present shall in no way prejudice the defendant).

KENT. *Commonwealth of Kentucky v. Ingram* at 46 S.W.3d 569 (Ky. 2001) (allows use of ITV for arraignments, and consent of defendant is not required). ITV also used for testimony by chemists from the six state crime labs. Email from Sarah Dent, Administrative Office of the Courts, to ITV Subcommittee staff Mike Johnson (Jan. 11, 2001).

LA. R. FOURTH JUD. DIST. XXXI (Ouachita Parish; appearance before a judge under C.Cr.P. Art. 2300.1, and arraignment under C.Cr.P. Art 551, may be either in person or by simultaneous transmission through audio-video electronic equipment).

MAINE R.CRIM.P. 5 (initial appearance by ITV in the discretion of the court).

MASS. reports that ITV is used for arraignments, criminal complaint hearings, pre-trial conferences, hearings to order psychological exams, and probation violation hearings. There are no statutes that permit use of video conferencing. It is left to the discretion of the local courts, some of which require a waiver from the defendant and defense attorney. E-mail from Theresa Gillis, Court Program Manager of Video Conferencing, Administrative Office of the Trial Court of Massachusetts, to Devin Hallin, Office Assistant, State Court Administrator's Office(Nov. 2005); Email from Bill Letendre, Court Program Manager, Administrative office of the Trial Court, to ITV Subcommittee staff Mike Johnson (Jan. 2, 2001); MASSACHUSETTS TRIAL COURT ADMIN. OFFICE OF THE TRIAL COURT, PLANNING AND DEVELOPMENT DEPT., VIDEO CONFERENCING JULY - SEPTEMBER 2000 (2000).

MICH. ADMIN. ORDER 2000-3 (July 18, 2000; file no. 89-44) (State Court Administrator authorized to approve the use of two-way interactive video technology between a courtroom and a prison, jail, or other place of detention for: initial arraignments on the warrant, arraignments on the information, pretrials, pleas, sentencing for misdemeanor offenses, show cause hearings, waivers and adjournments of extradition, referrals for forensic determination of competency, and waivers and adjournments of preliminary examinations; Model Local Administrative Order 13 provides that local Judge/Magistrate has the sole discretion to terminate or suspend an interactive video proceeding once initiated and to require that the defendant be brought physically before the court); *compare* MICH. COMP. LAWS § 767.37a (unless the defendant requests physical presence before the court, allows use of 2-way closed circuit television for initial criminal arraignments and the setting of bail between a court facility and a prison, jail, or other place where a person is imprisoned or detained; does not prohibit use of 2-way closed circuit television for arraignments on the information, criminal pretrial hearings, criminal pleas, sentencing hearings for misdemeanor violations cognizable in the district court, show cause hearings, or other criminal proceedings, to the extent the Michigan supreme court has authorized that use).

MO. REV. STAT. § 561.031 (for persons held in custody, personal appearance may be made by means of two-way audio-visual communication for: first appearance before an associate circuit judge on a criminal complaint; waiver of preliminary hearing; arraignment on an information or indictment where a plea of not guilty is entered; arraignment on an information or indictment where a plea of guilty is entered upon waiver of any right such person might have to be physically present; any pretrial or post-trial criminal proceeding not allowing the cross-examination of witnesses; sentencing after conviction at trial upon waiver of any right such person might have to be physically present; sentencing after entry of a plea of guilty; and other appearances via closed circuit television upon waiver of any right such person held in custody or confinement might have to be physically present).

MONT. CODE ANN. §§ 46-7-101 (initial appearance by ITV in court's discretion); 46-9-201 (bail by ITV in court's discretion); 46-9-206 (bail by ITV in court's discretion); 46-12-201 (arraignment by ITV in court's discretion); 46-12-211 (plea agreement disclosure by ITV if no party objects); 46-16-105 (guilty plea by ITV if no party objects and court agrees); 46-17-203 (misdemeanor guilty plea if no party objects and judge agrees); 46-18-102 (render judgment and sentencing by ITV if no party objects and court agrees); 46-18-115 (sentencing by ITV if no party objects and court agrees).

NEB. is currently developing rules for ITV use . E-mail from Janice Walker, Nebraska State Courts to Sue Dosal, State Court Administrator (Nov. 2005).

NEVADA reports that Clark County (Las Vegas area) Justice Center uses ITV routinely for arraignments without the consent of the defendant. (Source: Nov. 2005 Survey Response). Statutes also authorize ITV use in preliminary examinations and grand jury proceedings if the witness is 500 miles away or has a medical condition preventing attendance, NEV. REV. STAT. §§ 171.1975, 172.138 (2005), and out of state witnesses may testify by ITV in child support matters. NEV. REV. STAT. §§ 125A.285, 130.316, 425.3832 (2005).

N.J. Mun. Ct. R 7:8-7(a) (authorizes appearance of defendant by ITV as approved by the Administrative Office of the Courts); N.J. reports that ITV may be used for bail review/arraignment proceedings with the defendant's consent. (Nov. 2005 Survey Response).

N.M. R. CRIM. P. 5-303(H) (two-way audio-visual communication may be used for arraignment or first appearance if the defendant and the defendant's counsel are together in one room, the judge, legal counsel and defendant are able to communicate and see each other through a two-way audio-video system which may also be heard and viewed in the courtroom by members of the public, and no plea is entered except a plea of not guilty).

N.C. GEN. STAT. §§ 15A-532 (Any proceeding to determine, modify, or revoke conditions of pretrial release in a noncapital case may be conducted by an audio and video transmission; upon motion of the defendant, the court may not use an audio and video transmission); 15A-941 (arraignment in a noncapital case may be conducted by an audio and video transmission).

N.D. SUP. CT. ADMIN. R. 52 (2005) (allows court wide use of ITV for all hearings, conferences, and other proceedings in criminal cases; only limits are: defendant may not plead guilty or be sentenced via ITV unless the parties consent; and a witness may not testify by ITV unless defendant knowingly and voluntarily waives his or her right to have the witness testify in person; in a guilty plea proceeding, the court may not allow the defendant's attorney to participate from a site separate from the defendant unless the court: finds that the attorney's participation from the separate site is necessary; confirms on the record that the defendant has knowingly and voluntarily consented to the attorney's participation from a separate site; and allows confidential attorney-client communication, if requested.).

OHIO R. CRIM. P. 10(b) (arraignment by ITV with consent of parties if not guilty plea entered); *State v. Phillips*, 74 Ohio St. 3d 72, 656 N.E.2d 643 (1995) (rule does not violate due process).

ORE. UNIF. TR. CT. R. 4.080 (incorporating sections 4-12 of 2005 Enrolled House Bill 2282) (court may direct defendant to appear by simultaneous electronic transmission –includes ITV--- in bail review/arraignment proceedings, to enter a guilty plea, for in-custody inmates, for judgment/sentencing, and for probation violations; requires private communication with counsel and ability of judge and defendant to see each other; but a person may not appear before the jury by e-appearance). Survey Response also noted that Oregon courts also use ITV for oral and sign language interpretation in court proceedings.

42 PA. CONS. STAT. §§ 8703 (allows court discretion to hold arraignment by two-way electronic audio-video communication); 5985 (allows a child victim to testify by closed circuit television). PA. R. CRIM. P. 118 (may use ITV for post-sentence motions, bail hearings, extradition hearings, and Gagnon I hearings, but not for other preliminary hearings, trials, sentencing, revocation, or hearings where defendant has a constitutional or statutory right to be physically present), 540 (court has discretion to hold preliminary arraignments by ITV) and 571 (court has discretion to hold arraignments by ITV).

RHODE IS. R. CRIM. P. 5 (initial appearance by ITV in discretion of court when state opposes bail); 7 (waiver of indictment by ITV with leave of court and consent of prosecutor); 10 (arraignment by ITV in discretion of court); may be used in bail review/arraignment proceedings. Survey response also indicated that ITV may also be used in determination of attorney, probation review and motion to withdraw.

SOUTH CAROLINA: ITV may be used in bail review/arraignment proceedings. The consent of the defendant is required, and the defendant may “opt out.” The consent of the prosecutor is not

required. It may also be used in the following proceedings: non-capital initial appearances; bond hearings; preliminary hearings; contested motions; and, acceptance of guilty pleas and sentencing (for offenses initially within court of limited jurisdiction: initial appearances, bond hearings, probation revocations, contested motions, and acceptance of guilty pleas and sentencing in our court of general jurisdiction.) *Legal Authority:* Authority created in courts of limited jurisdiction statewide by Order dated August 2003. Authority created in courts of general jurisdiction by Order dated June 2005.

SO.DAK. 2005 survey response indicates that ITV may be used in bail review/arraignment proceedings. The consent of the defendant is **not** required. The defendant may "opt out." The consent of the prosecutor is **not** required. *Legal Authority:* No SD statutes or court rules specifically address this, but legal research found it permissible under existing statutes and case law. reports one judge using ITV on a regular basis on criminal arraignments based on a mutual consent. Email from D.J. Hanson, State Court Administrator, to ITV Subcommittee staff Mike Johnson (Jan. 10, 2001).

TENN. R. CRIM. P. 43(d), (e) (initial appearance by ITV in court's discretion if the use promotes the purposes of the rules, allows the judge and defendant to communicate with and view each other simultaneously, permits discussions to be heard by the public, and does not involve the defendant's entry of a guilty plea; same applies to an arraignment, in the absence of objection by the defendant).

TEX. CRIM. PROC. CODE ANN. Tit. 1, Chap. 27, Art. 27.18 (Vernon 2005) (Plea or Waiver of Rights by ITV with consent of the defendant and prosecutor); TEX. CRIM. PROC. ANN. Tit 1, Chap. 15, Art 15.17 (Vernon 2005) (initial appearance).

UTAH CODE JUD. ADMIN. Rule 4-106 (In the judge's discretion, any hearing may be conducted using telephone or video conferencing; applicable to all courts of record and not of record).

VERMONT ADMIN. ORDER NO. 38. (2005) (authorizes use in single county at judge's discretion for in-custody proceedings). Survey response reports limited use for bail review/arraignments and for plea bargains in simple cases.

VIR. CODE ANN. §§ 19.2-3.1 (any appearance required or permitted before a magistrate, intake officer or, prior to trial, before a judge, may be by use of two-way electronic video and audio communication); 19.2-82 (probable cause determination may be made using two-way electronic video and audio communication).

WASH. SUP. CT. CRIM. R. 3.4 (Preliminary appearances, arraignments, bail hearings, and trial settings may be conducted by video conference; any party may request an in-person hearing, which may in the trial court judge's discretion be granted; other trial court proceedings may be conducted by video conference only by agreement of the parties and upon the approval of the trial court judge pursuant to local court rule; In interpreted proceedings, the interpreter must be located next to the defendant); numerous local rules repeat the same, see, e.g., Wash. Crim. R. Courts of Lim. Juris. 3.4 (same). Survey response indicates that six of 31 districts use ITV in criminal cases for bail review/arraignments.

WIS. STAT. §§ 967.08-.09; 970.01; 971.04 (2005) (allows use of ITV for initial appearance if pleading not guilty, waiver of preliminary exams, waiver of competency proceeding, waiver of

jury trial, non-evidentiary bail and other release hearings, and non-evidentiary motions for severance, testing physical evidence, testing sufficiency of affidavits for arrest or search warrants, *in limine*, and to postpone; defendant may appear personally for good cause shown; physical presence otherwise required at arraignment, trial, during voir dire, any evidentiary hearing, any view by the jury, when the jury returns its verdict, and at the pronouncement of judgment and the imposition of sentence, except it may be excused in misdemeanor cases).

FED. R. CRIM. P. 5(f), 10(b), 43(a) (2005) allow use of ITV for initial appearances and arraignments if the defendant consents.

ATTACHMENT B

**C1-84-2137
STATE OF MINNESOTA
IN SUPREME COURT**

In Re:

**Supreme Court Advisory Committee
On Rules of Criminal Procedure**

**REPORT WITH PROPOSED AMENDMENTS
TO THE RULES OF CRIMINAL PROCEDURE
CONCERNING ITV COURT APPEARANCES**

February 2, 2007

Hon. Robert Carolan, Chair

Carolyn Bell Beckman, Saint Paul
Leonardo Castro, Minneapolis
James W. Donehower, Detroit Lakes
James D. Fleming, Mankato
Theodora Gaitas, Minneapolis
Candice Hojan, Minneapolis
Kathryn M. Keena, Hastings
Thomas M. Kelly, Minneapolis

Hon. Michael L. Kirk, Moorhead
William F. Klumpp, Saint Paul
John W. Lundquist, Minneapolis
Robin K. Magee, Saint Paul
Mark D. Nyvold, Saint Paul
Paul Scoggin, Minneapolis
Robert Stanich, Saint Paul
Hon. Heather L. Sweetland, Duluth

Hon. Paul H. Anderson
Supreme Court Liaison

Philip Marron, Minneapolis
Reporter

C. Paul Jones, Minneapolis
Counselor

Kelly Mitchell, Saint Paul
Michael Johnson, Saint Paul
Staff Attorneys

**REPORT TO THE MINNESOTA SUPREME COURT
FROM THE SUPREME COURT
ADVISORY COMMITTEE
ON RULES OF
CRIMINAL PROCEDURE
February 2, 2007**

In October 1999, the Minnesota Supreme Court approved the statewide use of ITV in limited criminal matters on a pilot basis under the protocol previously approved by the Court for the Ninth Judicial District's pilot project. In April 2006, the Judicial Council submitted to the Supreme Court its Proposed Protocol for the Use of ITV for Criminal Matters in District Court. By order of the Supreme Court dated May 16, 2006, the Advisory Committee on Rules of Criminal Procedure was directed to review the Judicial Council's protocol and to recommend and comment upon proposed rules implementing the protocol if adopted by the Court. The order gave interested persons the opportunity to submit to the committee written statements concerning this subject and directed that our report be submitted to the Court by October 20, 2006. By subsequent order of the Court dated October 24, 2006, the deadline for submitting the report was extended to February 2, 2007.

The advisory committee reviewed both protocols and the comments received from members of the bench and bar, including comments from many persons with experience in the pilot project. The committee has completed its review on this matter and recommends that the Supreme Court adopt a new Rule 1.05 to govern ITV proceedings. The Proposed Amendments to the Minnesota Rules of Criminal Procedure are submitted

herewith. A summary of those proposed rule amendments along with our comments concerning ITV follows.

COMMITTEE CONCERNS

The advisory committee recognizes that most states allow ITV appearances to some extent in criminal matters and that the use of ITV in appropriate circumstances can result in more-prompt hearings and possibly an earlier release for defendants who are in custody. Without ITV, defendants in certain areas of the state may be penalized by having their initial court appearances delayed due to the great distances involved, the lack of sufficient judicial and other resources, and other unpredictable events. This is of special concern in misdemeanor cases where a defendant may spend more time in custody awaiting the first appearance and a release determination than might be appropriate as punishment for the offense. More-prompt appearances by ITV could result in earlier release for defendants and the more prompt resolution of their cases.

Nevertheless, the advisory committee believes that in-person court appearances are preferable and is very concerned that ITV not be extended beyond what is absolutely necessary to benefit in-custody defendants by offering more-prompt hearings than would otherwise be possible. The committee is concerned about the impersonal nature of ITV court appearances and the possible adverse effects on the due process rights of defendants who appear by ITV. The committee is concerned that if ITV appearances are not strictly limited, the financial and other pressures to expand ITV use could result in ITV becoming the rule rather than the exception for certain court appearances. That could result in a

two-tier court system with those persons financially or otherwise unable to obtain release from custody appearing by ITV and those persons not in custody appearing personally before a judge. Proposed Rule 1.05, subd. 2, therefore expresses a presumption in favor of in-person court appearances. This presumption is in accord with the American Bar Association Standards for Criminal Justice, Special Functions of the Trial Judge, Standard 6-1.8(a) (3d ed. 2000). The committee believes that such a presumption is appropriate considering the defendant's right to confrontation and to a public trial under the Sixth Amendment to the United States Constitution and under Article I, Section 6 of the Minnesota Constitution. This presumption also protects the public's right to open criminal trials and judicial proceedings. See Richmond Newspapers, Inc. v. Virginia, 448 U.S. 555 (1980). In accordance with these concerns, proposed Rule 1.05 contains specific restrictions on the use of ITV that go beyond the restrictions included in the Judicial Council Protocol.

RECOMMENDATIONS

Proposed Rule 1.05, subd. 3, allows the use of ITV only if permitted by the court when there is no judge physically present in the venue county. This is more restrictive than the Judicial Council's protocol which would allow certain ITV appearances if no judge is "available" in the venue county and other ITV appearances regardless of judge availability. Further, pursuant to proposed Rule 1.05, subd. 1(1), ITV may be used only for specifically-designated court appearances and then only when the defendant is in custody. For felony and gross misdemeanor cases, those specifically-designated court

appearances under subdivision 3(1) of the rule are for hearings under Rule 5, Rule 6, and consolidated Rule 5 and Rule 8 hearings under Rule 5.03. Unlike the protocol, the proposed rule does not permit ITV hearings for separate Rule 8 appearances or for Rule 13 appearances. Those hearings are held later in the proceedings and there should be sufficient time for the court to schedule in-person court appearances.

Further, the advisory committee does not believe it is appropriate to enter a felony or gross misdemeanor plea under Rule 13 by ITV. A not guilty plea entered under Rule 13 for a felony or gross misdemeanor is not to be entered until the omnibus hearing is held under Rule 11. Under the rules, an omnibus hearing must be held and the committee believes that should be an in-person appearance by the defendant. The Judicial Council's protocol provides for waiver of an omnibus hearing by ITV, but such a waiver is not appropriate under the existing rules. If there are no evidence suppression issues or if no hearing on such issues is demanded, that will not be part of the omnibus hearing. However, an omnibus hearing still must be held and there is no need for a waiver whether by ITV or in person.

For misdemeanor cases, including petty misdemeanors, the specifically-designated ITV court appearances permitted under subdivision 3(2) of the rule are for hearings under Rule 5 and Rule 6, and for arraignments, pleas, and sentencings. Where the defendant is not in custody and for other hearings scheduled later in the criminal proceedings, time pressures are not so great and it should be possible to schedule those hearings before a judge in person.

Additionally, ITV hearings are subject to the consent and objection requirements of subdivision 4. An ITV hearing otherwise permitted by Rule 1.05 may not be held unless the defendant consents to such a hearing, either in writing or orally on the record. To be sure that those defendants understand their rights regarding ITV appearances, proposed Rule 1.05, subd. 4(1), provides for an ITV advisory and proposed Form 51 provides a waiver of personal presence form that may be used by defendants appearing by ITV. Proposed Form 51 is similar to the waiver form appended to the Ninth Judicial District's protocol. Further, under Rule 1.05, subd. 4(3), either the defendant's attorney or the prosecuting attorney may prevent an ITV appearance by objecting either in writing or orally on the record to such an appearance.

The provision in proposed Rule 1.05, subd. 4(4), allowing the chief public defender to object to an ITV hearing is in addition to the right of either the prosecuting attorney or the public defender assigned to the case to make such an objection. There is no such provision in the Judicial Council's protocol, but there was a similar provision in the Ninth Judicial District's protocol. *The chief public defender has no right to object to an ITV appearance by a defendant who is represented by private counsel.* The right of objection by the chief public defender is included as a check against abuse of the rule and the possibly excessive use of ITV for mass calendars where in-person appearances could be arranged. It is possible that an objection by the chief public defender may conflict with a defendant's desire for an ITV appearance. However, such a conflict is unlikely to occur if the chief public defender considers any ethical obligations to the defendant and

the defendant's right of self-representation under Faretta v. California, 422 U.S. 806 (1975).

Where an ITV hearing is not held because the defendant does not consent or an objection is made by counsel or the chief public defender, subdivision 4 directs that an in-person court appearance for that hearing must be scheduled to be held within the time limits as otherwise provided by the rules.

Rule 1.05, subd. 5(1), requires the defendant's attorney to be present at the same terminal site as the defendant for ITV court appearances, except in "emergency" circumstances when both parties agree that the defendant's attorney may be at a different site. The rule does not permit either the defendant's attorney or the prosecuting attorney to be present at the same terminal as the judge unless both attorneys are at that site with the judge or unless the attorney who is not there agrees on the record that the other attorney may be at the site with the judge. This proposed rule is substantially the same as the Judicial Council's protocol, except that the protocol would also allow the defendant's attorney to be at a different terminal site in "unusual" circumstances. The advisory committee believes that "unusual" circumstances could be too broadly-defined and too easily sacrifice the substantial benefits of having defense counsel with the defendant at the time of the ITV appearance.

Under proposed subdivision 6, for any ITV appearance, a defendant may request a rehearing before a judge in person. The rehearing shall be *de novo* and shall be held within three business days after the defendant requests the rehearing. If the request for

the rehearing is made at the time of the initial ITV hearing, then the rehearing must be held within three business days after that ITV hearing. However, often a defendant will not have counsel at the time of the ITV hearing and the request might not be made until after the defendant has had the opportunity to obtain and talk to counsel. The time limit for the rehearing would then start when the request is submitted to the court.

TECHNICAL PROTOCOL REQUIREMENTS

Proposed Rule 1.05 does not contain the various requirements for conducting ITV hearings that are included as “Standard Procedures” and “Equipment and Room Standards” in number 5 and number 7 of the Judicial Council’s protocol. Although these requirements are important to a successful ITV hearing, they are very detailed and technical and should apply to both criminal and civil proceedings. The advisory committee therefore believes it is appropriate to set forth these requirements somewhere other than in the Rules of Criminal Procedure; possibly in the General Rules of Practice for the District Courts. The committee therefore suggests that the Court refer this matter to the appropriate committee for further consideration.

FUTURE REVIEW

Because of the concerns of the advisory committee expressed in this report, proposed Rule 1.05 strictly limits the use of ITV in criminal proceedings. If ITV is approved by the Court, the committee believes it is very important to carefully review both the beneficial and adverse effects of ITV appearances on defendants. This is important not just for minority and indigent defendants, but for all defendants who make

such appearances. The committee therefore recommends that data be gathered on future ITV appearances concerning how well the rule is working, who is impacted by ITV appearances, and how they are impacted. It will then be possible to evaluate whether further revision of the ITV rules is necessary.

Dated: _____

Respectfully Submitted,

/s

Judge Robert Carolan, Chair
Supreme Court Advisory Committee
on Rules of Criminal Procedure

**PROPOSED AMENDMENTS TO THE
RULES OF CRIMINAL PROCEDURE
February 2, 2007**

The Supreme Court Advisory Committee on Rules of Criminal Procedure recommends that the following amendments relating to the use of interactive video teleconference (“ITV”) in criminal proceedings be made in the Minnesota Rules of Criminal Procedure.

1. Rule 1. Scope, Application, General Purpose, and Construction.

Amend this rule by adding a new Rule 1.05 as follows:

Rule 1.05. Use of Interactive Video Teleconference in Criminal Proceedings

Subd. 1. Definitions.

(1) **ITV.** “ITV” refers to interactive video teleconference and is permitted only for court appearances authorized by subdivision 3 of this rule for defendants who are in custody.

(2) **Terminal Site.** A terminal site is any location where ITV is used for any part of a court proceeding.

(3) **Venue County.** The “venue county” is the county where pleadings are filed and hearings are held under current court procedures.

Subd. 2. Presumption. All appearances under the Minnesota Rules of Criminal Procedure shall be made in person unless authorized to be conducted by ITV under this rule.

Subd. 3. Permissible Use of ITV.

(1) **Felony and Gross Misdemeanor Cases.** Subject to the limitations in subdivision 4 of this rule, the court may permit hearings under Rule 5 and Rule 6 and

consolidated Rule 5 and Rule 8 hearings under Rule 5.03 to be conducted by ITV before any available judge of the district if there is no judge physically present in the venue county, provided that no plea may be taken by ITV.

(2) Misdemeanor Cases. Subject to the limitations in subdivision 4 of this rule, the court may permit Rule 5 and Rule 6 hearings, arraignments, pleas and sentencings to be conducted by ITV before any available judge of the district if there is no judge physically present in the venue county.

Subd. 4. Consent Requirements.

(1) ITV Advisory. When a hearing by ITV is scheduled, a waiver of personal presence form as appended to these rules shall be provided to the defendant together with the notice of hearing. At the time of the appearance by ITV, the judge, judicial officer, or other duly authorized personnel shall advise the defendant of the right to be personally present before the presiding judge at all proceedings and that an in-person appearance will be scheduled if the defendant does not consent to appearing by ITV. The judge, judicial officer, or other duly authorized personnel shall also advise the defendant that if the defendant does consent to the ITV hearing, the defendant has the right to an in-person rehearing to be held within three business days after the defendant requests such a hearing.

(2) Consent of Defendant. Court hearings pursuant to subdivision 3 of this rule may not be conducted by ITV unless the defendant consents thereto either in writing or orally on the record at the ITV appearance. If the defendant does not consent to the hearing being conducted by ITV, an in-person court appearance for that hearing shall be

scheduled to be held within the time limits as otherwise provided by these rules.

(3) Objection by Counsel. The defendant's attorney or the prosecuting attorney may object either in writing or orally in court on the record to conducting an ITV hearing otherwise permitted to be held under subdivision 3 of this rule. If such an objection is made, an in-person court appearance for that hearing shall be scheduled to be held within the time limits as otherwise provided by these rules.

(4) Objection by Chief Public Defender. In those cases where a defendant is not represented by private counsel, the chief public defender for the district also may object either in writing or orally in court on the record to conducting an ITV hearing otherwise permitted to be held under subdivision 3 of this rule. If such an objection is made, an in-person court appearance for that hearing shall be scheduled to be held within the time limits as otherwise provided by these rules.

Subd. 5. Location of Participants.

(1) Defendant's Attorney. The defendant's attorney shall be at the same terminal site from which the defendant appears except in emergency circumstances when agreed to by both parties on the record. In such emergency circumstances, the defendant's attorney may be at any terminal site, provided that defendant's attorney may not be at the same terminal site as the judge unless the prosecuting attorney agrees to that on the record or both counsel are present at the same terminal site as the judge.

(2) Prosecuting Attorney. The prosecuting attorney may be present at any terminal site except the terminal site from which the judge appears, unless the defendant's

attorney agrees to that on the record or both counsel are present at the same terminal site as the judge.

(3) **Judge.** The judge may be at any terminal site.

(4) **Public.** Members of the public may be at any terminal site.

Subd. 6. Request for Rehearing. If a hearing is conducted by ITV under subdivision 3 of this rule, the defendant may request an *in-person rehearing before a judge*. The rehearing shall be held *de novo* within three business days of the defendant's request for that hearing and shall be deemed a continuance of the ITV hearing.

Subd. 7. Multi-county Violations. When a defendant has pending charges in more than one county within a district, any or all ITV appearances authorized by this rule may be heard by ITV by any judge of that district.

Subd. 8. Protocol. All other requirements for conducting ITV hearings shall be governed by the Protocol for the Use of ITV for Criminal Matters in the District Court.

2. **Comments on Rule 1.**

Amend the comments on Rule 1 by adding the following new paragraphs at the end of the existing comments as follows:

Rule 1.05 authorizes the use of interactive video teleconference ("ITV") for certain court appearances and establishes the procedure for such appearances. In 1999, the Minnesota Supreme Court approved the statewide use of ITV in limited criminal matters on a pilot basis under the protocol previously approved by the Court for the Ninth Judicial District's pilot project. In 2006, the Judicial Council recommended to the Court a revised

protocol for ITV court appearances. The Court then directed the Supreme Court Advisory Committee on Rules of Criminal Procedure to review that protocol and to recommend and comment upon proposed rules implementing the Judicial Council's protocol if adopted by the Court. Rule 1.05 is the result of that review.

The advisory committee recognizes most states allow ITV appearances to some extent in criminal matters and the use of ITV in appropriate circumstances can result in more-prompt hearings and possibly an earlier release for defendants who are in custody. Without ITV, defendants in certain areas of the state may be penalized by having their initial court appearances delayed due to the great distances involved, the lack of sufficient judicial and other resources, and other unpredictable events. This is of special concern in misdemeanor cases where a defendant may spend more time in custody awaiting the first appearance and a release determination than might be appropriate as punishment for the offense. Permitting ITV use for more-prompt appearances could result in earlier release for defendants and the more prompt resolution of their cases.

Nevertheless, the advisory committee believes that in-person court appearances are preferable and is very concerned ITV not be extended beyond what is absolutely necessary to benefit in-custody defendants by offering more-prompt hearings than would otherwise be possible. The committee is concerned about the impersonal nature of ITV court appearances and the possible adverse effects on the due process rights of defendants who appear by ITV. The committee is concerned that if ITV appearances are not strictly limited, the financial and other pressures to expand ITV use could result in ITV becoming

the rule rather than the exception for certain court appearances. That could result in a two-tier court system with those persons financially or otherwise unable to obtain release from custody appearing by ITV and those persons not in custody appearing personally before a judge. Rule 1.05, subd. 2, therefore expresses a presumption in favor of in-person court appearances. This presumption is in accord with the American Bar Association Standards for Criminal Justice, *Special Functions of the Trial Judge*, Standard 6-1.8(a) (3d ed. 2000). The committee believes that such a presumption is appropriate considering the defendant's right to confrontation and to a public trial under the Sixth Amendment to the United States Constitution and under Article I, Section 6 of the Minnesota Constitution. This presumption also protects the public's right to open criminal trials and judicial proceedings. See Richmond Newspapers, Inc. v. Virginia, 448 U.S. 555 (1980). In accordance with these concerns, Rule 1.05 contains specific restrictions on the use of ITV.

According to Rule 1.05, subd. 3, ITV may be used only if permitted by the court when there is no judge physically present in the venue county. Further, pursuant to Rule 1.05, subd. 1(1), ITV may be used only for specifically-designated court appearances and then only when the defendant is in custody. For felony and gross misdemeanor cases, those specifically-designated court appearances under subdivision 3(1) of the rule are for hearings under Rule 5, Rule 6, and consolidated Rule 5 and Rule 8 hearings under Rule 5.03. For misdemeanor cases, including petty misdemeanors, those specifically-designated court appearances under subdivision 3(2) of the rule are for hearings under

Rule 5 and Rule 6, and for arraignments, pleas, and sentencings. Where the defendant is not in custody and for other hearings scheduled later in the criminal proceedings, time pressures are not so great and it should be possible to schedule those hearings before a judge in person.

Additionally, ITV hearings are subject to the consent and objection requirements of subdivision 4. An ITV hearing otherwise permitted by Rule 1.05 may not be held unless the defendant consents to such a hearing, either in writing or orally on the record. To be sure that those defendants understand their rights regarding ITV appearances, Rule 1.05, subd. 4(1), provides for an ITV advisory and a waiver of personal presence form, which is contained in the Criminal Forms appended to these rules as Form 51. Further, under Rule 1.05, subd. 4(3), either the defendant's attorney or the prosecuting attorney may prevent an ITV appearance by objecting either in writing or orally on the record to such an appearance.

The provision in Rule 1.05, subd. 4(4), allowing the chief public defender to object to an ITV hearing is in addition to the right of either the prosecuting attorney or the public defender assigned to the case to make such an objection. The chief public defender has no right to object to an ITV appearance by a defendant who is represented by private counsel. The right of objection by the chief public defender is included as a check against abuse of the rule and the possibly excessive use of ITV for mass calendars where in-person appearances could be arranged.

Where an ITV hearing is not held because the defendant does not consent or an

objection is made by counsel or the chief public defender, an in-person court appearance for that hearing must be scheduled to be held within the time limits as otherwise provided by these rules. See Rule 4.02, subd. 5, as to the time limit for a court appearance by an in-custody defendant arrested without a warrant. The refusal by a defendant to appear by ITV does not automatically extend the time limit for the in-person court appearance. Rather, any extension of that time limit would have to be justified by cause shown under Rule 34.02.

Rule 1.05, subd. 5(1), requires the defendant's attorney to be present at the same terminal site as the defendant for ITV court appearances, except in emergency circumstances when both parties agree that the defendant's attorney may be at a different site. The rule does not permit either the defendant's attorney or the prosecuting attorney to be present at the same terminal as the judge unless both attorneys are at that site with the judge or unless the attorney who is not there agrees on the record that the other attorney may be at the site with the judge.

The defendant may request a rehearing before a judge in person. The rehearing shall be *de novo* and shall be held within three business days after the defendant makes the request for the rehearing. If the request for the rehearing is made at the time of the initial ITV hearing, then the rehearing must be held within three business days after that ITV hearing. However, often a defendant will not have counsel at the time of the ITV hearing and the request might not be made until after the defendant has had the opportunity to obtain and talk to counsel. The time limit for the rehearing would then

start when the request is submitted to the court.

3. Form 51. ITV Waiver of Personal Presence.

Amend the Criminal Forms following the rules by adding a new Form 51 as follows:

FORM 51. ITV WAIVER OF PERSONAL PRESENCE

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF _____

_____ JUDICIAL DISTRICT

_____,)
Plaintiff,)
vs.)
_____,)
Defendant.)

ITV WAIVER OF
PERSONAL PRESENCE

PLEASE TAKE NOTICE that the undersigned Defendant acknowledges his or her right to be personally present before the presiding Judge at all stages of these proceedings. I hereby waive that right for the hearing scheduled for ___(date)___, and agree to appear before the presiding Judge by interactive video teleconference (ITV) for that hearing. I further understand that I have the right to request a rehearing of this matter before a judge in person and it will be held within three business days after I make that request.

I understand that this waiver of personal presence before the presiding Judge of this hearing may not be extended to a future hearing without my later consent.

Dated:

Signature of Defendant

ITV

16 February 2007

Honorable Paul Anderson
Minnesota Supreme Court
Minnesota Judicial Center
St. Paul, Minn. 55155

OFFICE OF
APPELLATE COURTS

MAY 20 2007

FILED

Re: ITV usage

Dear Justice Anderson:

John Rodenberg has alerted us that the Advisory Committee on the Criminal Rules is proposing to significantly restrict the use of ITV in criminal cases. I am writing to express my sincere objection to any proposal that would restrict the use of ITV and I'll try to explain why I take this position.

I have read the February 2, 2007 report and note that the objections to use of ITV include the notion that use of this medium is "impersonal" and that such use might have "adverse effects" on the due process rights of defendants. Concern is also being expressed about a "two-tier" court system in which the affluent apparently receive "upgraded" due process over those less fortunate.

When I started this job 23 years ago we had 21 judges in the Fifth Judicial District. We now have 16 robed personnel and have three counties (out of 15) where there is no resident judge. Despite this reduction in the work force, our caseload had increased exponentially. We are constantly asked to do more with less, and now, we get this abstract notion that, unless the judge and defendant are physically in the same room, we are somehow denying the defendant's "due process" rights.

We frequently utilize ITV to do Rule 5 appearances and, sometimes, do arraignments or take guilty pleas when matters are settled. Having done this for a number of years I have yet to discern any disparity between the due process afforded a defendant who appears with his lawyer, for example, in St. James when I am in Worthington. Undertaking these hearings, where no testimony is taken from witnesses, works just fine. Without exception, the defendant is in the same room as his attorney and the only person not in the room, but on TV, is the judge. Everyone can see everyone else and hear everything that is being said. How does this "adversely" affect due process?

A typical use of ITV occurs when a Watonwan County defendant enters a plea agreement with the prosecutor. We insist that the plea be taken before the scheduled trial (especially when a jury has already been sent notice of when to report). If we cannot utilize ITV that means that I need to take most of a day to drive to St. James to take the

plea –which is seldom possible due to the calendar in Wgtn --- or else the attorneys – prosecutor and public defender, along with the defendant, must make the 120 mile round trip for a 15 minute hearing. The added pressure on the public defender’s office alone should defeat this ludicrous proposal. Clearly, those promoting this change have never lived or worked out here on the prairie during the winter months. When a judge is gone or on vacation, and a neighboring or distant judge is called upon to “fill-in” it just isn’t practical to take two or three hours (round trip time) for a 10 minute hearing, and this applies to the attorneys and judges. We had this same discussion when considering telephone interpreting.

Nobody likes or prefers to use ITV. We use it to meet the “mandated” efficiency we are expected to employ. It has become a requisite necessity, rather than an expedient. When I was on the CCJ several years ago, we voted to send over a million dollars to the Ninth District to purchase ITV equipment. Are we now going to put this expensive equipment in the closet? We employ ITV in every county in the Fifth District to meet the “timeliness” requirements of the rules, and, I would bet, every other rural district utilizes the technology.

Eliminating use of ITV, except in rare instances, amounts to an unfunded mandate (this time imposed by the Judicial Branch rather than the Legislature) because the counties are going to have to spend more money to hire more personnel to travel –i.e., prosecutors, transport deputies, etc. Look at what happened in Willmar and Duluth when the counties built their jails miles from the courthouse! The principle is the same.

Please reconsider the proposal to eliminate or greatly restrict use of ITV. I believe I have an open mind about the subject and if someone could, in real terms, explain why a person’s “due process” rights are impinged or not observed when ITV is employed, I would seriously consider changing my opinion. Until then, it seems to me that us outnumbered rural judges in this State will, once again, bow to the urban majority. How many of those promoting this rule change have used or witnessed use of ITV?

Respectfully Submitted,

Jeff Flynn

cc. Fifth District Judges

LELAND BUSH
JUDGE OF DISTRICT COURT



OFFICE OF
APPELLATE COURTS

PH: 507-537-6758
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MAY 10 2007

FILED

ITV

March 15, 2007

COUNTY OF LYON
LYON COUNTY GOVERNMENT CENTER
607 WEST MAIN STREET
MARSHALL, MN 56258

The Honorable Paul H. Anderson
Minnesota Supreme Court
305 Minnesota Judicial Center, Chambers 423
25 Rev. Dr. Martin Luther King, Jr. Blvd
St. Paul, MN 55155-6102

Dear Chief Justice Anderson:

I am writing you because I have received the report dealing with proposed amendments to the Rules of Criminal Procedure regarding ITV court appearances.

I am very concerned about the proposed policy changes and believe they are not in the best interests of administration of justice, based upon my perspective of working in rural Minnesota.

I will remind you of my perspective. I am a District Court Judge in Marshall, Minnesota. My regular duty assignment calls for me to hear approximately one-half of the cases in Marshall, Minnesota. Marshall is in Lyon County. I am also called upon to provide services to Lincoln County, Minnesota, and to provide services to Redwood County, Minnesota. Lincoln County is staffed regularly one-half day per week. Trials and extended hearings are scheduled outside of that time. Between Judge Harrelson and I, we provide a minimum of one day per month in Redwood County to address special term matters. Trials are scheduled outside of that timeframe.

As a judge, I have not heard cases in metropolitan locations.

On occasion, I am called upon to leave the 3-counties which make up the assignment district. For example, I am scheduled to travel to St. James on February 27, 2007, to assist with the judicial work there.

As you know, Judge George Harrelson is on the Judicial Council and these responsibilities take him out of our assignment district on a regular basis. While I certainly cannot suggest that it is a frequent occurrence, it is also not uncommon for me to have in-custody appearance for Defendants from Lincoln County, Lyon County and Redwood County in a single day.

My observation as to this proposal is all with whatever biases those experiences would bring to the process.

1. Is it broken? One of my first concerns is the question of why it is that there is a perceived need to change how these matters are being handled? Up to this point, I have not ever had a complaint about how an interactive television hearing was handled. To the best of my knowledge, in the approximately five years that I have been working as a judge, there has never been an appeal or a complaint as to a hearing which I handled by ITV. From that, I pose the question of why there is a necessity to change the procedures that we are utilizing.
2. The language of the proposed rule. I believe the language of the proposed rule does not contemplate what in fact occurs in rural counties. The reference to a venue county where pleadings are filed and hearings are held ignores the fact that if the Defendant is transported to a judge in an adjacent county, hearings are not held in the county in which the charge originates.

I attempt to use interactive television very carefully. There are a variety of cases that I refuse to hear by interactive television. As to criminal cases, those cases generally include a case in which I'm going to be receiving testimony that will be the subject of cross-examination. I recognize, however, that there may be circumstances when I have to take that testimony, if the hearing is going to happen in a timely manner. As of the time when I am writing this letter, I don't recall a case where that has happened. At the same time, the county where the pleadings are filed is not necessarily where the hearing is held. We are fortunate in Marshall, Minnesota to have a regional Public Defenders Office. That staff of public defenders provides coverage for Lyon County, Lincoln County, and Redwood County, as well as other counties. It is not uncommon for us to hear Lincoln County or Redwood County cases in Lyon County. This allows us to hear the case timely. If we insist on having that hearing in the county where the pleadings are filed, the case would not be heard within the scheduled timelines. The addition of the travel time for the prosecutors, public defenders, as well as judges and court staff impact how rapidly we can deliver necessary services.

I am concerned with the comments on Rule 1, in Subd. 3, and the comments to Rule 1 that ITV may only be used if there is no judge physically present in the venue county. I think it is important to remember that this overlooks a number of pertinent circumstances. Some examples are the following:

- 2.1 If Judge Peterson is physically present in Redwood County, but the Defendant has elected to remove him. Does that mean that I am not permitted to hear the case by interactive television from Lyon County as the judge who is reassigned?
- 2.2 If Judge Peterson is in a jury trial as the only sitting judge in Redwood County, am I prohibited from handling the Redwood County in-custody calendar? The alternative is that Judge Peterson would have to inform the jury members, counsel, the Defendant, and whatever witnesses are waiting for the trial that they should wait while he addresses a criminal defendant in custody because there is no other option for that Defendant to be seen on that day, unless a judge travels to Redwood County to do so.

I believe that both of these examples are an indication of a situation where not allowing ITV to be used really does not make sense.

3. The consent requirements. The consent requirements in the proposed rule call for the judge to provide the Defendant with an advisory and provide for the Defendant to have an absolute right to a "do over". I would point out that, as written, this is not an opportunity for a request by a party to reconsider the Court's decision, nor does it establish a right to an appeal to a de novo proceeding. It establishes an absolute right to a "do over". I am unaware of any precedent for a party to unilaterally have such a right in a criminal or any other case. This further presupposes that a Defendant who appears by ITV from a county where a judge is not readily available to hear his case is not a beneficiary of participation in this process. For example, can it be said that a Defendant who is not required to ride for two hours in the back of a squad car doesn't have benefit from an ITV appearance?
4. Objection by Chief Public Defender. The concept that the Chief Public Defender in a district can effectively preclude all ITV appearances within that district can hardly be said to be in the best interest of justice. If the Supreme Court wants to prohibit all ITV appearances, then it would seem that the appropriate level to make that decision at is with the Supreme Court. This is not a decision that should be deferred to a Chief Public Defender.

I think that it is important to note that most ITV appearances involve Rule 5 appearances. In our locality the Public Defender is generally not involved in Rule 5 appearances. I understand that that is not the practice everywhere, and certainly don't take a position of whether they should or should not be. I believe that question is a policy decision that has been

made elsewhere and it is not my place to try to redesign that as a part of this process.

I also believe that it is important to consider the practicality of restrictions on ITV usage. Restrictions on the use of interaction television will result in a greater number of requests from a prosecutor to a judge to make a judicial determination to hold a Defendant for a later Rule 5 appearance. Believing that to be a practical reality of restrictions on this policy, my opinion is that a Defendant is better off with a timely Rule 5 appearance by ITV than he or she is with a court appearance that is delayed one or two additional days in order to find time on the judge's calendar when the Defendant can be seen for that court appearance.

5. A comment about hearings other than Rule 5 Hearings and the use of ITV. I noted earlier that generally speaking our use of interactive television, it is used most frequently for Rule 5 appearances. Judge Harrelson and I both have a regular rotation through Redwood County to deal with recusals and removals. In doing this, we do not go to Redwood County so frequently that when Judge Peterson has been recused or been removed, each of us will either be back in Redwood County within the requisite 14 and 21-day time periods. I require parties, at times, to come to Lyon County to address those hearings. Obviously, at times, we are back in Redwood County. At other times timeliness requires me to ask the parties to travel to Lyon County and, in other situations, we do utilize interactive television. As I indicated earlier, I do not take oral testimony in a contested matter by interactive television.

6. How restrictions of interactive television may affect other cases. In Lyon County, we routinely utilize interactive television in addressing commitment cases. Mental health services are almost always provided outside of the immediate geographic area, with a Respondent generally being held in either Willmar, Minnesota, St. Peter, Minnesota, Worthington, Minnesota, or Sioux Falls, South Dakota. It is generally difficult to arrange to have the examining doctor physically present in Lyon County. The most common practice is to allow the Petitioner and County Attorney to appear in person in Lyon County; and the Respondent, the Respondent's attorney and the examining doctor to appear by interactive television from whatever the location of the Respondent is. There clearly are other options. The Court could travel to the remote location. (I have not considered what a district judge's jurisdiction is if we were to have to travel to Sioux Falls, South Dakota, to try to conduct a hearing.) We could require law enforcement to pick up the Respondent, transport the Respondent to Lyon County and attempt to arrange for the examining doctor to appear in person in Lyon County. I am told by Court Administration that this would not be easy to accomplish.

7. There may be abuses. As I pointed out earlier, I do not believe I have ever had a complaint about the use of interactive television by a criminal defendant or a party in a commitment proceeding. In saying that I recognize that there may be practices that exist that are considered to be abusive and, because of that, you judge that those practices need to be changed. For example, I have been told there are some jurisdictions where a Defendant does not ever appear in court on a Rule 5 appearance, and always appears initially remotely by interactive television, being the only person absent from the court proceeding. I understand why that procedure might be called into question. It is not my decision to make whether or not that procedure should be discontinued.

My point is, very simply, that if there are perceived abuses, I would encourage you to try to address those perceived abuses, rather than change the procedure in situations where the use of interactive television has not been identified as a problem.

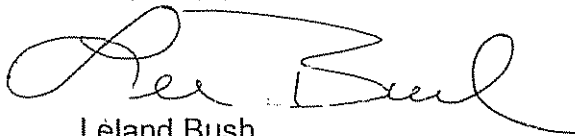
SUMMARY:

I am told by District Court Administrator that, based upon the current weighted caseload information, we are understaffed in the Fifth Judicial District. A decision to restrict ITV usage would necessarily make *doing our job more difficult*

It would make delivering services in a timely manner more difficult.

If it is determined that adopting these rules is necessary, then I would encourage you to consider how it is that we will either obtain more resources, that is judges and appropriate staff.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Leland Bush".

Leland Bush
Judge of District Court



GEORGE I. HARRELSON
JUDGE OF DISTRICT COURT

OFFICE OF
APPELLATE COURTS

MAR - 9 2007
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COUNTY OF LYON
LYON COUNTY COURTHOUSE
MARSHALL, MINNESOTA
56258

Justices of the Minnesota Supreme Court
Minnesota Judicial Center
25 Rev. Martin Luther King Jr. Blvd.
St. Paul, Minnesota 55155

C1-84-2137

RE: Proposed Amendments concerning ITV Court Appearances

Dear Members of the Minnesota Supreme Court:

Last week Justice Paul Anderson presented a report of proposed changes advocated by the Criminal Rules Committee for the ITV court appearances. I would like to express the strong concern on behalf of myself and the judges of the Fifth Judicial District.

Impact on courts and criminal justice partners in the rural area. While mention is made of the committee concerns regarding delays due to distances involved and the lack of sufficient judicial and other resources, I do not believe that these problems were sufficiently appreciated. It is noted that there is no member on the committee from a rural area, nor was there any input from Greater Minnesota. Judicial resources in rural Minnesota, as well as resources of prosecutors, public defenders, and law enforcement are being stretched to the limit. The adoption of these proposed rules would mean prosecutors and public defenders would spend many hundreds of hours in traveling to an available judge for short, non-testimonial hearings. Law enforcement would be also affected, but the biggest loser would be criminal defendants who would spend more time in custody and have their cases needlessly delayed.

Flawed Premises. The committee expressed concern about the "impersonal nature of ITV court appearances". That statement leads me to believe that few, if any, members of the committee, have actually observed an ITV hearing. ITV hearings, properly conducted, are not impersonal and are preferable to "cattle call" hearing calendars I have observed in the metro area. Mention is made of possible "due process" effects. These hearings in non-testimonial matters have been occurring for a number of years and I have yet to see any due process violations raised. The adoption of the

proposed amendments will certainly have significant effects on a defendant's right to timely hearings.

A two-tiered court system. The report expresses concern that expanded use of ITV could result in a "two-tier court system with those persons financially or otherwise unable to obtain release appearing by ITV and those persons not in custody appearing personally appearing before a judge." The adoption of the committee's proposed rule changes would have this exact effect. It would allow in custody defendants to appear by ITV and not allow those not in custody to appear by ITV (even if they and their attorney wishes to do so). With resources already stretched, we can expect even greater use of ITV for in-custody defendants, if the committee's proposals are adopted.

Physical presence vs. availability. Proposed Rule 1.05 would only permit ITV when there is no judge is physically present in the county. If a judge is present but not available due to sickness, vacation, or a completely booked calendar, why should that disallow use of ITV? The current rule of availability makes more sense.

Rule 8 appearances. The committee's proposal would prohibit ITV for Rule 8 appearances. In the rural area a Rule 8 hearing takes about 5 minutes and consists of the defense attorney asking for an Omnibus hearing (or sometimes a Rule 20 evaluation). No testimony is taken. Under the proposed change, if a judge is not available in my neighboring county, the prosecutor, the defense attorney, and the defendant would be required to each take two hours of travel for a five minute hearing

Plea agreements and guilty pleas. Entries of guilty pleas in cases where there is a plea agreement are commonly held by ITV. Often, the request for an ITV hearing is made by a defendant who has transportation difficulties and wishes closure on his or her case.

A concrete example. In the course of writing this letter, I have just had to take a break in order to hear a probation violation matter by ITV. Prior to the hearing, an agreement had been reached wherein the defendant admitted to the violations but was reinstated on probation on certain conditions. The hearing took less than 15 minutes. Hearing it by ITV saved two hours of travel by the prosecutor, defense attorney, probation agent, the defendant and the sheriff's deputy who would have had to transport her.

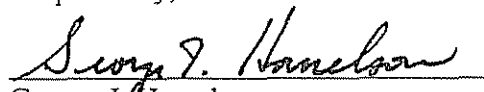
Time pressures. I must take umbrage with certain statements contained in the committee's report. Regarding misdemeanors and petty misdemeanors, the report states: "Where the defendant is not in custody and for other hearings scheduled later in criminal proceedings, time pressures are not so great and it should be possible to schedule those hearings before a judge in person." In fact, time pressures are great- due to the status of the court's calendars. While it is "possible" to schedule a matter before a judge, delays of weeks or months will be common.

Chief public defender veto. I have great concern about the proposal which would allow the chief public defender to object to an ITV hearing. The committee states that “ it is possible that an objection by the chief public defender may conflict with a defendant’s desire for an ITV appearance. However, such conflict is unlikely to occur if the chief public defender considers any ethical obligations to the defendant and the defendant’s right of self representation....” The chief public defender of my district has gone on record as opposing the use of ITV in criminal matters. A conflict is not just possible, but is a certainty. The committee’s remedy appears to be that the defendants can fire their public defenders and represent themselves. The use of ITV should be a decision that is made by defendants and their attorneys. I believe that the ability of the district chief public defender to substitute his or her decision is improper.

De novo review within 3 days. The committee’s proposal that a defendant have a right to a de novo rehearing of any ITV matter within three business days of a request is not warranted and does not take into consideration the present state of our calendars.

Conclusion. I am not an advocate of use of ITV hearings for contested matters that involve testimony. I also do not support the use of ITV as a wholesale substitute for in court appearances. However, I disagree strongly with the conclusion of the committee that ITV is necessarily impersonal in nature and that it has adverse effects on due process rights of defendants. I again want to point out that none of the members of the Rules Committee are from the rural area where ITV is now used on a regular basis. If the proposals of the committee are adopted, they will have serious implications on judge need, resources, and time standards for criminal cases. I would urge the Supreme Court not adopt these proposals.

Respectfully,


George I. Harrelson
Chief Judge, Fifth Judicial District



Minnesota Association of Criminal Defense Lawyers

OFFICE OF
APPELLATE COURTS

MAY - 7 2007

FILED

7 May 2007

Dan Guerrero *President*
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Michael Samuelson
Faison Sessoms

Frederick Grittner
Clerk of the Appellate Courts
305 Judicial Center
25 Rev. Dr. Martin Luther King, Jr. Boulevard
St. Paul, Minnesota 55155

*Re: PROPOSED AMENDMENTS TO THE RULES OF CRIMINAL
PROCEDURE RELATING TO IMPLEMENTATION OF ITV PROTOCOL*

Supreme Court File No. C1-84-2137

Dear Mr. Grittner;

Please accept this letter as the written submission and request to make an oral presentation to the Court on the above issue behalf of the MACDL.

We are writing this submission on behalf of the Minnesota Association of Criminal Defense Lawyers. The MACDL is the largest private criminal defense organization in the State of Minnesota, representing nearly 200 lawyers engaged in the practice of criminal defense. The members of the MACDL consist of both private practitioners and public defenders. The undersigned attorneys, Thomas Plunkett and Douglas Olson, represent the MACDL Rules Committee. The MACDL Rules Committee oversees proposed changes in various Rules which affect the practice of criminal defense attorneys and on behalf of MACDL membership responds to requests for input to committees and the courts in response to proposed rules changes. On behalf of the MACDL, Mr. Plunkett and Mr. Olson each request an opportunity to be heard on the proposed changes to the Rules of Criminal Procedure concerning the implementation of the ITV proposal, and each would request the opportunity to make a ten minute appearance before the court at the May 15, 2007 hearing.

The MACDL recognizes that ITV has the potential to be a useful tool, particularly in greater Minnesota where the logistics of getting an in-custody defendant before a judge may take days to accomplish. In those cases, ITV technology can be used effectively for initial appearances to set bail or conditions of release, thus ensuring that a person can be released

Paula Brummel E.D

earlier than if they were required to wait for a live court appearance. However, the MACDL has grave reservations as to the widespread use of ITV, and has concerns about the potential for regular ITV initial appearance calendars. ITV, like any "new" technology, will have its proponents and opponents, and its desirable features and its potential for abuse. The MACDL requests that the Court carefully consider limiting the use of ITV in the courts of Minnesota to ensure that it does not become abused or become a substitute for live in person court proceedings. While ITV may be more convenient and cost efficient than in person court appearances, this court should be weary of implementing a technology that has the potential to be biased and discriminatory and, equally important, will undoubtedly be perceived by those most impacted (the in-custody defendants) as biased and discriminatory. Those concerns alone should more than offset the efficiencies and economics which may be driving some proponents towards adopting this technology in Minnesota's courts.

The MACDL objects to the Judicial Council's Proposed Protocol for the Use of ITV

(hereinafter the "Judicial Council's Proposal") and urges the Court to adopt the proposal recommended by the Advisory Committee to the Rules of Criminal Procedure ("Advisory Committee Proposal"). The Advisory Committee's proposal is more limited in scope, adheres to the traditional preference for in person court appearances, mandates the requirement of defendant consent, and overall provides a more carefully thought out protocol for the initial implementation of ITV in Minnesota's courts. Accordingly, the MACDL requests that the Court give careful consideration to the thoughtful work done by its advisory committee on the Rules of Criminal Procedure and adhere to the ITV proposal it has proposed.

1. ITV should only be used in cases where there is no Judge physically present in the courthouse. The most significant difference between the Judicial Council's proposal and the Advisory Committee's proposal concerns the initial threshold standard governing its potential use. The Council's proposal permits the use of ITV if there is "no judge available in the venue county." Proposed Protocol, 3. a. (i. and ii.) The Committee's proposal permits the use of ITV "if there is no judge **physically present** in the venue county." Proposed Rule 1, Subd. 3 (1) and (2). There is a marked difference in these two standards and the MACDL maintains that the "not physically present" standard is vastly superior to "unavailable."

The MACDL believes that the "unavailable" standard is too broad, may be subject to abuse, and provides no meaningful standard to guide the involved parties in determining whether a particular situation is appropriate for an ITV appearance. It really establishes no standard at all and would permit judges and court administrators to determine whether ITV will be used in a particular instance or to run a particular calendar. Moreover, "unavailable" can mean one thing in one district and one thing at another locale; it could also carry different meaning to judges located in the same

courthouse. "Physically present" is a clear and unambiguous standard that means what it says. The use of ITV should not be allowed if there is a judge available in the venue county to hear the court appearance.

2. ITV should only be used in cases where the defendant is in custody. The MACDL believes that ITV should only be used in cases where the defendant is in custody. We cannot envision a justification for using ITV in non-custodial settings that cannot otherwise be taken care of by calendaring, traveling, waivers, and scheduling adjustments such that in person appearances before the court can be accomplished. The MACDL has concerns that the ease and convenience of using ITV may be so compelling that the technology itself will drive the "unavailability" of judges in certain areas and for certain inconvenient calendars. We do not see ITV to be a technology that should be used to replace in person live court appearances and it should be carefully structured to ensure that in person live court appearances remain the norm, not the exception. There exists little justification for using ITV for out of custody cases that calendaring and travel cannot solve. The dangers for overuse and abuse outweigh the benefits for use in most non-custodial settings. At this initial stage in its implementation, the MACDL believes that using ITV in non-custody cases is not warranted.

3. ITV should only be used with the consent of the defendant. The MACDL does not believe that ITV should be used without the consent of the defendant. The Council's proposal allows the court to hold ITV appearances over the objection of a defendant. This should not be permitted.

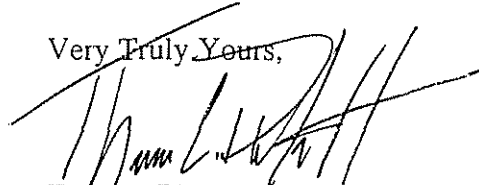
4. ITV should not be used to hold petty misdemeanor court trials. The MACDL is concerned over the rather cavalier treatment that the use of ITV for petty misdemeanor court trials is treated. While the "non-criminal" petty misdemeanor ticket does not afford those ticketed with the right to appointed counsel or the right to jury trial, this does not diminish the importance of these events in the lives of those affected. For most people, the only meaningful court experience they may ever face is their day in court in response to a petty misdemeanor traffic ticket. It is important that people feel that they have had their day in court and that they were treated fairly and with dignity. Permitting the use of ITV to hold contested court trials devaluates the importance of the experience for those affected. No one will be surprised when ticketed defendants complain about the unfair treatment following their losing experience in an ITV held trial. This predictable complaint and its obviously rural discriminatory bias should be avoided at the outset and the use of ITV to hold court trials should be rejected.

5. Any adopted ITV proposal should be carefully limited and monitored. Assuming that the Court adopts some form of Statewide ITV, the MACDL requests that the court build into the proposal a requirement that the use of ITV be monitored and studied, and that the Advisory Committee on the Rules of Criminal Procedure review its impact, effectiveness, and

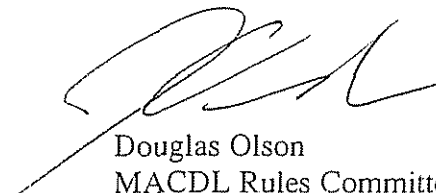
monitor complaints with the understanding that the Committee should be empowered to make recommend changes in light of studied historical experience. This makes sense in that this is something that will be new for most of the State's courts, and all participants should strive to ensure that that this technology is being used appropriately and uniformly throughout the State. Accordingly, the MACDL suggests that the advisory committee report to the court on a two year time frame and recommend any changes that it believes will assist in stream lining the use of ITV throughout the State.

In conclusion, the MACDL believes that the Judicial Council's proposal has the potential for widespread application and implementation of jail-to-courtroom procedures which should be avoided unless absolutely necessary. The salutary benefits of the use of ITV in out-state districts do not apply in many other districts. The use of any ITV in the larger metropolitan areas should not be condoned nor should the Court adopt a protocol which permits its use in metropolitan areas where the judges, defendants, and lawyers are all in the same building or within bocks of each other. The potential for widespread use of "court TV" as a substitute for live appearances will undoubtedly have an unintended yet hard to ignore discriminatory and dehumanizing impact on those that can not make bail. At a time when the court system is making efforts to minimize bias and discriminatory impacts in the court system it seems difficult to find justification for widespread implementation of a system which will undoubtedly create additional divisiveness in the criminal justice system between those that can make bail and those that cannot. Any mechanism which encourages further perception that there is a two tiered system of justice divided along economic lines should be cautiously reviewed and implemented only with significant safeguards and only when necessary. The potential for widespread use of in-custody ATV will further public perception that the poor are treated differently in the court system and, in a sense, serve as verification of this as fact. In short, the MACDL believes that the absence of many of the safeguards which were used in the original Ninth District pilot project, in particular, its potential to be used without consent of defendants and its use in cases where it is not necessary, weigh heavily against the Judicial Council's Proposal.

Very Truly Yours,



Thomas Plunkett
MACDL Rules Committee
Chair



Douglas Olson
MACDL Rules Committee



May 7, 2007

OFFICE OF
APPELLATE COURTS

MAY - 7 2007

FILED

Russell A. Anderson
Chief Justice
Supreme Court of Minnesota
305 Judicial Center
25 Rev. Dr. Martin Luther King, Jr. Blvd.
Saint Paul, MN 55155

RE: IMPLEMENTATION OF ITV PROTOCOL

Dear Chief Justice Anderson:

The Association of Minnesota Counties (AMC) strongly supports the Judicial Council's recommendation that the Court approve statewide use of interactive television (ITV). AMC encourages the Court to implement the proposed ITV protocol and adopt necessary amendments to the Minnesota Rules of Criminal Procedure consistent with and no more restrictive than the proposed protocol. AMC is pleased to have the opportunity to respond to the Court's initiative and respectfully offers the following written statement in support of statewide ITV implementation.

AMC is a voluntary association comprised of each of the state's 87 counties. As a matter of policy, AMC has for many years supported and advocated the use of interactive televised video conferencing in district courts for certain judicial proceedings. The ITV pilot authorized in 1999 for the Ninth Judicial District was arguably a success. The benefits of its use should now accrue to entire state. Accordingly, each year since the pilot this Association has advocated for statewide ITV implementation.

Counties agree that the use of ITV is an appropriate method to administer justice fairly, effectively and efficiently throughout Minnesota. Most states already allow the use of ITV to some extent in criminal proceedings. The benefits of ITV in other states are well documented and are applicable to circumstances that warrant its use in Minnesota courts. Travel delays and travel costs impacting defendants and court and county personnel greatly affect the administration of justice where time, distance and county or judicial resources are considerations. For defendants, the use of ITV should result in a more swift administration of justice through more prompt hearings and resolution of cases. Absent ITV, defendants in parts of Greater Minnesota are further penalized, particularly when first appearances are delayed due to travel time or other resource limitations. For court and county personnel, reducing travel requirements will help conserve limited resources and in the case of counties avoid further pressure on local property taxes.

Chief Justice Russell A. Anderson
May 7, 2007
Page Two

AMC notes that just as each of the 87 counties are not alike; circumstances in each of the ten judicial districts are unique and may warrant the flexible application of ITV. Counties concur that the extent to which the protocol is implemented in each of the districts is best left to the sound discretion of the bench. Nevertheless, in light of the Advisory Committee's report, it is AMC's recommendation that the Court not adopt a rule that more narrowly restricts the use of ITV than the Judicial Council's protocol. The rule should implement statewide ITV authority at least as broad as proposed, permit the trial bench to exercise necessary discretion, and allow for future evaluation of whether the interests of justice warrant further ITV rule revisions.

To put the importance of this proposal in historical perspective, in 1988 both the Supreme Court and AMC adopted a strong policy in favor of a state takeover of the financing and administration of the trial court system. Accordingly, in 1989 the legislature enacted laws to begin the phased transfer to the state of the judicial district budgets. Additional state funding transfers occurred in subsequent years. While each of the districts has now had the state take over court functions, there are a number of costs, including defendant transportation, for which counties are still responsible. As the Court Administrator's Office reported in February 2001, a state funded trial court system has the advantage of delivering consistent and equitable levels of judicial services statewide. The use of ITV is one example where counties can enjoy reduced costs while the Court can move to a more equitable and consistent delivery system. Counties and AMC believe authorizing the statewide use of ITV as proposed will move the administration of justice forward.

Thank you for the opportunity to express our support for the proposed protocol.

Sincerely,



Bob Fenwick
President



Scott R. Simmons
Intergovernmental Services Manager

THE MINNESOTA
COUNTY ATTORNEYS
ASSOCIATION

May 7, 2007

Mr. Frederick Grittner
Clerk of the Appellate Courts
305 Judicial Center
25 Dr. Rev. Martin Luther King Jr. Blvd.
St. Paul, MN 55155

OFFICE OF
APPELLATE COURTS

MAY 7 2007

FILED

RE: Request to Make an Oral Presentation on Proposed ITV Rules

Dear Mr. Grittner,

The Minnesota County Attorneys Association (MCAA) respectfully submits this request to make an oral presentation at the May 15, 2007 hearing to consider proposed amendments to the rules of criminal procedure regarding the implementation of the ITV protocol. The MCAA is the professional association for all 87 elected County Attorneys and their Assistants. The following County Attorneys have agreed to testify: Cass County Attorney Earl Maus, Hennepin County Attorney Michael Freeman, and Stevens County Attorney Charles Glasrud.

In addition, please find a statement from Kandiyohi County Attorney and MCAA President Boyd Beccue and resolutions from Cass and Stevens County Boards.

Thank you for your consideration.

Sincerely,



John P. Kingrey
Executive Director

T H E M I N N E S O T A
C O U N T Y A T T O R N E Y S
A S S O C I A T I O N

**Minnesota County Attorneys Association
ITV Position**

Introduction

The Minnesota County Attorneys Association (“MCAA”) supports the liberal and responsible use of ITV in criminal matters in the district courts, and opposes the rules proposed by the Supreme Court Advisory Committee on Rules of Criminal Procedure (“Rules Committee”) as unduly restrictive. The MCAA urges instead that this Court adopt the reasonable protocol proposed by the Minnesota Judicial Council.

Use of ITV promotes the interests of justice

Because prosecutors’ obligation is to see justice done, it should be no surprise that the primary benefit we identify from ITV is not economic, but rather prompt access to the courts for out-state defendants, regardless of their economic status. As the adage goes, “justice delayed is justice denied.” Those who can afford to retain private counsel may have more options at their disposal to ensure they receive prompt, individual attention from the courts. Indigent defendants cannot always hope to do as well; often they do not even have counsel until after their first appearance – and then they are represented by an attorney who is not necessarily able, due to his or her heavy caseload, to provide the same level of individual attention that can be expected from private counsel. There is nothing about ITV, when utilized under a protocol such as proposed by the Judicial Council that disadvantages the indigent or minority defendant or promotes a two-tier system of justice; to the contrary, there is much benefit to be had for such parties.

While the most obvious benefits of ITV are in ensuring that defendants’ bail hearings are conducted as promptly as possible, there are other benefits to defendants and their families, victims and their families, and the rest of the community in moving cases along as quickly as practicable, and this means various other hearings may also be best handled by ITV under the unique circumstances of particular cases – circumstances that cannot necessarily be predicted by rule-makers.

Use of ITV enhances safety

The constant flow of vehicular traffic carrying defendants, law enforcement, judges, attorneys and others from one place to another (because the judicial system is not – and cannot be – funded sufficiently always to hold court where it needs to be) places these people

at risk of death or injury, particularly on two-lane rural roads in Minnesota's winters. Without the ITV option, some hearings simply must be rescheduled due to weather, but in other cases people end up taking risks to travel. Every road-mile, particularly in poor conditions, represents a small but real risk to people's safety which should not be ignored. The judicious use of ITV should be encouraged to limit these safety risks in various situations where the parties and the judge think it appropriate.

Frequently a deputy sheriff is utilized to transport persons in custody to hearings out of county. While doing so, that deputy is unavailable to patrol, investigate or respond to emergencies in his or her jurisdiction. In small departments, this is more than a scheduling problem or an extra manpower expense: it means one less deputy will be working. Many departments literally have less than a handful of deputies to begin with, so the resulting loss of public protection is significant.

Use of ITV saves energy, time and money

For reasons similar to its safety benefits, ITV can also save substantial resources in the form of gasoline, salaries and people's valuable time. It is axiomatic that the courts, public defenders and prosecutors alike are in serious need of more funding, but it is just as clear that such funding – if and when it comes – will never be truly sufficient to meet the need. Those of us in the court system must make the most of what we've got. Taxpayers and political leaders expect us to take advantage of technology to achieve efficiencies and cost savings, and they should expect this. (The boards of commissioners of Cass and Stevens Counties have passed resolutions supporting the liberal use of ITV, and these are attached hereto as Appendices 1-2.) Under the Judicial Council's protocol, we can meet the expectation that we will strive for efficiencies in a reasonable and just way by utilizing ITV, as many other jurisdictions already do – and as many of us have been doing in Minnesota for years.

Too many times one sees a deputy drive an hour or more – or parties not in custody make a long drive – for a five-minute preliminary hearing or waived omnibus; this always strikes one as wrong and wasteful. It must seem equally wasteful to the private defendant paying for an attorney's travel time for a hearing that could easily be handled by ITV. Parties and trial judges can and should be trusted to decide to utilize this tool where it makes sense to do so to eliminate such waste, without undue rule-based restrictions such as proposed by the Rules Committee.

The Judicial Council's protocol provides adequate direction without being unduly restrictive

The experience of our members using ITV in criminal cases has been overwhelmingly positive. Most participants like it. The public's right to open proceedings is vindicated to a greater extent than with written appearances or telephone conferences, which have been utilized for many years. We see no need for rules unduly restricting ITV's use, and every reason for allowing judges and parties to take advantage of the technology where they feel it appropriate. The rule proposed by the Rules Committee would seriously hamper the practice

that is currently going on in many district courts in a number of respects; it would not just represent an opportunity lost, it would adversely affect the manner in which the system currently operates.

By its own terms, the Rules Committee's proposed rule "strictly limits the use of ITV in criminal proceedings," and holds out the possibility of future revision of the rule based on data gathering. This ignores the fact that a pilot project has been conducted and thousands of ITV hearings have taken place throughout the state, with positive results. The data is available, and supports a more liberal and full use of ITV now. Future revision of the rule can be undertaken if unanticipated abuses are identified in practice, but under the Judicial Council's protocol such problems seem unlikely.

Particular problems with the Rules Committee's approach include the right of a veto by a district's chief public defender. The purpose for this – when the defendant is presumably represented by a capable advocate – is obscure, but the potential for mischief is obvious. There is no reason to include such a provision.

The requirement that a party be in custody for ITV to be used is similarly unnecessary. Many of the benefits that have been identified will accrue to those not in custody, be they indigent defendants, privately-represented defendants, or other stakeholders in the justice system.

The Rules Committee's proposed rule would prohibit ITV being used in certain hearings, including waived omnibus hearings. While it might be ordinarily desirable for such hearings to be in person, many unforeseen and unforeseeable circumstances can arise. Participants in the system can keep in mind the purpose of ITV and the preference for in-person hearings, and if we do so ITV will not take place of hearings that could easily be held in person. Judges and attorneys who are officers of the court can and should be trusted to deal with this issue on a case-by-case basis

Nor should the rules concern themselves unduly with the situation where one party, but not both, appears live before the judge. If a party feels this will be a disadvantage, he or she need not consent to it. But as a practical matter, many judges and attorneys have participated in motion hearings by telephone, for example, where one lawyer is in chambers and the other is not. The fact is, *ex parte* communication between a lawyer and the court is unethical and the judge and lawyers in such situations can and should be trusted to behave ethically.

Conclusion

The trial judge and the attorneys, who are best aware of all factors bearing on a particular case, are the appropriate gate-keepers for this tool and can be trusted to decide ITV's suitability in each unique case. Any rule that would prevent the potential use of ITV in a particular situation will eventually cause unintended consequences. The Judicial Council's members are in a unique position to evaluate ITV without bias and based on practical

experience with it, and the Council has proposed a common-sense, workable protocol containing adequate safeguards which is based on that experience.

The MCAA urges the Supreme Court to adopt the Judicial Council's protocol for ITV and not unduly restrict the use of this effective tool upon which so many have already come to rely in out-state Minnesota to obtain justice with the same degree of promptness, safety and efficiency as their counterparts in the metro area enjoy.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Boyd Beccue', with a long horizontal flourish extending to the right.

Boyd Beccue
Kandiyohi County Attorney
President, Minnesota County Attorneys Association

STEVENS COUNTY, MINNESOTA

DATE: May 1, 2007

RESOLUTION NO. 18

Motion by Commissioner Kloos

Seconded by Commissioner Munsterman

**RESOLUTION NO. 070501-18
RESOLUTION SUPPORTING EXPANSIVE USE
OF ITV IN DISTRICT COURTS**

WHEREAS, overly restrictive rules governing the use of ITV in court would cause delay in court appearances for defendants and others involved in the court system; increased costs and decreased productivity for county employees as well as others; waste of fuel; and increased risk to those forced to engage in unnecessary travel; and

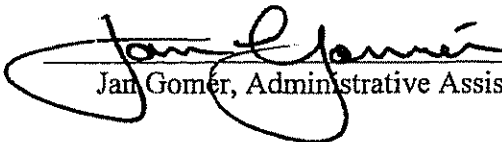
WHEREAS, the Stevens County Board of believes that ITV can be appropriately regulated by leaving broad discretion in judges involved in the individual cases;

NOW, THEREFORE, BE IT RESOLVED, that the Stevens County Board of Commissioners respectfully urges the Minnesota Supreme Court to adopt ITV rules that allow for the use of ITV in a broad and common-sense manner consistent with protecting individuals' rights and ensuring prompt court appearances for parties while maximizing economies in the utilization of personnel and public funds.

Kloos	Aye	Munsterman	Aye	Hofland	Aye
Sayre	Aye	Watzke	Aye		

STATE OF MINNESOTA)
) ss.
COUNTY OF STEVENS)

I, Jan Gomer, Administrative Assistant, for the County of Stevens, State of Minnesota, do hereby certify that I have compared the foregoing copy of a resolution with the original minutes of the proceedings of the Board of County Commissioners, Stevens County, Minnesota at their session held on the 1st day of May, 2007, now on file in the Stevens County Auditor's office, and have found the same to be a true and correct copy thereof.


Jan Gomer, Administrative Assistant

CERTIFIED COPY OF RESOLUTION COUNTY BOARD OF CASS COUNTY

RESOLUTION NO. 29-07

ADOPTED: May 1, 2007

Commissioner Demgen offered Resolution No 29-07 and moved its adoption; Commissioner Foster seconded:

WHEREAS, Crow Wing County has constructed a larger and more modern County Jail facility to house prisoners in a humane, cost efficient manner; and,

WHEREAS, Cass County has a jail bed shortage and is presently housing inmates in Aitkin County, Morrison County, and Hubbard County, as the Cass County Jail has been unable to meet the existing housing needs of Cass County; and

WHEREAS, Cass County has entered into a Contract with Crow Wing County for the construction costs of an additional housing unit at the Crow Wing site in the amount of approximately \$2,000,000; and

WHEREAS, Cass County has contracted to house sixty (60) prisoners at the facility for a 10-year period, commencing in the year 2007; and

WHEREAS, it is the Cass County Board's belief that the Criminal Rules Committee proposed ITV rules are overly restrictive and would cause delay in court appearances and increased transportation and staff costs, which monies could be better spent improving underlying socioeconomic problems thereby reducing the need for jail cells in the future; and

WHEREAS, the Cass County Board believes that an increased use of ITV procedures not only would be cost-effective, but would treat individuals charged with crimes in a fair and timely manner, regardless of individuals' socioeconomic status; and

WHEREAS, the Cass County Board believes that ITV should be used for various court appearances without restricting the physical location of the parties and discretion left with the District Courts and parties for the use of ITV in other court hearings; therefore,

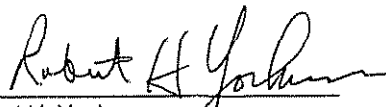
BE IT RESOLVED that the Cass County Board of Commissioners respectfully requests the Supreme Court adopt ITV rules that allow for the use of ITV in a common sense manner consistent with public needs while maintaining the constitutional rights of individuals.

Resolution No. 29-07 was adopted by majority vote: Demgen, Dowson, Foster, Kangas, Peterson. Nays: None

STATE OF MINNESOTA }
County of Cass } ss
Office of County Administrator }

I, Robert H. Yochum, Administrator of the County of Cass, do hereby certify that I have compared the foregoing with the original resolution filed in my office on the 1st day of MAY, A. D. 2007, and the same is a true and correct copy of the whole thereof.

WITNESS MY HAND AND SEAL OF MY OFFICE
at Walker, Minnesota, this 1st day of MAY, A. D. 2007.



Robert H. Yochum
County Administrator

THE MINNESOTA
COUNTY ATTORNEYS
ASSOCIATION

May 8, 2007

Mr. Frederick Grittner
Clerk of the Appellate Courts
305 Judicial Center
25 Dr. Rev. Martin Luther King Jr. Blvd.
St. Paul, MN 55155

OFFICE OF
APPELLATE COURTS

MAY 9 2007

FILED

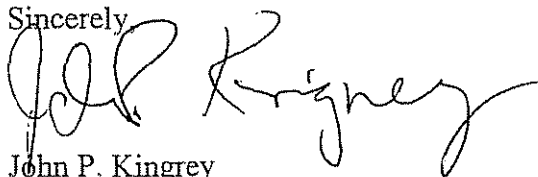
RE: Additional Material on Proposed ITV Rules

Dear Mr. Grittner,

Subsequent to the submission of our request to appear at the May 15, 2007 hearing on the ITV protocol, the enclosed county resolution was received by our office. I respectfully request that the Lake of the Woods resolution be added to our file which was received by your office on May 7th.

Thank you.

Sincerely,



John P. Kingrey
Executive Director

CERTIFIED COPY OF RESOLUTION COUNTY BOARD OF LAKE OF THE WOODS COUNTY

RESOLUTION NO. 07-05-01

ADOPTED: May 8, 2007

WHEREAS, it is the Lake of the Woods County Board's belief that the Criminal Rules Committee proposed ITV rules are overly restrictive and would cause delay in court appearances and increased transportation and staff costs, which monies could be better spent improving underlying socioeconomic problems thereby reducing the need for jail cells in the future; and

WHEREAS, the Lake of the Woods County Board believes that an increased use of ITV procedures not only would be cost-effective, but would treat individuals charged with crimes in a fair and timely manner, regardless of individuals' socioeconomic status; and

WHEREAS, the Lake of the Woods County Board believes that ITV should be used for various court appearances without restricting the physical location of the parties and discretion left with the District Courts and parties for the use of ITV in other court hearings; therefore,

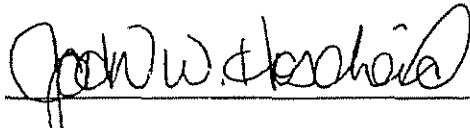
BE IT RESOLVED that the Lake of the Woods County Board of Commissioners respectfully requests the Supreme Court adopt ITV rules that allow for the use of ITV in a common sense manner consistent with public needs while maintaining the constitutional rights of individuals.

Resolution No. 07-05-01 was adopted by majority vote: Ayes: Commissioner Todd Beckel, Commissioner Kim Bredesen, Commissioner Ken Moorman, Commissioner Patty Beckel Nays:

STATE OF MINNESOTA }
County of } ss.
Office of County Auditor }

I, John W. Hoscheid, County Auditor of the County of Lake of the Woods, do hereby certify that I have compared the foregoing with the original resolution filed in my office on the 8th day of May A. D. 2007, and the same is a true and correct copy of the whole thereof

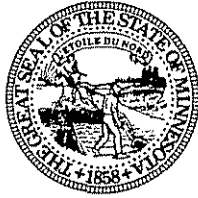
WITNESS MY HAND AND SEAL OF MY OFFICE
at Baudette, Minnesota, this 8th day of May, A. D. 2007



County Auditor

ASSISTANT
PUBLIC DEFENDERS

PAUL G THOMPSON
DIANA M SWEENEY
KRISTINE W CANNON
ERICA L H AUSTAD
ROBERT H AITKEN, III



STATE of MINNESOTA
NINTH JUDICIAL DISTRICT
Public Defense

CHIEF PUBLIC DEFENDER
KRISTINE A. KOLAR

INVESTIGATOR
PAMELA GREGG

PARALEGAL
PENNY WILSON

DISPOSITIONAL ADVISOR
TIMOTHY MOUNTAIN

4 - West Office Building, 403 - 4th Street NW, Suite 160, P O Box 945, Bemidji, MN 56619-0945
Telephone (218) 755-4333 (800) 366-2623 FAX (218) 755-4335

May 7, 2007

OFFICE OF
APPELLATE COURTS

MAY 7 2007

Mr. Fred Grittner
Clerk of Appellate Courts
305 Judicial Center
25 Rev. Dr. Martin Luther King, Jr., Blvd.
Saint Paul, Minnesota 55155

FILED

RE: Opposition to the Judicial Council's Proposal to Expand the Use of ITV

Dear Mr. Grittner:

Please add my name to the oral presentation list for the hearing on the Proposed ITV Rules scheduled for May 15, 2007.

I have been the Chief Public Defender in the Ninth Judicial District for almost twelve years. In that capacity, I was a member of the ITV Pilot Project in the late 1990s. In fact, I was instrumental in drafting the Ninth Judicial District Protocol for ITV use in Criminal Courts that was in effect from 1998 until I was informed it had "expired" last year. It was then I was informed that the Judicial Council had drafted and implemented a new protocol. The original protocol had no expiration date. I was never informed that a new protocol was even being considered.

Under the new protocol, several situations have occurred that cause concern. The first involves misdemeanor court in Baudette, Lake of the Woods County. There is no Judge seated in Lake of the Woods County. Misdemeanor court was traditionally presided over by the Judge from Koochiching County, who made the drive and appeared in person. When the Ninth District protocol was declared expired, entire misdemeanor court calendars and some civil calendars were presided over by a rotation of Judges throughout the District who appeared in Lake of the Woods County on TV. It was more convenient for the Judges to handle the entire court calendar on TV rather than drive. I fail to understand how this practice recognizes the asserted preference of "in-person hearings in criminal cases." In December 2006, however, the practice of holding TV court for entire court calendars abruptly ceased. The Judge began again to travel from Koochiching County. Yet, the criminal justice system did not fall apart. If the Supreme Court adopts the Criminal Rules Committee protocol, which it should, the criminal justice system in

Mr. Fred Grittner
May 7, 2007
Page 2

greater Minnesota will not collapse. It will resume as it always had to holding hearings in a courtroom where all parties are present, in person, with limited exceptions.

The second situation involves in custody initial appearances for people arrested in Mahnomen County. The jail in Mahnomen County can hold only two male inmates. Most folks arrested are held in Pennington County, at a jail at least 60 miles from their homes. Even though there is a Judge, two public defenders and prosecutors back in Mahnomen County, in custody Defendants are not transported to Mahnomen County for their initial appearances. The Judge and the accused appear in Mahnomen on TV from Pennington County. It is argued that this procedure is "helpful" to the accused because he or she may appear sooner than if they must be driven back to Mahnomen County for court, and that this may result in being released from jail sooner than if they had to be transported back to Mahnomen. It takes about an hour to drive 60 miles from Thief River Falls to Mahnomen, where there is a Judge, two public defenders and a prosecutor.

However, what any argument in support of this arrangement fails to resolve is that if the inmate is released, he or she has no transportation home to Mahnomen County. He or she is released from jail, wearing only what they happened to be arrested in for clothing, with whatever money they had on their person when arrested, and left to their own devices to find transportation 60 miles back to their homes. Again, I fail to see how this practice "enhances service to defendants" as the proponents of the Judicial Council's proposal profess.

TV court is also being discussed in two other areas in the Ninth Judicial District. Crow Wing County is close to completing a large new jail. That county has reached an agreement with Cass County to house 60 inmates at a cost of millions of dollars for the next ten years. Again, this results in 60 accused people being held 60+ miles from their families, their attorneys and their communities. If the Resolution passed by the Cass County Board of Commissioners is any indication, there will soon be pressure to avoid transportation costs and force those housed in Crow Wing county to appear in Cass County on court TV, again even though the Judge, the public defender and the prosecutor are in Cass County. Again, if the accused is released, he is left to his own devices to find transportation back to their homes 60+ miles away. Suppose an individual is arrested in his home in the winter. He would be released 60+ miles from home, possibly without a coat, perhaps without boots, a hat or gloves. Again, I fail to see how this "enhances service to defendants."

Any what about their families? How are they going to get to Crow Wing County to visit their loved ones and offer support in their cases? Apparently, there is going to be a TV monitor in the public lobby of the Cass county jail, where the families can "visit" their loved ones incarcerated in Crow Wing County. The families of the accused can "attend"

Mr. Fred Grittner
May 7, 2007
Page 3

the court appearances of their loved ones and offer their support on TV. What about the public in Cass County? Doesn't the public have the right to observe Court? What about victims and their family members? They also have the right to observe court and have input. How many people can the public lobby of the Cass County jail accommodate on TV? What happens if the victims and there families are crammed into the lobby with the family and friends of the accused?

It needs to be noted that Cass County has had a shortage of jail beds for some time. As a result, they have housed inmates in Aitkin, Morrison and Hubbard Counties for years. The distance from these jails and Cass County court is greater than that from Crow Wing County. Yet, there has been no need for court TV. Traditional means of over the road transportation has been used for years to get in custody defendants to court in front of a real live judge in Cass County. Concentration of out of county inmates in Crow Wing County, closer to Cass County, should make over the road transportation easier and obviate the need for court TV.

Similar situations as the Cass County/Crow Wing County arrangement will soon arise in the furthest northwestern areas of this state. An enormous jail and court complex project is underway in Polk County. Obviously it is being built as a regional jail. We can expect any number of County Board Resolutions being passed to advocate for liberal use of court TV to allow the transmission of the accused's TV image from jail to remote courtrooms in order to avoid transportation costs or judicial travel

The regional jail concept raises yet another concern. Under both protocols, the accused's attorney is to be present at the same terminal site as the accused AND in both protocols the prosecutor and Judge are not to be alone at the same terminal site without the presence of the defense attorney. When in custody individuals are appearing in remote courtrooms, how can defense counsel be in both places at once? How can she be present with her client at the jail, and also present in the courtroom with the Judge and the prosecutor? She can't. So, does defense counsel drive the 120 miles round trip to the jail to be with the client (a cost shift to the Board of Public Defense and 2 hours of missed desk time to otherwise meet with clients to be prepared for court) and have a hearing where defense counsel and her client get court TV, and the Judge and the prosecutor are actually present in the courtroom having who knows what type of discussion once we are turned off?

Or, do we turn the lawyer-client relationship into a TV /telephone relationship and leave the client alone in the jail, and all three employees of the criminal justice system sit in the *courtroom 60 miles away from the client at his initial court appearance, and his introduction to the attorney/client relationship?*

Mr. Fred Grittner
May 7, 2007
Page 4

Finally, what effect does the expanded use of court TV have on the demeanor and the integrity of the criminal justice system in Minnesota? Those who have practiced in this system have witnessed and felt the lack of respect, and sometimes even contempt, some parties have for the court and the court process. How can we expect their respect or even compliance when we don't respect them enough to require face to face court appearances with their accusers and/or the Judges who hold their fates? What trust will they have in an attorney with whom they can merely talk over the telephone, while everyone else is watching? At a recent Judges' meeting in the Ninth District, one Judge was relating a story told to him by his bailiff; while he was beamed into the courtroom on TV, a group of individuals in the gallery, off camera, were making obscene gestures toward the TV and laughing. The Judge was oblivious to the fact that he had become an object of ridicule, and just kept talking. Is this what we want?

It is my request that the Court adopt the Proposed Amendments to the Rules of Criminal Procedure as prepared by the Criminal Rules Committee, and reject the proposals from the Judicial Council. Specifically:

1. ITV should only be allowed when there is not reasonably possible for a Judge to be physically present in the venue county;
2. All parties must consent to the use of ITV, and if the cases involves a public defender client, the District Chief Public Defender must also consent; and
3. Waiver of the right to have a Judge physically present must be informed and must also be in writing with a standard form included in the Appendix of Forms to the Rules of Criminal Procedure.

Thank you for the opportunity to comment.

Sincerely,



Kristine A. Kolar
Chief Public Defender
Ninth Judicial District

Enclosed 12 copies

Grittner, Fred

From: Maatz, Paul
Sent: Monday, May 07, 2007 11:56 AM
To: Grittner, Fred
Subject: Criminal rules input
Attachments: ITV amendment response.doc

OFFICE OF
APPELLATE COURTS

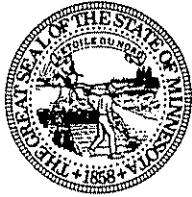
MAY 7 2007

FILED

On behalf of the Ninth District bench I submit the attached position statement. Thank you.

5/7/2007

The Ninth District judges met on Friday, April 27, 2007. During the course of the meeting there was a discussion regarding the proposed amendments to the criminal rules of court as they relate to the use of interactive television. Upon a motion and second the Ninth District Bench, with one judge in opposition, gave its support to the Judicial Council's response to those amendments.



**EIGHTH JUDICIAL DISTRICT
PUBLIC DEFENDER
432 SW LITCHFIELD AVENUE
WILLMAR, MN 56201**

OFFICE OF
APPELLATE COURTS

MAY 7 2007

FILED

**(320) 231-6064
FAX: (320) 231-6065**

TIMOTHY S. JOHNSON
CHIEF PUBLIC DEFENDER
JOHN D. HOLBROOK
MANAGING ATTORNEY
CARTER W. GREINER
ASSISTANT PUBLIC DEFENDER

AURORA McCLEARY
PARALEGAL

MELISSA S. GORT
INVESTIGATOR
JAN BJORNGJELD
DISPOSITIONAL ADVISOR
MARY ANN KLINGHAGEN
ADMINISTRATIVE ASSISTANT

May 4, 2007

Frederick Grittner
Clerk of the Appellate Courts
305 Judicial Center
25 Rev. Dr. Martin Luther King, Jr. Boulevard
St. Paul, Minnesota 55155

Re: Hearing scheduled for May 15, 2007, at 2 P.M. at Minnesota Judicial Center relative to
Proposed ITV Rules

Dear Mr. Grittner:

Please add me to the oral presentation list for this hearing.

I am in agreement with our State Public Defender's position as outlined in his letter to you dated May 4, 2007. It is important that any procedures put in place governing the use of ITV contain sufficient checks and balances to maintain a level playing field for all parties and their counsel. The recommendations of the Rules Committee achieve this goal.

Without those checks and balances ITV might be used inappropriately. For example, over the past 12-18 months fifteen of the assistant public defenders in the Eighth Judicial District report that they have been involved in forty-three ITV hearings. In seven of those matters the defense attorney was not at the same location as his/her client; and, in eight of the other hearings the judge and the prosecutor were together in the venue county, while the defense attorney and client were together at another location. My lawyers also report that they were not consulted about the use of ITV for these hearings - they were simply told the hearings would be done by ITV.

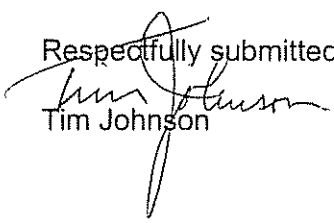
Every county in each of the Judicial Districts in the state does not have its own jail, and I believe there are only two regional jails in the state; and, many counties have limited jail space requiring them to board prisoners in other jails, sometimes significant distances away. Law enforcement, in an effort to reduce its transportation costs, supports the use of ITV for Rule 5 and 8 hearings (and probably other hearings as well). However, this simply shifts those transportation costs to the Board of Public Defense, as the public defender must then travel to the distant jail to be with his/her client. And, this complicates where to put the prosecutor and judge - they cannot now be together in the venue county. Based upon historical funding patterns, I believe it is unwise to establish a discretionary protocol that will produce such cost shifts.

I also have some concerns about the attractiveness of regularly using ITV for in-custody arraignments where the defendants and their public defender appear from the local jail, and pressure is put on the public defender to agree to the prosecutor and judge being at the same terminal site, i.e. the venue courtroom. Most of the public defenders in greater Minnesota are part time, and are often reluctant to risk incurring disfavor with the local judge and court administrator with whom they will have to deal on one of their private cases tomorrow.

The use of ITV for in-custody arraignments will also increase scheduling problems for public defenders. We already receive a lot of pressure to substitute lawyers for our clients to avoid having to reschedule hearings. This "musical chairs" approach to providing representation to clients is not in their best interests, and only increases and reinforces their beliefs that we are part of a system they already perceive as unfair. We are extremely reluctant to use substitute counsel to avoid continuances of any kind of hearing, and will only do so if there is a genuine benefit to the client, and the client agrees to it. If we are required to send lawyers to jails to conduct in-custody arraignments via ITV, we will send each clients assigned lawyer, which will mean each of those lawyers will not be available for other hearings in the courthouse. Those lawyers will usually remain at the jail following those appearances, so that they can visit their other incarcerated clients.

Some parties may dismiss these concerns feeling the use of ITV is for "inconsequential" hearings. However, being able to effectively advocate for the defendant's release pending trial at a Rule 5 and/or Rule 8 hearing is NOT of little or no consequence to an in-custody defendant. I would also submit that the effectiveness of arguments for a defendant's release is greatly impaired by ITV. It depersonalizes the defendant, and lends itself to the judge becoming detached from the arguments made by defense counsel on a video monitor.

ITV can be a useful tool, but it must be used carefully and sparingly. If not, I firmly believe it will, over time, demean the judicial process, and undermine the integrity of the criminal justice system.

Respectfully submitted,

Tim Johnson

KIMBERLY J. CORRADI

ATTORNEY AT LAW

402 East Howard Street

Suite 7

Hibbing, MN 55746

Phone: 218-262-0064

OFFICE OF
APPELLATE COURTS

MAY 7 2007

FILED

May 3, 2007

Frederick K. Grittner
Clerk of the Appellate Courts
25 Martin Luther King Jr. Blvd.
St. Paul, MN 55155

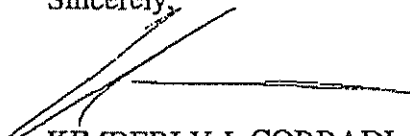
In re: ITV Use in Criminal Proceedings

Dear Mr. Grittner:

With regard to the above referenced matter, I stand in opposition to the proposed rule that will expand the use of ITV for criminal hearings above the objection of counsel. I believe this will adversely affect rural practice and discourage small courtroom practice. I believe appearing by ITV will diminish counsel's ability to speak with clients before the hearing and confer during the court appearance. I further believe this will segregate the individuals who can bail out or get out of custody from those individuals who cannot afford bail and now will not be able to appear in court. Denying defendant's constitutional right to be present in court over the objection of counsel will diminish faith in the legal system and faith in their appointed counsel as well.

For the above reasons, I respectfully oppose changing the criminal rules to expand the use of ITV in criminal court proceedings.

Sincerely,



KIMBERLY J. CORRADI
Assistant Public Defender

JACLYN CORRADI

ATTORNEY AT LAW

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OFFICE OF
APPELLATE COURTS

MAY 7 2007

FILED

May 3, 2007

Frederick K. Grittner
Clerk of the Appellate Courts
25 Martin Luther King Jr. Blvd.
St. Paul, MN 55155

In re: Expanded use of ITV

Dear Mr. Grittner:

With regard to the above referenced matter, I am opposed to the proposed rule that will expand the use of ITV for hearings when the court wishes above the objection of counsel. An incarcerated individual facing criminal charges by the state should have the same rights as anybody else that is facing criminal charges and has the ability to bail out of jail. Especially in the rural areas, appearing by ITV will diminish counsel's ability to speak with clients before the hearing and confer during the court appearance. Waiving defendant's constitutional right to be present in court over the objection of counsel will diminish faith in the legal system and faith in their legal representation.

For the above reasons, I respectfully oppose changing the criminal rules to expand the use of ITV in criminal court proceedings.

Sincerely,



JACLYN CORRADI

Assistant Public Defender

JAMES PERUNOVICH
ATTORNEY AT LAW
402 East Howard Street
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Hibbing, MN 55746
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OFFICE OF
APPELLATE COURTS

MAY 7 2007

FILED

May 4, 2007

Frederick K. Grittner
Clerk of the Appellate Courts
25 Martin Luther King Jr. Blvd.
St. Paul, MN 55155

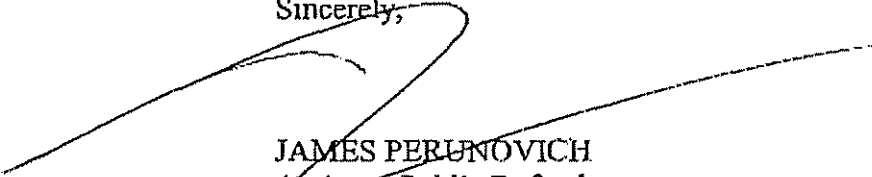
In re: ITV Use in Criminal Proceedings

Dear Mr. Grittner:

With regard to the above referenced matter, I stand in opposition to the proposed rule that will expand the use of ITV for criminal hearings above the objection of counsel. I believe our clients have the right to appear in court with their appointed counsel. Expanded use of ITV will further segregate the individuals who can bail out or get out of custody from those individuals who cannot afford bail and now will not be able to appear in court. I believe this will adversely affect rural practice and discourage small courtroom practice. Denying defendant's constitutional right to be present in court over the objection of counsel will diminish faith in the legal system and faith in their appointed counsel as well. This practice will hinder our ability to represent our clients and diminish the client's ability to assist counsel in their proceedings by eliminating direct contact with the client prior to and during the hearings.

For the above reasons, I respectfully oppose changing the criminal rules to expand the use of ITV in criminal court proceedings.

Sincerely,



JAMES PERUNOVICH
Assistant Public Defender

CIANNI LAW OFFICES

First National Bank Building
P.O. Box 586
Chisholm, MN 55719
Telephone: 218-254-3335
Fax: 218-254-3334

OFFICE OF
APPELLATE COURTS

MAY 7 2007

Tom Wangenstein
(1934-1983)

Louis J. Cianni
Fabian Danich
Patrick G. Valentini

FILED

May 4, 2007

Frederick K. Grittner,
Clerk of Appellate Courts
25 Martin Luther King Jr Blvd
St. Paul, MN 55155

Re: 2006_Crim_Rules_ITV

Dear Mr. Grittner

Please accept this short note as my sentiment and opposition to the judicial council's proposed use of ITV hearings when the court wishes. A Fundamental right of clients is to appear in court in person. This will have an affect on a client's ability for bail and makes ways for our clients to be barred from the courthouse door. My clients' have an ultimate right to appear in court in person and that should be greatly protected. Thank you.

Sincerely,



Patrick G. Valentini
Attorney at Law

PGV/as

TED N. LUNDRIGAN, ATTORNEY AT LAW

P.O. Box 49, Pine River, MN 56474-0049

Telephone 218 587 2350

Fax 218 587 4242

May 4, 2007

To:

OFFICE OF
APPELLATE COURTS

Frederick R. Grittner
Clerk of Appellate Court
25 Rev. Martin Luther King Blvd
Minnesota Judicial Center
St. Paul, MN 55155

MAY 7 2007

FILED

Mike Johnson
State Court Administrator's Office
135 Minnesota Judicial Center
12 Rev. Martin Luther King Blvd
St. Paul, MN 55155

In re: Use of ITV in criminal court arraignments

Gentlemen:

The CASS COUNTY BAR ASSOCIATION at a special meeting called on April 13, 2007 in Walker, MN, discussed the use of ITV and its application to our rural part of the State Court, and its system and procedures.

We adopted the following resolution and forward it to you for the consideration of the Court.

BE IT RESOLVED:

That we, as members of the Cass County Bar Association and practicing trial attorneys cannot recommend the use of ITV in the context of criminal court hearings. It is our collective opinion that there is a greater responsibility to uphold the constitutional rights granted every defendant than there is a need to process the defendant as component of the Court system.

Moved, seconded and adopted this 13th day of April, 2007.


Ted N. Lundrigan Recording Secretary

MUHICH LAW FIRM

OFFICE OF
APPELLATE COURTS

MAY 7 2007

FILED



Tini Square Building
302 Chestnut Street Suite 316
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Phone: (218) 741-7656
E-Mail: mamuhich@rangenet.com

MARK A. MUHICH
Attorney at Law

May 4, 2007

Mr. Frederick K. Grittner
Clerk of Appellate Courts
25 Rev. Dr. Martin Luther King, Jr. Blvd.
St. Paul, MN 55155

Re: Proposed Amendment to Rules of Criminal Procedure Regarding ITV

Dear Mr. Grittner:

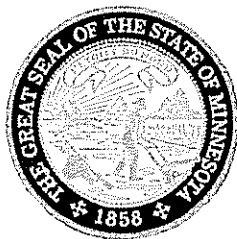
Please accept this letter as an objection to the proposed change to the Minnesota Rules of Criminal Procedure regarding use of ITV. I have been practicing law in Virginia, Minnesota, since 1994 and have been a part-time public defender in that community since 2001. I believe that the proposed amendment to the rules would have a negative effect on rural Minnesota practice. While a judge may find it easier and more cost effective to arraign by ITV from the jail in the county seat, the client is deprived of an opportunity for a face to face meeting with his lawyer and the judge. The elements of non-verbal communication are so important in the law, and that variable would be lost. The interests of justice and of rural Minnesota practice are not served by the proposed amendment.

I ask that this letter be considered by the rules committee in opposition to the proposed amendment. Thank you for your consideration.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Mark A. Muhich".

Mark A. Muhich
Attorney at Law
Part Time Assistant Sixth Judicial District Public Defender



OFFICE OF
APPELLATE COURTS

MAY 7 2007

FILED

STATE OF MINNESOTA
DISTRICT COURT OF MINNESOTA
EIGHTH JUDICIAL DISTRICT

PAUL A. NELSON
JUDGE OF DISTRICT COURT

May 3, 2007

CHAMBERS AT
CHIPPEWA COUNTY COURTHOUSE
629 NORTH 11TH STREET
MONTEVIDEO, MINNESOTA 56265
TELEPHONE (320) 269-7774
FAX (320) 269-7733
e-mail: paul.nelson@courts.state.mn.us

Hon. Justices of the Minnesota Supreme Court
MN Judicial Center
25 Rev. Dr. Martin Luther King Jr. Boulevard
St. Paul, MN 55155

Re: Proposed Amendments to the Rules of Criminal Procedure concerning ITV
Court Appearances

To the Honorable Justices of the Minnesota Supreme Court:

I am writing as the Chief Judge of the Eighth Judicial District and on behalf of the members of the Bench in our district. As the most rural judicial district in the state we have both a great need for, and experience with, ITV in criminal proceedings.

The Advisory Committee on Rules of Criminal Procedure has submitted proposed amendments that would, in the opinion of our bench, have a substantial negative impact on criminal justice in our district. The following is the unanimous resolution of the judges in attendance at our Bench meeting on March 12, 2007:

- 1) **The proposed amendments substantially impair the rights of the defendant.**
- 2) **The proposed amendments vastly inflate the inability to deliver effective judicial services.**
- 3) **The proposed amendments understate the numerous benefits to the defendant as well as law enforcement and the judiciary including the need for prompt hearings.**
- 4) **The proposed amendments ignore the economic realities of the cost of the delivery of judicial services in the rural judicial system.**

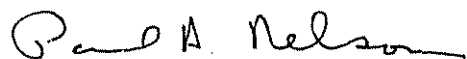
Hon. Justices of the Supreme Court

Page 2

May 3, 2007

I participated in the preparation of the comments of the Judicial Council on this issue. Those have been submitted to this Court. The comments and concerns contained in their submission are the same as those raised by our Bench. I urge the adoption of the Judicial Council version for the use of ITV.

Respectfully,

A handwritten signature in cursive script that reads "Paul A. Nelson". The signature is written in black ink and is positioned above the printed name.

Paul A. Nelson

Chief Judge, Eighth Judicial District

MAY 7 2007

FILED

C1-84-2137
STATE OF MINNESOTA
IN SUPREME COURT

**In Re: Supreme Court Advisory Committee
On Rules of Criminal Procedure**

**STATEMENT AND REQUEST TO MAKE ORAL PRESENTATION
REGARDING PROPOSED AMENDMENTS TO THE RULES OF
CRIMINAL PROCEDURE CONCERNING ITV COURT
APPEARANCES**

From: Minnesota Inter-County Association (MICA)

Pursuant to the March 8, 2007 Order of the Minnesota Supreme Court the Minnesota Inter-County Association (MICA) respectfully requests an opportunity to make oral presentation regarding the proposed amendments to the Rules of Criminal Procedure concerning ITV District Court appearances at the scheduled May 15, 2007 hearing. MICA will be represented by their Public Safety Government Relations Associate, John Tuma.

The Minnesota Inter-County Association is a nonprofit organization of growing or urban counties in Minnesota. MICA is comprised of the following 13 counties: Anoka, Benton, Blue Earth, Carver, Dakota, Olmsted, Rice, St. Louis, Scott, Sherburne, Stearns, Washington and Winona. MICA's member counties encompass a major portion of the state's population. The association is a vehicle for planning and implementing projects and programs of similar interest to member counties.

MICA, on behalf of its 13 member counties, has significant concerns with the direction proposed by the Advisory Committee on Rules of Criminal Procedure (Advisory Committee) as it relates to the use of ITV in criminal matters.

MICA's Concerns

As larger growth counties in Minnesota, MICA counties are on the cutting edge of technological advancements to improve public safety, efficiency in the justice system, and courtroom safety. Several MICA counties have made significant investments in their new and old infrastructure to move their courtroom systems into the 21st century. Instead of proposing real solutions for the 21st century, the Advisory Committee has proposed restrictions that move us backwards relating to technology and the safety of the accused, court staff, and the public. The proposed rule on ITV presented by the Advisory Committee is so restrictive it would prohibit the use of ITV in all of Minnesota's major urban county courtrooms. Two major concerns MICA would like to emphasize before the court is (1) the inconsistent nature of the impact on county government and their property taxpayers and (2) the significant risk of physical harm to the accused, courtroom staff, and the public that would result from adoption of this very narrow rule regarding the use of ITV.

Inconsistent Application of ITV

The Report recognizes that most states already allow ITV appearances. These typically are for initial appearances similar to those under Minnesota Rules 5 or hearings establishing conditions for release and bail similar to those under Minnesota Rules 6. Some states even allow a broader application of ITV appearances. Appropriately designed, these procedures have clearly protected the rights of confrontation and public trial contemplated under the Sixth Amendment of the United States Constitution and under article 1, section 6 of the Minnesota Constitution. The committee essentially admits this by suggesting that ITV can be used in circumstances where the judge is absent from the jurisdiction.

It defies logic to say that a defendant's rights to open and fair proceedings can be protected when it would inconvenience the judge to travel to a jurisdiction and that those rights would not be protected if an identical system was created when the judges only a mile away. The committee justifies the difference by claiming that a "more-prompt appearance by ITV could result in earlier release..." (Report, page 2) The possibility of being released somewhat sooner than the present constitutionally tested release times has absolutely no bearing on whether an individual is receiving a fair and open proceeding. The very proceeding that may possibly give them an earlier release could also require the individual to stay for extended term of custody. The proceeding is either both fair and open or it is not.

We agree with the Advisory Board's assertion in its report that defendants should have the opportunity to confront witnesses and be present at their trial or guilty plea, but initial hearings typically do not present these types of situations. As has been contemplated by other jurisdictions, Minnesota should establish an ITV procedure that is available in all its counties based on the type of hearing that is before the court. Establishing arbitrator rules about where the judge is sitting at the time a hearing is necessary denies the larger urban counties opportunity to use any of the ITV technology they have been planning for their facilities over the last decade. It is time we move into the 21st century and not shrink from it.

Safety of the Accused, Courtroom Staff and the Public

The reason counties have been planning for the use and presently using ITV has been for the safety of the accused, courtroom staff, and public. Many counties are planning on integrating ITV courts in construction of new courthouses and jails to handle initial appearances of their most dangerous offenders. These appearances are usually within 36 hours of the arrest and many defendants are still under the influence of alcohol or drugs. Tension from the underlying incidents is still high in most initial appearances. Typically anything of importance that would require confrontation of witnesses or a personal appearance by the defendant is not completed by this time for the most dangerous offenders. Defendants who are high on meth are typically highly agitated and extremely dangerous at initial appearances.

Denying counties the opportunity to use ITV for initial appearances will further deplete the resources of the sheriffs' departments. Having deputies running offenders back and forth will make it difficult to have timely appearances and reduce the availability of those deputies in times of crisis if a particular offender acts up or is attacked by the public which happens on occasions. It is far safer for the general public, court staff, and the defendant to have a sufficient contingent of deputies on the job as opposed to running offenders back and forth from facilities.

The committee stated, "Without ITV, defendants in certain areas of the state may be penalized by having their initial appearance delayed due to great distances involved, lack of sufficient judicial and other resources, and other unpredictable events." (Report, page 2) If the Court adopts the proposed rules, defendants in larger metropolitan areas will have fewer opportunities to receive speedy initial appearances due to delays in available deputies to run them back and forth from the courthouse. It would make far more sense for the safety of the public and the defendant, along with guaranteeing timely adjudication, to have a uniform rule statewide that allows for appropriate use of ITV in as many initial appearances as possible. Failure to do so will needlessly cost county taxpayers significantly more money without providing any additional protection to the defendant, court staff, or the public.

Recommendations

On behalf of the 13 counties that make up MICA, we request that the proposed rule be modified so that as many initial appearances as possible can be handled in all counties through ITV. MICA would specifically request the removal of the condition limiting ITV use to jurisdictions where the judge has to be outside the county before it can be used. MICA would further specifically request removal of the restriction that the prosecuting attorney must not be at the same terminal site as a judge. This restriction makes no practical sense from a public safety standpoint or for the rights of the defendant.

Dated: May 7, 2007

Respectfully submitted,



John Tunia
Government Relations Associate
Public Safety
Minnesota Inter-County Association
161 St. Anthony, Suite 850
St. Paul, MN 55103
(612) 991-1093



District Court of Minnesota
NINTH JUDICIAL DISTRICT

HONORABLE JOHN P. SMITH
CHIEF JUDGE

CHAMBERS
CASS COUNTY COURTHOUSE
300 MINNESOTA AVENUE
P.O. BOX 3000
WALKER, MINNESOTA 56484
(218) 547-7245
FAX: (218) 547-1904

OFFICE OF
APPELLATE COURTS

MAY 7 2007

FILED

Frederick Grittner
Clerk of the Appellate Courts
305 Judicial Center
25 Rev. Dr. Martin Luther King, Jr. Boulevard
St. Paul, Minnesota 55155

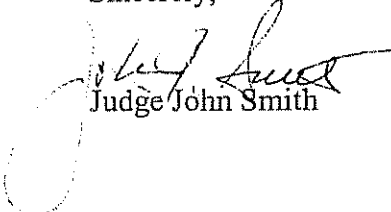
May 7, 2007

Dear Mr. Grittner,

On behalf of the Judicial Council of the Minnesota Judicial Branch, I am submitting 12 copies of the Judicial Council Comment Regarding the Report with Proposed Amendments to the Rules of Criminal Procedure Concerning ITV Court Appearances.

I am also requesting that I and Judge Jerry Seibel be permitted to make an oral presentation on behalf of the Judicial Council at the hearing to consider the proposals for implementation of a statewide ITV protocol set for May 15, 2007.

Sincerely,


Judge John Smith

JUDICIAL COUNCIL COMMENT REGARDING
THE REPORT WITH PROPOSED AMENDMENTS TO THE RULES OF CRIMINAL
PROCEDURE CONCERNING ITV COURT APPEARANCES

In 1999, the Supreme Court approved the statewide use of interactive television (“ITV”) in limited criminal matters on a pilot basis. Since that time, ITV has been installed in every county in the 5th, 7th, 8th, and 9th (the original pilot district) Judicial Districts at an expense of \$1.6 million. Of the remaining districts, only 8 of the 32 counties in those districts do not currently have access to ITV. In many locations, mainly in rural Minnesota, ITV usage is a common and everyday occurrence.

In 2006, the Judicial Council reviewed the protocol under which the pilot had been operating, recommended that the Court permanently institute the statewide use of ITV, and recommended a revised protocol. The Court referred the matter to the Advisory Committee on Rules of Criminal Procedure for resolution of potential conflicts with the rules.

The committee has now submitted a report with proposed rules that would severely roll back what has become standard ITV protocol in many areas. The proposed rules are totally unreflective of the needs of defendants and all partners in the criminal justice system. The Judicial Council is writing to express its strong opposition to the report and to request that the Court instead adopt the ITV protocol proposed by the Judicial Council.

1. Justice is the Beneficiary of ITV

It has been argued that implementation of the use of ITV in criminal cases will result in a two-tiered justice system in which ITV is utilized only for low-income defendants. The Judicial Council rejects this assertion because experience with the use of ITV in the seven years it has been authorized for statewide use simply does not reflect this concern. To the contrary, ITV results in faster hearings for defendants in custody, assists defendants in obtaining both private

and public representation, and assists defendants in keeping travel costs down, including the costs associated with the travel of privately retained attorneys.

ITV is most critical in outstate areas where the population is spread thinly over a large geographic area. In these areas, resources at every level are impacted by the population distribution. ITV is one tool that can be used to place defendants and criminal justice partners in these areas on an even footing with those in areas such as the Twin Cities, which have greater resources.

For example, ITV benefits defendants by providing them with the opportunity to make an initial appearance before a judge sooner than they otherwise might, and therefore with the opportunity to be released from custody sooner. The attached map (Attachment A) shows the distribution of chambered judges across the state. Counties in which two or more judges are chambered are shown in white. Counties in which one judge is chambered are shown in blue. And counties in which no judges are chambered are shown in yellow. The map shows that over a significant geographic area of the state – 48 of 87 counties – either one or no judge is chambered. In these counties, rotational schedules must be developed to ensure that judges are available an appropriate number of days a year to address the proportionate caseload in that county. However, though the caseload in general is covered, that does not mean that a judge will actually be present in the county on a regular basis.

In the Eighth Judicial District, there is no chambered judge in Big Stone, Grant, Lac Qui Parle, and Traverse Counties. Judges are assigned into these counties 76, 81, 70, and 43 days per year, respectively. See Attachment B showing Judicial Coverage in Counties Without a Chambered Judge. Similarly, in the Ninth Judicial District, there is no chambered judge in Kittson, Lake of the Woods, Norman, and Red Lake Counties. Judges are assigned into these

counties 13, 26, 52, and 26 days per year, respectively. See Attachment B. For four of these counties, that represents less than two judge days per week. And for Traverse, Kittson, Lake of the Woods, and Red Lake Counties, the figure does not even reach *one* judge day per week. This schedule means a person arrested in any of these counties would face a wait of a week or more for a judge to be physically present in the county. Since such a wait is already impermissible under the Rules, and the courts in these areas work very hard to adhere to the timelines, a judge must either be sent to the county as soon as possible after a person is taken into custody – most likely within a few days – or, more often, the court must resort to other methods to address the needs of these defendants such as bail hearings by phone or the actual transport by law enforcement to another courthouse. With the use of ITV, the same individuals can, and regularly do, appear before a judge the same or next day.

Equally as important, ITV benefits defendants by providing them an additional means of obtaining representation. In outstate Minnesota, there is a shortage of both public and private defense attorneys. There are simply not enough qualified attorneys to address the needs of defendants in the area. Use of ITV allows public and private defense attorneys to appear from a location other than the site from which the defendant is appearing, therefore allowing more defendants to benefit from their representation. For example, a typical scenario in Northwest Minnesota is that for arraignments, both the judge and defendant will appear from Thief River Falls, and the defense attorney will appear from Mahanomen, which is about 60 miles south of Thief River Falls. Without the benefit of ITV, defendants appearing in Thief River Falls would simply go without representation. ITV makes both public and private representation more accessible to all defendants by providing a means for defense attorneys, whether public or private, to cover cases in more than one county in a single day.

ITV also aids in transportation issues. In many areas, public transportation is nonexistent. As the population in outstate Minnesota dwindles, there is less of a base to support public transportation between cities. As a result, defendants who are without transportation or driver's licenses have fewer options for traveling to court. Because many of the counties in outstate Minnesota cover large areas, it may be that the nearest courthouse to the defendant is the courthouse in the next county, which is not the court with jurisdiction over the defendant's case. Having the ability (but not necessarily the requirement) to appear by ITV even when not in custody benefits the defendant by cutting down both on the distance that must be traveled to make an appearance and the cost of transportation.

2. ITV Benefits All Criminal Justice Partners

Just as judicial resources are allocated across the state in accordance with caseloads and population, resources of other partners in the criminal justice system, such as public defenders and law enforcement are also allocated according to greatest need. Some counties have built regional jails or have entered into jail sharing arrangements to address budgetary constraints. The result is that defendants who are in custody may be physically located a long distance from the courthouse where the judge is located. See, e.g., Attachments C and D, detailing the location of public defender offices and jails in the Eighth and Ninth Judicial Districts. Use of ITV will allow the defendant to appear via ITV from a courthouse that is closer to the jail, thereby *eliminating substantial transportation issues for law enforcement*. Additionally, in those counties in which there may only be one law enforcement agency with perhaps only one or two officers on duty at any time, ITV decreases the time spent on the road by law enforcement transporting defendants to neighboring counties for court appearances. Time spent in transport is time spent away from other law enforcement duties, which may affect public safety.

Similarly, ITV allows public defenders to cover a wider geographic area. For example, in the Eighth Judicial District, the majority of public defenders working in the district are officed in Willmar, which is located in Kandiyohi County. No public defenders are officed in Wilkin, Traverse, Big Stone, Lac Qui Parle, or Chippewa Counties. See Attachment C. The average travel distance for public defenders covering cases in counties other than the county in which they are officed is a 77-mile round trip. In the Ninth Judicial District, because the geography of the district is so vast, there are multiple areas where a single office covers several counties. See Attachment D. For example, public defenders officed in Thief River Falls cover Kittson, Roseau, Marshall, Pennington, and Red Lake Counties. Within the district, the average travel distance for public defenders covering cases in counties other than the county in which they are officed is a 99-mile round trip, and the most extreme distance is a 240-mile round trip. Each minute spent on the road is one less minute spent with defendants in preparation for hearings or representing defendants in court. Allowing ITV provides public defenders, if they wish to utilize it, greater flexibility to allocate their representational resources across the district in the manner that provides the greatest possible benefit to their clients.

3. The Proposal of the Advisory Committee on Rules of Criminal Procedures to Limit the Use of ITV Hearings to Persons Who Are In Custody and to Just a Few Hearing Types is Too Restrictive

Proposed Rule 1.05, subd. 1(1) states ITV “is permitted only for court appearances authorized by subdivision 3 of this rule for defendants who are *in custody*” (emphasis added). This proposed limitation places unnecessary constraints on the use of ITV and ignores the broad range of issues that can interfere with timely participation in a court hearing. Of the 39 states that currently permit the use of ITV for arraignments or initial appearances, only 3 states limit ITV use to in custody situations.

One purpose for instituting the use of ITV is to ensure that persons who are in custody are able to appear before a judge in a timely manner so that release conditions can be set, and if release conditions are not appropriate, so that a probable cause determination can be made within 48 hours of the warrantless arrest. Both the Judicial Council protocol and proposed Rule 1.05 accomplish this goal. However, the Judicial Council protocol accomplishes several other additional goals that the proposed rule fails to address.

For example, ITV allows judicial resources to go farther. As the map explained in section 1 shows, there are a small number of judges covering a large geographic area in outstate Minnesota. A recent graphic published in USA Today (Attachment E) indicates that the population is decreasing in the same areas in which there are currently very few or no judges chambered. Compare Attachment E with Attachment A. This could result in even fewer judges allocated to the very large geographic region of outstate Minnesota. ITV allows fewer judges to cover more calendars over a larger area. As an example, on a typical day, a single judge may preside over arraignments (both for persons in custody and persons who are not in custody) in Lake of the Woods county via ITV in the morning, and then preside over a master calendar in Beltrami county, the location in which the judge is physically present, in the afternoon. Use of ITV in this manner allows one judge to address the judicial needs of two counties in a single day.

Additionally, ITV allows for a more accountable and transparent method of appearing in court in those situations in which the rules already permit appearance by written petition or by phone. Minn. R. Crim. P. 26.03, subd. 1(3)3 provides that the defendant may waive the right to be present for arraignment, trial, and sentencing in misdemeanor cases. Minn. R. Crim. P. 14.02, subd. 2 and 15.03, subd. 2 allow a defendant charged with a misdemeanor to enter a plea by written petition. And Minn. R. Crim. P. 26.03, subd. 1(3)4 provides that the court may allow

participation by telephone of one or more parties, counsel, or the judge in any proceedings in which the defendant would otherwise be permitted to waive personal appearance under the rules. The use of ITV in any of these situations would result in better quality interaction between the court, defendant, and counsel, and provide for more accountability between and among all of these participants and the public. The proposal to limit ITV use to in custody situations ignores these rules and so restricts the use of ITV that it will result in situations where, because not expressly permitted, the judge, defendant, or counsel will be unable to use ITV and will instead be forced to appear by phone. This outcome simply does not make sense. The Judicial Council proposal is broader in those areas covered by the alternative appearance rules – allowing ITV for all misdemeanor hearings and certain pretrial hearings in felony and gross misdemeanor cases – and is therefore more in line with the current intent and function of the rules.

4. The Proposed Consent Requirement is Unnecessary Because the Judicial Council Protocol Builds in Protections Against Coercion Such as Requiring the ITV Transmission to be Courthouse to Courthouse

Proposed Rule 1.05, subd. 4 requires the consent of the defendant before ITV may be used, and provides for objection by the Chief Public defender in the district. The Judicial Council’s proposed protocol does not contain a similar consent requirement because the protocol already builds in several safeguards to protect the rights of the defendant. First, when the defendant appears by ITV for Rule 5 or 6 hearings, ¶ 4.a. of the protocol allows the defendant to request an in-person hearing, which shall be granted and held within three days of the ITV appearance. For all other hearing types, ¶ 4.b. of the protocol allows the defendant to object to appearing by ITV prior to the appearance. And, unlike proposed Rule 1.05, which places no direct restriction on where ITV hearings must be held, ¶ 7.a. of the protocol requires that all hearings be conducted in a courtroom or other room in the courthouse reasonably accessible to

the public, which minimizes the threat of coercion inherent in appearances from locations such as the county jail. Moreover, as demonstrated by the list attached to the Judicial Council's proposed protocol, which details the uses of ITV in criminal matters in other jurisdictions, only nine other states require the consent of the defendant prior to use of ITV. With built in protections, consent is simply unnecessary.

5. ITV is a Proven Tool and Should be Made Permanent as Proposed in the Judicial Council Protocol

ITV has been in use statewide in criminal cases in the State of Minnesota since 1999. Since that time, there has only been one case challenging its use for any reason: State v. Sewell, 595 N.W.2d 207 (Minn. Ct. App. 1999). In Sewell, the defendant asserted the use of ITV violated his confrontation rights. There, a prosecution witness was deemed to be unavailable for a retrial because he was under doctor's orders not to travel following neck surgery. The district court decided that it would not permit the reading of the witness' prior testimony, but suggested that either a videotaped deposition or ITV would be suitable options for presenting the witness' testimony. The Court of Appeals found that use of ITV did not violate the defendant's confrontation rights because defense counsel extensively and effectively cross-examined the witness and thoroughly explored inconsistent statements. Id. at 212-213. Moreover, in reviewing the medium for unfair impact, the Court found that the ITV transmission was clear and undistorted, id. at 212, and that the jury had a reasonable opportunity to observe and assess the witness' demeanor during his testimony, id. at 213. Thus, ITV was determined to be at least equivalent to a videotaped deposition, and more than likely proved to be better because it allowed for real time questioning and cross examination.

As the Sewell case, and the lack of any other cases before or since proves, ITV is an effective tool for expediting judicial process, and for doing so in the furtherance of justice for the

defendant. Moreover, ITV is also currently functioning effectively in the areas of civil commitment, see Commitment and Treatment Act Rule 14, juvenile protection, see Minn. R. Juv. Protection P. 12, and for appeals to the Minnesota Court of Appeals, see Protocol for the Use of ITV in the Minnesota Court of Appeals.

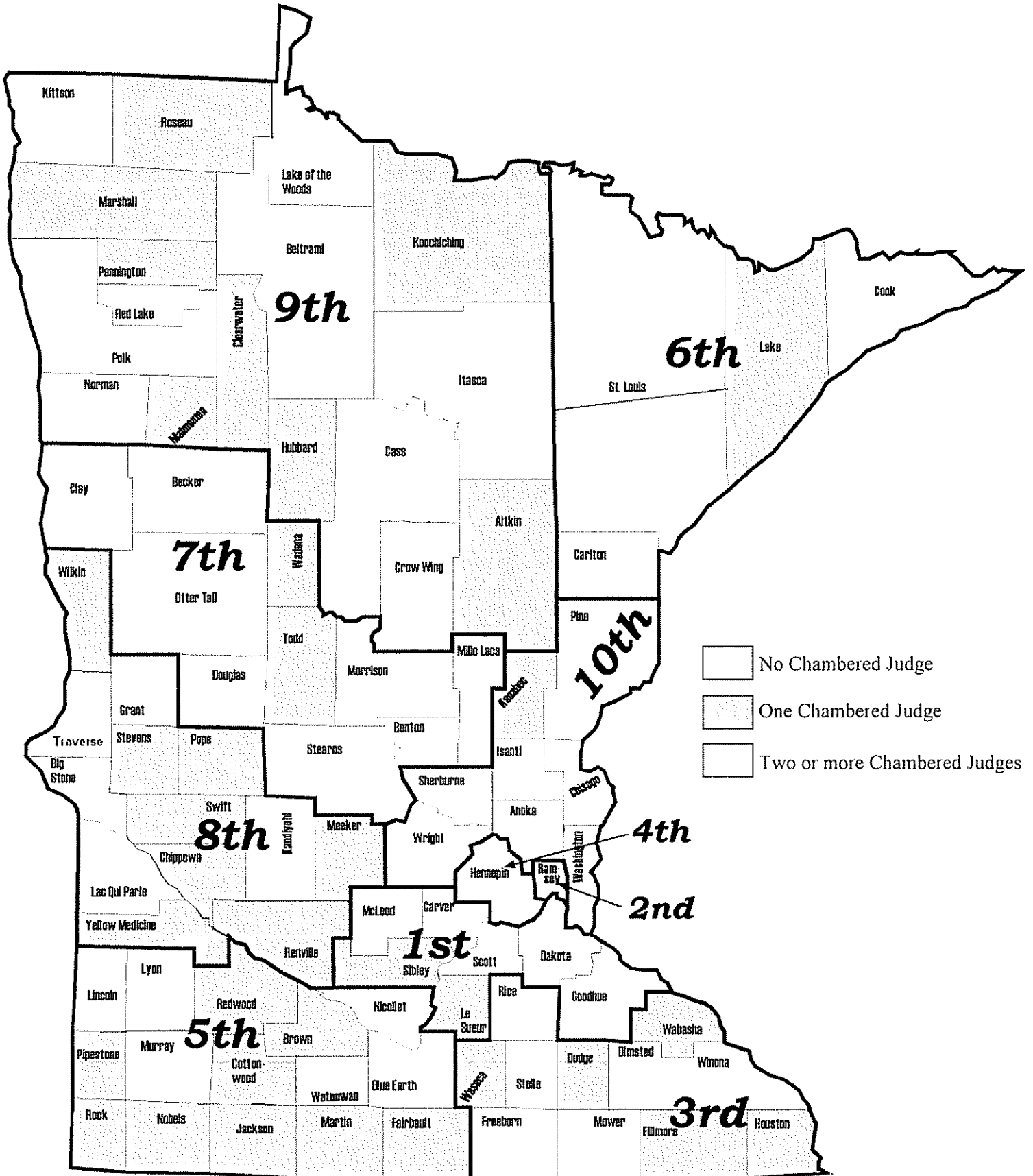
The Judicial Council brought forth its proposed protocol in the interests of justice. Though the Council respects the work of the professionals who comprise the Advisory Committee on Rules of Criminal Procedure, it must be recognized that a majority of the members of the committee work and practice in the metro area, and as such, simply do not have experience in the use and successes of ITV. As demonstrated above, ITV is a proven commodity that facilitates the administration of justice in a timely and cost effective manner. The Judicial Council strongly urges the Court to adopt the Judicial Council protocol and finally sanction the statewide use of ITV in criminal cases.

Respectfully Submitted,

MINNESOTA JUDICIAL BRANCH
JUDICIAL COUNCIL

Attachment A

MN Chambered Judge Configuration



ATTACHMENT B

JUDICIAL COVERAGE IN COUNTIES WITHOUT A CHAMBERED JUDGE

District	County	Average Days Per Week	Average Days Per Year
5	Lincoln	1	52
5	Murray	2	104
5	Watonwan	3	156
6	Cook	2 every other week	52
8	Big Stone	1-1/2	76
8	Grant	1-1/2	81
8	Lac Qui Parle	1-1/3	70
8	Traverse	3/4	43
9	Kittson	1/2 every other week	13
9	Lake of the Woods	1 every other week	26
9	Norman	1	52
9	Red Lake	1/2	26

Denotes the average number of days a judge is scheduled in county without a chambered judge. Some additional days may be scheduled for trials.

ATTACHMENT C

Public Defender and Jail Locations/Trip Miles - 8th Judicial District

COUNTY	PUBLIC DEFENDER	OFFICED IN	ROUND TRIP MILES	JAIL
BIG STONE County Seat:Ortonville Chambered Judge: None	Carter Greiner**	Willmar	148	NO - Transport to Milbank SD Will probably use Traverse Co when their new jail completed
	Ken Hamrum	Morris	90	
CHIPPEWA County Seat: Montevideo Chambered Judge: Paul Nelson	Michael Kinney	Willmar	78	YES - Also has sharing arrangement with Yellow Medicine County - All female defendants are housed there as well as some male defendants
	Carter Greiner**	Willmar	78	
	Greg Holmstrom	Granite Falls	28	
GRANT County Seat: Elbow Lake Chambered Judge: None	Tracy Mitchell	Elbow Lake	0	NO - transport to the Couties of Douglas, Ottertail, Wilkin
	Kent Marshall	Barrett	15	
	Ken Hamrun	Morris	64	
	Jan Wahlquist	Glenwood	80	
KANDIYOHI County Seat: Willmar Chambered Judges: Donald Spilseth Kathryn Smith Michael Thompson	Tim Johnson**	Willmar	0	YES
	Aaron Jordan	Willmar	0	
	John Holbrook**	Willmar	0	
	Michael Kinney	Willmar	0	
	Brad Kluver	Litchfield	0	
	Ramona Lackore	Willmar	0	
	Jay Liedman	Willmar	0	
	Greta Smolnisky	Willmar	0	
	Mike Thalberg	Willmar	0	
	Robert Schaps*	Litchfield	56	
	Curt Reese*	Olivia	52	
Neil Tangen*	Starbuck	108		
*Used Occassionally in Kandiyohi County				
LAC QUI PARLE County Seat: Madison Chambered Judge: None	Michael Kinney	Willmar	130	Can hold overnight - otherwise transport to Chippewa, YM
	Carter Greiner**	Willmar	130	
	Greg Holmstrom	Granite Falls	84	
MEEKER County Seat: Litchfield Chambered Judge: Steven Drange	Robert Schaps	Litchfield	0	YES
	Brian Olsen	Cokato	35	
	Brad Kluver	Litchfield	0	
POPE County Seat: Glenwood Chambered Judge: Jon Stafsholt	Jeff Kuhn	Glenwood	0	NO - transport to Alexandria, Willmar, or Benson
RENVILLE County Seat: Olivia Chambered Judge: Randall Slieter	Ron Seelander	Olivia	0	YES
	Curt Reese	Olivia	0	

Public Defender and Jail Locations/Trip Miles - 8th Judicial District

COUNTY	PUBLIC DEFENDER	OFFICED IN	ROUND TRIP MILES	JAIL
STEVENS County Seat: Morris Chambered Judge: Gerald Seibel	Jeff Kuhn Ken Hamrum	Glenwood Morris	58 0	NO - transport to Willmar, Alexandria, Breckenridge, Benson, or Granite Falls
SWIFT County Seat: Benson Chambered Judge: David Mennis	Neil Tangen Jan Wahlquist Ken Hamrum	Starbuck Glenwood Morris	50 64 58	YES
TRAVERSE County Seat: Wheaton Chambered Judge: None	Ken Hamrum Jan Wahlquist	Morris Glenwood	74 122	New Jail to be completed in July/August, 2007
WILKIN County Seat: Breckenridge Chambered Judge: Peter Hoff	Tracy Mitchell	Elbow lake	80	YES
YELLOW MEDICINE County Seat: Granite Falls Chambered Judge Bruce Christopherson	Michael Kinney Carter Greiner** Greg Holmstrom	Willmar Willmar Granite Falls	84 84 0	YES

**Full Time Public Defenders

ATTACHMENT D

Public Defender and Jail Locations/Trip Miles - 9th Judicial District

COUNTY	PUBLIC DEFENDER	OFFICED IN	ROUND TRIP MILES	JAIL
BELTRAMI County Seat: Bemidji Chambered Judge: Paul T. Benschopf John G. Melbye Shari R. Schluchter	<u>Beltrami and Clearwater</u> Kris Kolar (Chief) - 5 Paul Thompson (MA) - 5 Dee Sweeney - 1 Kris Cannon - 1 Rob Aitken - 1 Erica Austad - 1	Bemidji	Bemidji to Bagley- 52 miles	Yes
CLEARWATER County Seat: Bagley Chambered Judges: Paul E. Rasmussen	Margaret Dow - 75 Loretta Hillier - 75			Yes
CASS County Seat: Walker Chambered Judge: John P. Smith David F. Harrington	<u>Cass & Hubbard</u> Jay Sommer (MA) 5 Paul Sellers - 1 Justin Cain - 1 Mike Udem - 75 Larry Kimball - 75	Walker	Walker to Park Rapids - 56 miles	Yes
HUBBARD County Seat: Park Rapids Chambered Judge: Robert D. Tiffany	Eric Boe - 75			Yes
CROW WING County Seat: Brainerd Chambered Judge: Frederick J. Casey John R. Leitner David J. Ten Eyck Richard A. Zimmerman	<u>Crow Wing and Aitkin</u> Jana Austad (MA) - 5 David Hermerding - 1 Jennifer Cummings - 1 Stephanie Shook - 1 Brook Mallak - 1 Joe McGown - 1 Ray Horton - 75	Brainerd	Brainerd to Aitkin 60 miles	Yes
AITKIN County Seat: Aitkin Chambered Judge: John R. Solien	Kent Strunk - 75 Josh DuBois - 75 Jeff Haberkorn - 25			Yes
ITASCA County Seat: Grand Rapids Chambered Judge: John R. Hawkinson Lois J. Lang Jon A. Maturi	<u>Itasca & Koochiching</u> James Austad (MA) - 5 JD Schmid - 1 Evy Schneider - 1 Gayle Lovejoy - 1 vacant - 1 Anne Marcotte - 75	Grand Rapids Grand Rapids Grand Rapids Grand Rapids Grand Rapids Grand Rapids	Grand Rapids to Intl Falls - 240 mi	Yes
KOOCHICHING County Seat: International Falls Chambered Judge: Charles H. LeDuc	John Udem - 75 Bruce Biggins - 75 Steve Shermoen - 75	Grand Rapids Intl Falls Intl Falls		Yes

Public Defender and Jail Locations/Trip Miles - 9th Judicial District

COUNTY	PUBLIC DEFENDER	OFFICED IN	ROUND TRIP MILES	JAIL
KITTSON	<u>Kittson, Marshall, Pennington, Red Lake, & Roseau</u>			Yes
County Seat:	Kip Fontaine (MA) - 5	Thief River	Thief River to	
Hallock	Chad Garner - 1		Hallock 146 miles	
Chambered Judge:	Melissa Young - 1			
None	Brian Hardwick - 75	Warroad		
MARSHALL			Thief River to	Yes
County Seat:			Marshall - 58 miles	
Warren				
Chambered Judge:				
Donald J. Aandal				
PENNINGTON				Yes
County Seat:				
Thief River Falls				
Chambered Judge				
Kurt J. Marben				
RED LAKE			Thief River to	No
County Seat:			Red Lake Falls	
Red Lake Falls			38 miles	
Chambered Judge				
None				
ROSEAU			Thief River to	Yes
County Seat:			Roseau - 128 miles	
Roseau				
Chambered Judge				
Donna K. Dixon				
LAKE OF THE WOODS	vacant - 75		Intl Falls to	Yes
County Seat:			Lake of the Woods	
Baudette	**LOW is covered by GR		140 miles	
Chambered Judge:	office staff housed in Ifalls			
None				
MAHNOMEN	<u>Polk, Norman and Mahnomen</u>			Yes - but only lockup to hold 2
County Seat:	Jennifer Moore (MA) - 5	Crookston	Crookston to	
Mahnomen	Eric Gudmundson - 1		Mahnomen - 108 mi	
Chambered Judge:	Corey Harbott - 1			
Michael J. Karker	Mike LaCourisere - 1			
NORMAN	Joel Arnason - 75		Crookston to	No
County Seat:	Gretchen Handy - 75		Norman - 72 miles	
Ada	Peter Cannon - 75			
Chambered Judge	Mike Rousu - 75			
None				
POLK				Yes
County Seat:				
Crookston				
Chambered Judge				
Jeffrey S. Remick				
Tamara L. Yon				

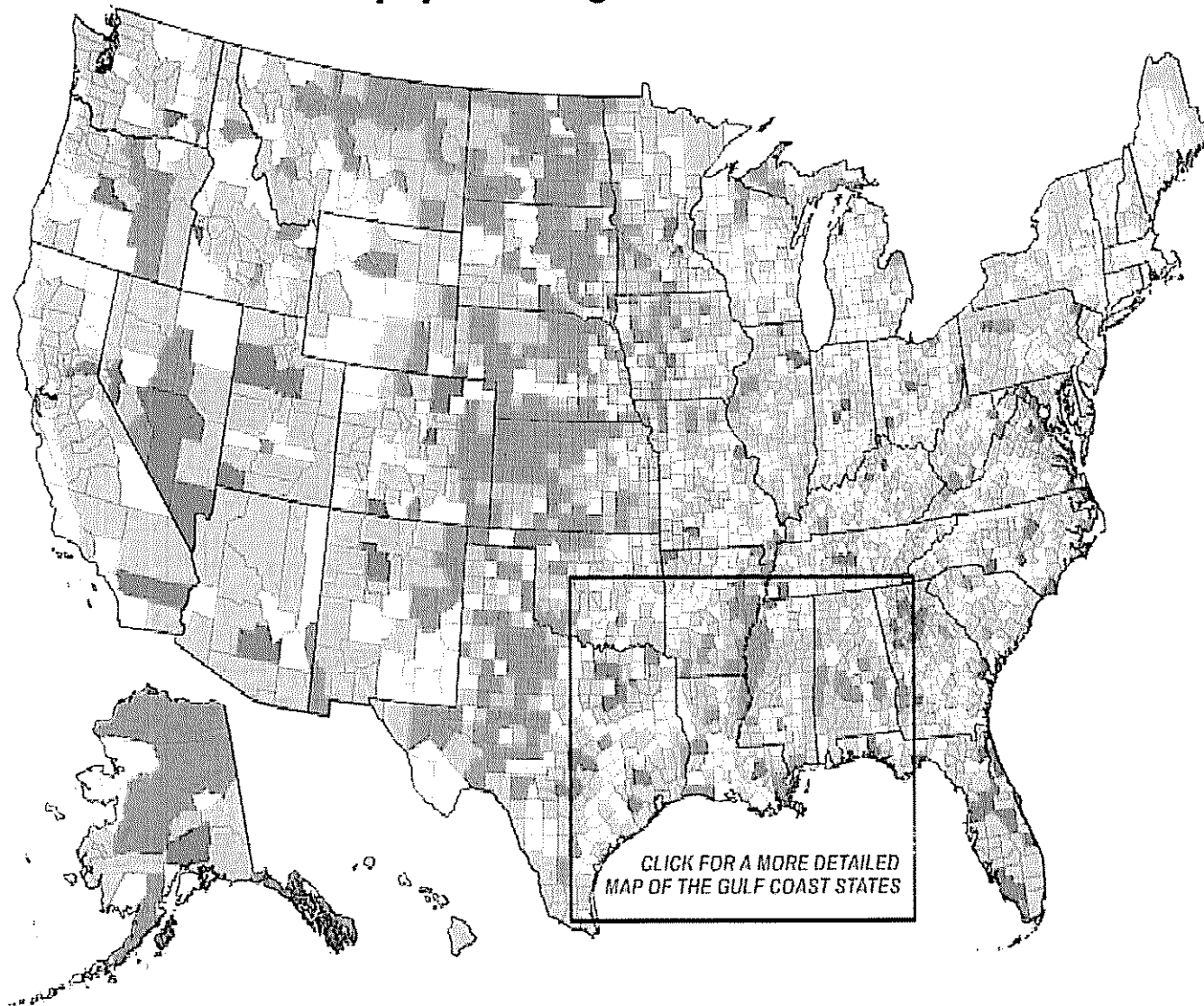
Attachment E



Sun Belt's population grows as Gulf Coast suffers

[Interactively blog](#)

[Send this interactive to a friend](#)



U.S. population themes

- Population change, 2000 - 2006
- Domestic migration, 2000 - 2006
- Natural increase, 2000 - 2006
- Immigration, 2000 - 2006

This first detailed look at overall population change since Hurricane Katrina shows losses along the Gulf Coast and gains for nearby inland counties.

- Growth greater than 25%
- Growth of 5% to 25%
- Growth of up to 5%
- Loss of up to 5%
- Loss of more than 5%

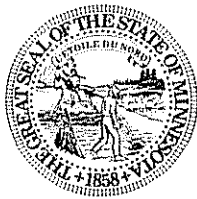
Audio analysis



William Frey
Demographer at the
Brookings Institution

[CLICK FOR AUDIO](#)

CREDITS



OFFICE OF
APPELLATE COURTS

MAY 4 2007

**STATE OF MINNESOTA
STATE PUBLIC DEFENDER**

FILED

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State Public Defender

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Minneapolis, MN 55401

(612) 349-2565
FAX (612) 349-2568
john.stuart@pubdef.state.mn.us

Mr. Frederick Grittner
Clerk of the Appellate Courts
305 Minnesota Judicial Center
25 Rev. Dr. Martin Luther King, Jr., Blvd.
St Paul, MN 55155

May 4, 2007

Dear Mr. Grittner:

Please add me to the oral presentation list for the Proposed ITV Rules hearing May 15.

I am speaking on behalf of the District Chief Public Defenders, Deputy State Public Defender, and the Minnesota State Board of Public Defense. We provide legal representation to indigent persons in over 175,000 cases a year, in all 87 counties, making us the largest "customer" of Minnesota's system of District Courts. We support the recommendations of the Criminal Rules Committee.

We appreciate the Supreme Court's commitment to develop a policy on ITV. The events since the Final Report of the Minnesota Supreme Court Task Force on Closed Circuit Television (1991) demonstrate the need for a policy. Over these 16 years, although there has been some adherence to the Ninth District Protocol (1998), on the whole, counties and judicial branch officials around the state have followed their own separate paths based on local perceptions of economy and convenience. Occasionally there have been attempts to rein in these developments—see, e.g., letter from former Chief Justice Blatz to former Chief Judge Richard G. Spicer, October 28, 2005[sic—should say "04"], copy attached as Attachment "A"—but there has been a need to have uniform, statewide, consistent, clear principles for ITV use.

There is a sharp contrast between the Proposed Amendments to the Rules of Criminal Procedure and the Judicial Council's Proposed Protocol for the Use of ITV as to how they would meet this need for uniform, clear principles. Here are three examples of the contrast. In each instance the "Proposed Rules" approach is superior to the "Proposed Protocol." The Rules provide actual measurable standards, where the Protocol creates a wide zone of discretion.

First, please consider which proposal best implements the stated preference for in-person, live hearings in open court. The Proposed Rule 1, Subd. 3 (1) and (2) permit ITV use “if there is no judge **physically present** in the venue county.” This is clear and measurable. By comparison the Proposed Protocol, 3. a. (i. and ii.) permits ITV use if there is “no judge **available** (emphasis added) in the venue county.”

I respectfully submit that “**available**” is no standard at all. It is equivalent to “whenever.” A person can become “unavailable” simply by making other plans for the day. I further respectfully submit that if a judge is present in a county where a person in custody in a criminal matter requires a hearing, that should be the court’s priority. The hearing should not be televised to another judge in another county. Acceptance of “**available**” as a standard completely vitiates the purported preference for live hearings.

Another way the Proposed Protocol shows that it does not really prefer live hearings is that it does not require that the defendant be in custody. The absence of this requirement, combined with the concept of “unavailability” means that courts will plan regular calendar schedules around ITV. We are encouraged by ITV proponents to visualize emergencies, big snowstorms, sudden illnesses; but in fact, the Proposed Protocol is written to permit constant, routine, daily, mass use of this technology.

There is a physical reality beneath the formal language of “rules” and “protocols.” Rightly or wrongly, counties will buy TV equipment hoping to consolidate jails and to avoid the costs of transportation. It is easier for court personnel, and lawyers, on both sides, to use the TV’s than it is to appear physically in a courtroom. Once the equipment is in place, the opportunities to use it spread like creeping Charlie. The Court should prefer “**physically present**” as a standard, over “**available**,” and restrict ITV use to cases where defendants are in custody.

Second, there is a sharp difference between “Protocol” and “Rule” regarding the location of the parties. The Proposed Rule 1, Subd. 5 states that the defendant’s attorney “shall” be with the defendant except by agreement in emergencies; and the prosecutor may not be alone at the site with the judge, with a similar exception carved out. By contrast the Proposed Protocol, 6 b., provides that “...the use of ITV should not result in a situation where only the prosecutor or defense counsel is physically present before the judge unless all parties agree.”

What does “**should not**” mean? The Comment to this section says the intent is to “discourage” ITV use in hearings where the prosecutor and judge are alone together at one site. This is a “situation” which should be **prohibited**, not “**discouraged**.” Again, this is not a standard.

Third, the Court should have grave concern over the question of consent by, and on behalf of, the defendant.

The Supreme Court Task Force on Closed Circuit Television (1991) was divided on whether or not to allow any experimental development of this technology to proceed at all; the final vote

was 5-3 to allow a “carefully designed and monitored pilot project.” (Final Report, p.4.) The question of the defendant’s consent to ITV was crucial:

There was also a great deal of concern about the form and content of the waiver, reflecting the group’s belief that ensuring a knowing and intelligent waiver was critical. The group felt that a written waiver should be supplemented by an advisory read by the judge before each defendant’s CCTV hearing began.

(Id. at 11, and see Standard, pp.19-20: “No defendant may make any...appearance [by ITV] without waiver of the right to be physically present in the courtroom.”)

In 1998, when the Ninth District Protocol was adopted, it included a section (4. c.):

c. Consents

In all proceedings other than a Rule 5 or Rule 6 hearing the defendant, defense attorney, prosecuting attorney and the presiding judge must consent to holding the hearing by ITV. If the defendant’s attorney is a public defender, the district’s chief public defender or his or her designee must also consent.

The current “Proposed Protocol” handles this issue by allowing the same parties, except the District Chief Public Defender, who previously were required to consent affirmatively, to “submit an objection in writing” to an ITV use, the objection to be determined by the judge. (4.b.) This is not a consent or waiver process whatsoever. Again, there is no standard to guide a judge in determining those few written objections which might arise.

I respectfully submit that the 1991 Supreme Court Task Force would never have recommended the development of the “pilot project” had it known that that it would lead to compulsory ITV appearances as proposed here.

What has happened to allow the abandonment of the concern for consent, that recently was so strongly held? Budget cuts and caseload increases have elevated perceived expediency as the prime value. The Criminal Rules Committee should be commended, and its proposed Subd. 4 adopted. This Subdivision contains the same requirements that the judges who wrote the Ninth District Protocol developed just nine years ago.

In conclusion, ITV can be useful as a back-up to the judicial branch’s main product, full open public hearings in a courthouse. If ITV is overused, the people who will suffer are the defendants who are too poor to afford a bond; that is, the clients of the public defender system. This is the Board and Chief Public Defenders’ primary concern, and my own strongest concern, which I have been raising since 1991.

I also have a desire for the trial courts to be effective, which also leads me to want controls on ITV. Over the last 5 years I have been active in three judicial branch committees on drug courts. Here's what I have learned: these courts are effective for two reasons. They bring people together to solve problems, and they create a face-to-face relationship between the defendant and the district court judge. ITV runs in the opposite direction. ITV says, "let's NOT bring people together, let's NOT have the defendant and the judge look each other in the eye. We'll use television, it's a lot cheaper." Drug courts get results because the judges roll up their sleeves and grapple with real human beings. I don't believe people change their lives by seeing a judge on television.

Seen in the light of the drug court experience, ITV risks elevating the form of "court appearances" over the substance. A lot more "court appearances" can be done for a dollar if you don't incur the expense of getting people in a room together, but is this truly cost-effective? As a practitioner I handled thousands of cases, all live and in person, and of the ones where there were good results, the most common element was contact with the other parties. A judge would get us in chambers and ask, what's the real issue here? Prosecutor might say, "restitution," I might say, "work release," and a problem could be solved.

In the bail-setting situation, if someone is being released with an admonishment like "stay away from your ex!" I believe the court will make its message much more powerful in person than on an ITV screen. Again, ITV can provide the formal ingredients of a court appearance, but not the substance. The perception of efficiency and economy by having court on television is a false one, if ITV hinders resolution of cases or diminishes the power of a judge's message. ITV dilutes the impact of the court experience. For centuries courts have developed the means to dramatize what the judge says—impressive rooms, elevated benches, black robes—so that defendants feel the power behind the judge's words. Courts should not give that power away.

That is why we believe the Proposed Rules of Criminal Procedure have the right approach. Use ITV as a tool, subject to meaningful standards and conditions: NOT when a judge is physically there in the county; NOT when the defendant is out of custody; NOT when the judge and prosecutor will be in court by themselves; NOT when the parties do not consent.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "John Stuart", with a long horizontal flourish extending to the right.

John Stuart



THE SUPREME COURT OF MINNESOTA
MINNESOTA JUDICIAL CENTER
25 REV. DR. MARTIN LUTHER KING JR. BLVD.
SAINT PAUL, MINNESOTA 55155

CHAMBERS OF
KATHLEEN A. BLATZ
CHIEF JUSTICE

MEM 296-3380

October 28, 2005

Attachment "A"

Honorable Richard G. Spicer, Chief Judge
Dakota County Judicial Center
1560 Highway 55
Hastings, MN 55033

Dear Judge Spicer:

The First Judicial District has requested a 90-day pilot project using interactive audio-visual teleconferencing to conduct all Rule 5 and Rule 6 in-custody hearings in criminal matters. While most Dakota County parties are in agreement with the proposed protocol, the public defender's office is not enthusiastic about this project. It is concerned that the rights of the defendant may be infringed upon. In addition, as communicated to the Conference of Chief Judges, the state public defender's office has raised the following concerns:

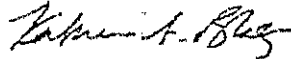
- a. Separating criminal justice into a "live-middle class" division and a "televised, in jail, poor people's" division, based on the ability to post bail. This division often correlates with race.
- b. Having "meaningful" or "productive" appearances where case resolution discussions can take place, which is much more difficult where everyone is in a different room watching a monitor. If an appearance is not going to be "meaningful," public defenders would prefer developing procedures to waive an appearance rather than televise it.
- c. Cost reductions to other participants (e.g., the sheriff) may be more than offset by additional costs for public defenders who may have to have staff in both locations (i.e., with the defendant and with the judge team.)

In addition to these concerns, the proposed project does not comply with the Ninth Judicial District Criminal ITV Protocol previously approved by this Court because it would allow use of ITV even when there is a resident judge available in the courthouse to preside over the hearings. The Court is aware that efforts to modify the Ninth Judicial District Criminal ITV Protocol were

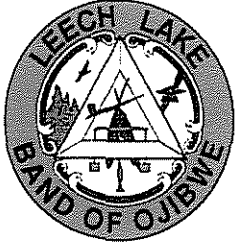
Honorable Richard G. Spicer, Chief Judge
October 28, 2004
Page 2

met with resistance by the Advisory Committee on the Rules of Criminal Procedure, and that a subcommittee of the Judicial Branch Technology Planning Committee may yet bring forth a revised protocol for review. In light of this and the concerns above, at this time we are reluctant to go beyond the parameters of the approved Ninth Judicial District Criminal ITV Protocol, and must respectfully deny your request.

Very truly yours,



Kathleen A. Blatz



Leech Lake Band of Ojibwe

George Goggeye Jr., Chairman
Arthur "Archie" LaRose, Secretary/Treasurer

District I Representative
Robbie Howe

District II Representative
Lyman L. Losh

District III Representative
Donald "Mick" Finn

May 1, 2007

Mr. Frederick Grittner
Clerk of the Appellate Courts
305 Judicial Center
25 Rev. Dr. Martin Luther King, Jr. Blvd.
St. Paul, Minnesota 55155

OFFICE OF
APPELLATE COURTS

MAY 4 2007

FILED

Re: Hearing to Consider ITV Protocol

Dear Mr. Grittner:

Please let this letter serve as our written request to have Leech Lake Tribal Court Chief Judge Korey Wahwassuck make an oral presentation at the Minnesota Supreme Court's May 15, 2007, Hearing to Consider Proposed Amendments to the Rules of Criminal Procedure Relating to Implementation of ITV.

Minnesota's Ninth Judicial District is unique, not only in terms of its sheer size, but also because it overlaps with the Reservations of four Federally-recognized Indian Tribes, including the Leech Lake Band of Ojibwe. There is a crippling lack of access to adequate transportation for many defendants who live on the Leech Lake Reservation, and the consequences for failure to appear create a huge burden on the court system and significantly impact the lives of tribal members. Proposed restrictions on the use of ITV in criminal proceedings will close the door on a unique opportunity that could benefit not only those defendants willing to take advantage of ITV, but also the Minnesota Judicial Branch. While safeguards must be implemented to ensure that defendants' rights are protected, the use of ITV for proceedings other than in-custody hearings has great potential for increasing efficiency and improving access to the judicial system.

Enclosed please find twelve (12) copies of written materials Judge Wahwassuck will use in her oral presentation on May 15, 2007. Thank you for your consideration.

Very truly yours,

George Goggeye, Jr.
Chairman of the Leech Lake Tribal Council

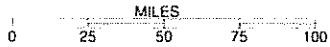
Cc: The Honorable Korey Wahwassuck



FEDERAL LANDS AND INDIAN RESERVATIONS

- Bureau of Indian Affairs
- Department of Defense (includes Army Corps of Engineers lakes)
- Fish and Wildlife Service / Wilderness
- Forest Service / Wilderness
- National Park Service / Wilderness

Some small sites are not shown, especially in urban areas

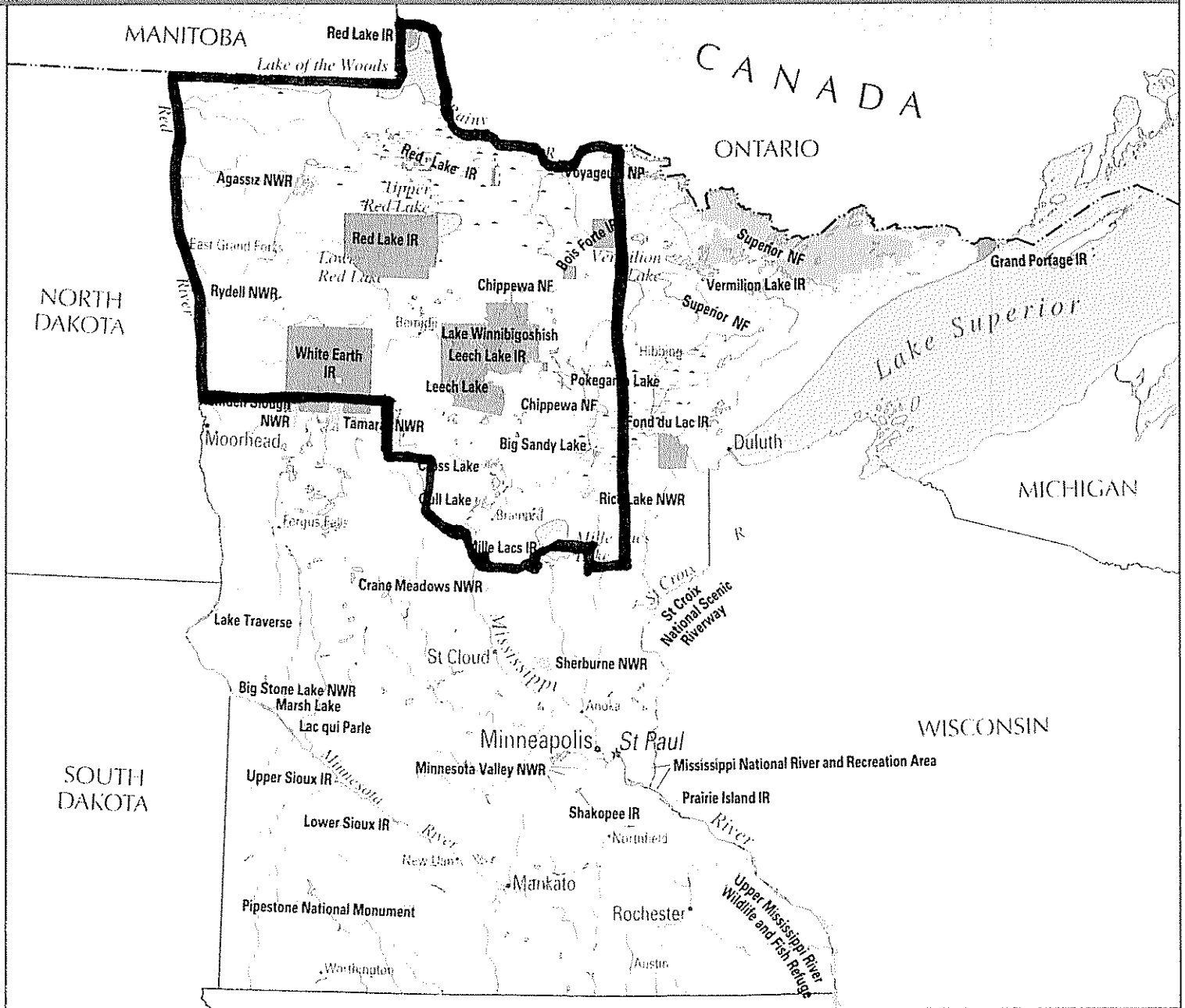
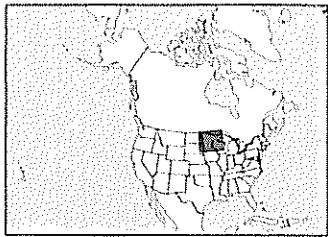


Albers equal area projection

Abbreviations

- IR Indian Reservation
- NF National Forest
- NP National Park
- NWR National Wildlife Refuge

OUTLINE OF 9th JUDICIAL DISTRICT



My name is Ryan Ries. I am an assistant public defender working in Wadena County Minnesota. I am writing to express my concern regarding the increased use of interactive television (ITV) for criminal hearings. While I understand and even agree with the use of ITV in emergency situations, I firmly believe that its overuse would come at a great detriment to the Minnesota criminal justice system.

I have participated in ITV appearances in Minnesota as an attorney and have witnessed how they function outside Minnesota. I have two principle problems with the use of ITV. First, I believe that hearings conducted by ITV are less "real" for my clients and are perceived as not truly being legitimate court appearances. Secondly, I believe that the quality of the decisions being made at an ITV hearing are lessened because of the lack of "personal" contact between the participants.

Almost all of the clients I serve as a public defender are in very poor social standing. Generally speaking they are less educated and have a very hard time expressing themselves while in court. They are easily intimidated by the system and believe that the chips are stacked against them even before they come to court. In my opinion, when a client appears by ITV their perception of the system only worsens. They feel that their case is unimportant to people involved and that they are simply being moved through the system as quickly and easily as possible. They are much more comfortable dealing with people face to face and perceive ITV as impersonal.

I also believe that while ITV technology is improving, it still leaves much to be desired compared to personal interactions. When a Judge is in the same room as my client the Judge can much better interpret their body language and emotions. These subtle observations also extend to the attorneys, probation agents and others who are involved in the matter. I believe that the information provided by these nonverbal sources is lost in an ITV hearing. These nonverbal clues benefit my clients as well. They are better able to perceive the gravity of their situation and make better decisions about their cases.

While I understand the cost saving and logistical reasons that make ITV an attractive alternative, I do not believe that it should be used on a routine or non emergency basis. My clients are already in a strange and uncomfortable environment when they come to court. While we have made their situation better by making court more understandable with simpler language choice and rights advisories, routine ITV hearings would be a step backwards. Many of my clients, even those with less serious charges, have a great deal at stake when they are in court and I believe that we should strive to make the justice system as approachable and fair as possible. Indeed, to a great extent it is the perception of justice and equality by the people involved in our courts that gives meaning to the criminal justice system.

OFFICE OF
APPELLATE COURTS

MAY 4 2007

FILED

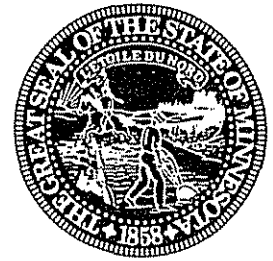


Fred T. Friedman
Chief Public Defender

May 2, 2007

**STATE OF MINNESOTA
OFFICE OF THE SIXTH JUDICIAL DISTRICT
PUBLIC DEFENDER**

1400 Alworth Building
306 West Superior Street
Duluth, Minnesota 55802



Telephone (218) 733-1027
Fax (218) 733-1034

OFFICE OF
APPELLATE COURTS

MAY 3 2007

FILED

Mr. Frederick Grittner
Clerk of the Appellate Courts
305 Minnesota Judicial Center
25 Rev. Dr. Martin Luther King, Jr., Blvd.
St Paul, Minnesota 55155

RE: Opposition to the Judicial Council's Proposal to Expand the Use of ITV

Dear Mr. Grittner:

As a Public Defender for 35 years, and as the Senior Chief Public Defender in the State of Minnesota in terms of years of experience, I want to emphasize my opposition to the proposed expansion of the use of ITV as proposed by the Judicial Council. I completely agree with the analysis of the proposed rule as articulated by the Criminal Rules Committee. There is no question in my mind that they have the better of the argument and the better analysis.

I've had an opportunity to read the written testimony of the Judicial Council, and in all due respect, I look at it differently. I've had the honor of being in courts at all ten districts in the state, as well as both our appellate courts. I recognize that courts are for the people of Minnesota, not for the judges and the attorneys.

Anything that reduces access to personal appearances in court by people who are at their most vulnerable is wrong.

I recognize expanding the use of ITV would be convenient and reduce the travel for some judges. I also recognize Minnesota is a large state. I know what it's like to put a suit on, leave my house at 3:30 in the morning, and drive to court in Rochester, Roseau, or Crookston. The point is, the Minnesota courts should not encourage a segregation between the "haves" and the "have nots." We should not encourage a segregation between those that can afford bail and those that cannot. We cannot afford a segregation between those whose attorneys can make it to the courthouse and those whose attorneys would rather not make it to the courthouse. We don't meet on television, we don't make important decisions on television, the Supreme Court does not have conferences

Frederick Grittner

RE: Opposition to the Judicial Council's Proposal to Expand the Use of ITV

May 2, 2007

Page 2

regarding cases on television, and neither the Minnesota County Attorney's Association nor the Minnesota Chief Public Defenders make important decisions on television. Certainly, our legislature does not meet and vote on bills on television.

Expanding ITV is wrong because everybody should have access and *equal* access to their courthouse. Expanding ITV is wrong because it will adversely affect rural practice and discourage the small town practice of law, reducing the use of small town courthouses. Expanding ITV is wrong because it will emphasize **those that have the money, influence, and connections to bail out or be released on their own recognizance from those who are in jail, despite being told they are presumed innocent because they cannot afford bail or afford to hire a bondsman who becomes wealthier off of their misfortune.** Expanding the use of ITV is wrong because it will especially impact defendants of color who will be denied further justice by now creating yet another chain and another lock to the courthouse door.

Despite every effort all of us make to have justice remain color blind, this will be perceived as white folks come to court and folks of color, especially rural Native and Hispanic folks, appear through a television screen.

I know it's been expressed by a few chief judges (not mine) that while the Chief Defenders are, by consensus, opposed to expansion of ITV, some rural defenders prefer it. Not one defender in the Sixth, urban or rural, favors ITV. All of us favor the rule best proposed by the Minnesota Criminal Rules Committee.

Sincerely,



Fred T. Friedman

CHIEF PUBLIC DEFENDER

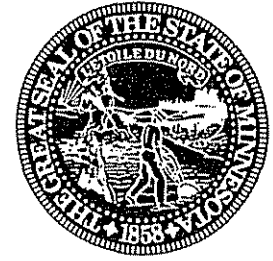
(218) 733-1027

FTF:kpm



**STATE OF MINNESOTA
OFFICE OF THE SIXTH JUDICIAL DISTRICT
PUBLIC DEFENDER**

1400 Alworth Building
306 West Superior Street
Duluth, Minnesota 55802



Fred T. Friedman
Chief Public Defender

OFFICE OF
APPELLATE COURTS

Telephone (218) 733-1027
Fax (218) 733-1034

May 2, 2007

MAY 3 2007

FILED

Mr. Frederick Grittner
Clerk of the Appellate Courts
305 Minnesota Judicial Center
25 Rev. Dr. Martin Luther King, Jr., Blvd.
St Paul, Minnesota 55155

RE: Use of ITV in the Courtroom

Dear Mr. Grittner:

I am an Assistant Public Defender servicing the St. Louis County Courthouse - Virginia, MN. This courthouse covers a wide geographical area in a very large, rural county in out-state Minnesota. This courthouse does not have a local jail, only a 48 hour local holding facility. Therefore, incarcerated clients are more than one hour from the Virginia courthouse for all appearances.

It has come to my attention that the Judicial Council is proposing a change in the criminal rules to expand the use of ITV. While I acknowledge that this may seem like a quick fix to a logistical and geographical nightmare, I urge the judicial council to reconsider this position. All criminal defendants have the right to appear in the courtroom before a judge, live and in person. The judicial system that our founding fathers set up is not an easy one; it was not intended to be so. The majority of my clients already perceive our criminal justice system to be skewed against them. The use of ITV would further demean the indigent and accused so irrevocably that "innocent until proven guilty" would truly mean nothing to them.

Admittedly, the use of ITV would make my job easier by cutting down the travel time to the Virginia Courthouse, 70 minutes from my office. However, I am absolutely opposed to any use of ITV in any judicial proceeding. The simple fact that we practice in a rural area should not mean that rural clients are treated differently than "big city" clients.

Please feel free to contact me if you have any questions or concerns regarding this letter or my position.

Sincerely,

Rebekka L. Stumme
ASSISTANT PUBLIC DEFENDER
(218) 733-1033

RLS:kpm

SKARE LAW OFFICE

THOMAS M. SKARE
ATTORNEY AT LAW
1429 CLOQUET AVENUE
CLOQUET, MN 55720
Telephone: 218-878-0002
Fax: 218-878-3474

OFFICE OF
APPELLATE COURTS

MAY 3 2007

FILED

May 1, 2007

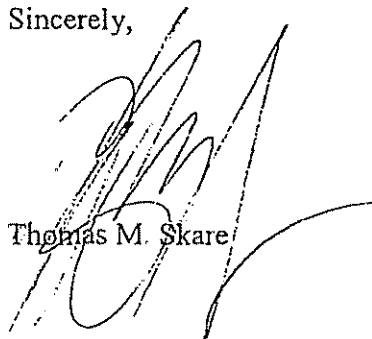
Frederick K. Grittner
Clerk of Appellant Courts
25 Rev. Dr. Martin Luther King Jr. Blvd.
St. Paul, MN 55155

RE: ITV

Dear Mr. Grittner:

I am a half-time public defender in Carlton County, which is in the Sixth Judicial District. I also have my own private practice in this area. This is a rural area of northern Minnesota. I recently learned of the proposed changes to the criminal rules to allow for the use of ITV to hold hearings on television, at the court's discretion. I have used ITV in the past and have found this technology to be less than desirable. Because of my area of practice, I am in court regularly and have not had any problem in having my clients appear in court, in front of a judge, to have their matter addressed. As a rural defense attorney, I am opposed to this proposed rule change. I believe that my clients have a right to appear in, and have access to, the courts. Thank you.

Sincerely,



Thomas M. Skare

Law Office of
BRUCE R. WILLIAMS†

Attorney at Law

409 PIERCE STREET • BOX 705
EVELETH, MN 55734
PHONE: (218) 744-1230
FAX: (218) 744-1123

May 2, 2007

OFFICE OF
APPELLATE COURTS

MAY 3 2007

FILED

Frederick K. Grittner
Clerk of Appellate Courts
25 Rev. Dr. Martin Luther King Jr. Boulevard,
Suite 305
St. Paul, Minnesota 55155

Re: Use of ITV for court appearances

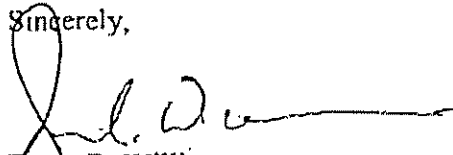
Dear Mr. Grittner:

I am advised the Criminal Rules Committee is thinking of a change of allowing defendants to appear by video camera for court appearances. Please understand I am adamantly opposed to this change. I have spoken with defense attorneys in Wisconsin and other districts and they wish the rule in their district would be repelled. It creates a division between those who can afford to bail out and those who cannot.

I have been an Assistant Public Defender for the Sixth District for 17 years. I work primarily on the Iron Range out of the Virginia Courthouse. Being able to meet with a judge and a prosecutor at arraignments and initial appearances often results in resolutions to the case. Appearing by video would only serve to delay the court's calendar for another two weeks.

I hope you take my comments into consideration.

Sincerely,

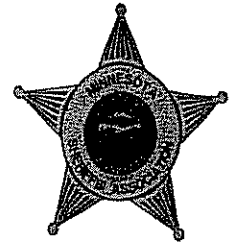


Bruce R. Williams
Attorney at Law

BRW/mh



*Minnesota Sheriffs' Association
Minnesota Chiefs of Police Association
1951 Wood Lane Drive
Woodbury, MN 55125*



651-457-0677

651-451-7216

March 9, 2007

OFFICE OF
APPELLATE COURTS

MAY 14 2007

FILED

Mr. Frederick Grittner
Clerk of the Appellate Courts
305 Judicial Center
25 Dr. Rev. Martin Luther King Jr. Blvd.
St. Paul, Minnesota 55155

RE: Proposed ITV Rules

Dear Mr. Grittner:

It is my understanding that the Minnesota County Attorneys Association (MCAA) has submitted a request to make an oral presentation at the May 15, 2007 hearing to consider proposed changes to the rules of criminal procedure regarding the use of ITV equipment.

The Minnesota Sheriffs Association (MSA) represents the 87 elected Sheriffs in the State of Minnesota and the Minnesota Chief of Police Association (MCPA) represents over 350 Police Chiefs in the State of Minnesota. Each of our respective associations has reviewed the comments and position paper that has been submitted to you by the Minnesota County Attorney Association (MCAA). We wish to advise you of our collective support for the MCAA position in this matter.

We urge your careful review of this position as we believe it is the best way to safeguard the judicial process and the general public. Thank you.

Sincerely,

James Franklin, Executive Director
Minnesota Sheriffs' Association

Harlan Johnson, Executive Director
Minnesota Chiefs of Police

RESOLUTION FOR SUPPORT OF ITV USE

OFFICE OF
APPELLATE COURTS

MAY 11 2007

RESOLUTION NO. 05-08-03
ADOPTED: May 8, 2007

FILED

WHEREAS, it is the Yellow Medicine County Board's belief that the Criminal Rules Committee proposed ITV rules are overly restrictive and would cause delay in court appearances and increased transportation and staff costs, which monies could be better spent improving underlying socioeconomic problems thereby reducing the need for jail cells in the future, and

WHEREAS, the Yellow Medicine County Board believes that an increased use of ITV procedures not only would be cost-effective, but would treat individuals charged with crimes in a fair and timely manner, regardless of individuals' socioeconomic status; and

WHEREAS, the Yellow Medicine County Board believes that ITV should be used for various court appearances without restricting the physical location of the parties and discretion left with the District Courts and parties for the use of ITV in other court hearings; therefore,

BE IT RESOLVED that the Yellow Medicine County Board of Commissioners respectfully requests the Supreme Court adopt ITV rules that allow for the use of ITV in a common sense manner consistent with public needs while maintaining the constitutional rights of individuals.

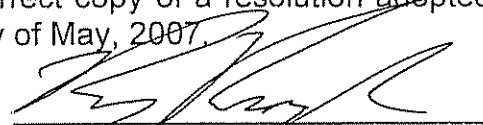
Adopted by Yellow Medicine County this 8th day of May, 2007.

County Board of Commissioners



Ron Antony, Chairman

I, Ryan Krosch, Administrator in and for the County of Yellow Medicine, Minnesota, do hereby certify that the above is a true and correct copy of a resolution adopted by the Board of County Commissioners on the 8th day of May, 2007.



Ryan Krosch
County Administrator

SIBLEY COUNTY BOARD OF COMMISSIONERS
RESOLUTION # 2007-19

Request Supreme Court Adopt ITV Rules

May 8, 2007

OFFICE OF
APPELLATE COURTS

MAY 10 2007

Motion by Commissioner Woehler

Seconded by Commissioner Anderly

FILED

WHEREAS, It is the Sibley County Board's belief that the Criminal Rules Committee proposed ITV rules are overly restrictive and would cause delay in court appearances and increased transportation and staff costs, which monies could be better spent improving underlying socioeconomic problems thereby reducing the need for jail cells in the future; and

WHEREAS, The Sibley County Board believes that an increased use of ITV procedures not only would be cost-effective, but would treat individuals charged with crimes in a fair and timely manner, regardless of individuals' socioeconomic status; and

WHEREAS, The Sibley County Board believes that ITV should be used for various court appearances without restricting the physical location of the parties and discretion left with the District Courts and parties for the use of ITV in other court hearings; therefore,

BE IT RESOLVED, That the Sibley County Board of Commissioners respectfully requests the Supreme Court adopt ITV rules that allow for the use of ITV in a common sense manner consistent with public needs while maintaining the constitutional rights of individuals.

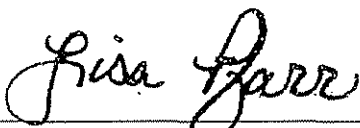
	Yes	No	Abstain	Absent
Anderly	<u>X</u>	_____	_____	_____
Bauer	<u>X</u>	_____	_____	_____
Pettis	<u>X</u>	_____	_____	_____
Pinske	<u>X</u>	_____	_____	_____
Woehler	<u>X</u>	_____	_____	_____

STATE OF MINNESOTA

OFFICE OF COUNTY AUDITOR
COUNTY OF SIBLEY

I, Lisa Pfarr, Auditor of the County of Sibley, State of Minnesota, do hereby certify that I have compared the foregoing with the original proceedings filed in my office on the 8th day of May 2007 and that the same is a true and correct copy of part thereof.

Witness my Hand and Seal of Office at Gaylord, Minnesota the 8th day of May 2007.



Lisa Pfarr, County Auditor

RESOLUTION
OF THE
COUNTY BOARD OF COMMISSIONERS
ITASCA COUNTY, MINNESOTA

Adopted May 8, 2007

Commissioner Mandich moved the adoption of the following resolution:

Resolution No. 05-07-02 (Page 1 of 1)

RE: SUPPORT OF BROADER USE OF ITV BY THE MINNESOTA DISTRICT COURTS

WHEREAS, it is the Itasca County Board's belief that the Criminal Rules Committee proposed ITV rules are overly restrictive and would cause delay in court appearances and increased transportation and staff costs, which monies could be better spent improving underlying socioeconomic problems thereby reducing the need for jail cells in the future; and

WHEREAS, the Itasca County Board believes that an increased use of ITV procedures not only would be cost-effective, but would treat individuals charged with crimes in a fair and timely manner, regardless of individuals' socioeconomic status; and

WHEREAS, the Itasca County Board believes that ITV should be used for various court appearances without restricting the physical location of the parties and discretion left with the District Courts and parties for the use of ITV in other court hearings; therefore,

BE IT RESOLVED that the Itasca County Board of Commissioners respectfully requests the Supreme Court adopt ITV rules that allow for the use of ITV in a common sense manner consistent with public needs while maintaining the constitutional rights of individuals.

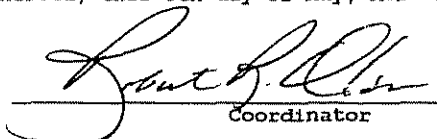
Commissioner Dowling seconded the motion for the adoption of the resolution and it was declared adopted upon the following vote:

Yeas 5 Nays 0 District #1 Y District #2 Y
Other 0 District #3 Y District #4 Y
District #5 Y

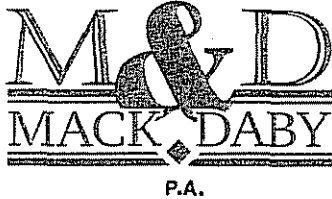
STATE OF MINNESOTA
Office of County Coordinator
ss. County of Itasca

I, ROBERT R. OLSON, Coordinator of County of Itasca, do hereby certify that I have compared the foregoing with the original resolution filed in my office on the 8th day of May A.D. 2007, and that the same is a true and correct copy of the whole thereof.

WITNESS MY HAND AND SEAL OF OFFICE at Grand Rapids, Minnesota, this 8th day of May, A.D. 2007.


Coordinator

By _____ Deputy



Civil Litigation • Criminal Defense
Appellate Law • Family Law • Worker's Compensation • Tax Law

26 Main Street
P.O. Box 302
New London, MN 56273
320-354-2045
Fax: 320-354-5081

JOHN E. MACK, M.A., J.D.

RALPH E. DABY, J.D., C.P.A.

OFFICE OF
APPELLATE COURTS

April 5th, 2007

APR 9 2007

FILED

Frederick Grittner
Clerk of the Appellate Courts
305 Judicial Center
25 Martin Luther King Boulevard
St. Paul MN 55155

Re: ITV Protocol

To: The Justices of the Minnesota Supreme Court

The Judicial Council has proposed ITV Protocols regarding the use of interactive television in criminal proceedings. Various objections have been raised with regard to these proposals, and the Supreme Court noted that implementation of the protocols could potential conflict with the Minnesota Rules of Criminal Procedure.

As a member of a small Western Minnesota law firm which has a fairly extensive criminal practice, I would like to express my views on the issues involved. In general, I favor the Judicial Council's proposal with respect to the use of ITV and believe that the proposed criminal rule changes are far too restrictive. I would also note that the position of the State Public Defender's Office with respect to the use of ITV is problematic and is even, in some cases, rather parochial. Substantial restrictions on the use of ITV substantially and unnecessarily inflate the costs of practicing criminal law in areas where populations are relatively sparse and the distance between courthouses is considerable.

I would like to consider the proposed rule changes more or less in order. Consider first the General Authorization. It seems to me that there is little to be gained from making a presumption either in favor of personal appearance or in favor

of the use of ITV. The use of one form of appearance or the other is almost completely dependent upon the context involved. Rather, the focus should be on (1) maximizing the fairness and efficacy of the process; and (2) consistent with "(1)", providing a process which is speedy and inexpensive to all concerned. Keeping such a focus in mind should provide a better framework within which to analyze whether and how ITV should be used in specific situations.

With regard to the general category of permissible use, if anything both proposed rule changes are too narrow. Perhaps the most important proposal is the Judicial Council's recommendation that ITV may be used in "Any other hearing where the court and parties agree." I can think of only one objection to this proposal that has any pith, and that would be objections by the press to the relatively secluded nature of ITV proceedings. But even here the objection is weak - after all, the press is not *excluded* from ITV proceedings, and neither the press nor the public has a right to have proceedings conducted in the most dramatic forum available. Beyond this possible objection, if the prosecution, the defense, and the court agree to ITV procedures, it is hard to imagine anyone else with legitimate standing to object to them. Indeed, there would be a good deal to be said for a protocol which authorized ITV proceedings in all pre-trial criminal proceedings, but which required a personal appearance in most cases where one of the three interested parties (Court, prosecution, or defense) demanded one.

It is not clear what is to be gained by making a distinction between "in custody" defendants and defendants who are not in custody. Presumably the idea behind the "in custody" requirement is that those who are custody need to have a determination of their status made at the earliest possible date. But presumably every criminal defendant should have a determination of their status made at the earliest possible date. Now either the lack of a personal appearance potentially compromises a defendant's rights, or it does not. If it compromises a defendant's rights, the in-custody defendants would be especially harmed by the lack of such an appearance, because their immediate freedom is at stake. If an ITV appearance does not compromise a defendant's rights, on the other hand, why shouldn't the non-custodial defendant enjoy the speediest possible resolution of pre-trial issues as well? If anything, the argument for an ITV appearance by a non-custodial defendant is stronger than in the case of a custodial defendant.

Suppose the non-custodial defendant lives in Ortonville and his case is venued in Willmar. Why should he have to make a 100 mile trip to be arraigned, particularly if there are no contested matters anticipated, such as bail? Furthermore, why should his Ortonville attorney have to make the trip and bill his client for four hours of work rather than one-half hour of work?

In my experience, most Rule 5 and Rule 8 appearances are rather pro-forma. The only really important issue which comes up on a regular basis is bail or conditions of release. In a fair number of cases, the State will not be seeking bail and the conditions of release will be "boilerplate." Where this is the case, it is difficult to see what is lost by holding the proceedings by ITV. In cases where bail is seriously contested, the prosecution or defense can usually inform the Court ahead of the defendant's appearance and an "in-person" hearing can be arranged separately. Frankly, I like this idea on grounds having little to do with the ITV controversy: I think contested bail issues tend to be resolved too summarily and often require more careful consideration than is sometimes provided in the crush of "arraignment day."

I also see no relevant distinction between personal appearances in Rule 5, Rule 6, Rule 8, Rule 11, Rule 13, or for that matter Rule 15 proceedings. The important issues determining whether ITV should be considered are (1) whether the proceedings will involve seriously contested issues; (2) whether there is any serious doubt that the defendant will understand or appreciate the proceedings, or where it is important that the Court speak to the defendant in some detail about matters of concern; (3) whether there is something about the solemnity or gravity of the proceedings which would be enhanced by personal appearance (a particularly important issue where there has been suspected pre-trial misconduct by the defendant or one of the attorneys); and (4) whether the matter before the court will be resolved outside the parameters of the proceeding anyway (most commonly, by briefs or memoranda submitted by the lawyers after the hearing).

The reality of the situation is that in most cases, particularly in rural areas, only about 10% of pre-trial criminal proceedings are going to require the sort of specialized attention that warrants limitations on ITV appearances. Non-bail Rule 5 and Rule 8 appearances are usually "boilerplate." Omnibus waivers are usually boilerplate.

particularly those involving a subsequent briefing schedule, are boilerplate. Motions and arguments are not themselves boilerplate, but do not involve credibility determinations and can ordinarily be handled as well by telephone, by ITV, or by written submissions as by personal appearance. On the other hand, where evaluation of credibility is important, and where seeing and hearing the witnesses is a real aid to that determination, there is a good argument for restricting the use of ITV. However, in those cases (contested omnibus hearings involving searches or confessions, say, or bail hearings involving possible threats by a defendant) the Court and counsel can usually anticipate the need for a personal appearance well in advance.

I see no need for any automatic restriction on the use of ITV in misdemeanor cases. I do see a real use for personal appearances in only two classes of cases - DWI pleas and sentences where the importance of future sentence enhancement needs to be explained to the defendant, and sentences where jail is a real possibility. I see absolutely no reason why the defendant's custody status is an important reason for personal appearance in a misdemeanor case. Rather, because there is a strong presumption and likelihood of release in a misdemeanor case, it is particularly important to hold a hearing on conditions of release as soon as possible and hence, by any means possible.

I agree with the Judicial Council's recommendations with respect to the use of ITV in petty misdemeanor cases with one exception - I believe that all trials on the merits should take place in person. I do think it is easier to evaluate credibility when the witnesses are physically present.

I do think that the Judicial Council's consent recommendations are a bit too loose, but the proposed rule changes are far too rigid. Of course, if a defendant does not have a right to an in-person appearance (as I would recommend that he not have in the cases I discussed above) then it is not necessary to obtain his consent to ITV. I would substitute for the proposed rule changes language which permits either party to object to an ITV appearance and to permit the Court to rule on these objections by telephone or by ITV appearance. The Courts must be mindful that at some stages of the proceeding (trial, certainly; contested omnibus hearings, pleas and sentencing, maybe) the defendant's confrontation rights may be at stake. But presumably if either party wants a personal appearance, that

party has some reason for it, and I suspect the Courts will be ready to grant an in-person appearance if there is any sort of rational basis for it.

It think the idea of the chief public defender having a right - independent of the right of the defense counsel who is actually representing the defendant - to object to an ITV appearance is pernicious. It has the potential to cause the public to see the Public Defender's Office as a politicized organization.

One of the strongest objections to the public defender system - and one which both the Courts and the public defender system itself should be at greatest pains to obviate - is that such a system will be tempted to represent interests more general than that of the specific defendants it is called upon to defend. Once a public defender system is perceived to represent the interests of criminals as a class rather than individual defendants, it is open to the sorts of criticisms recently made by an administration official regarding representation of Guantanamo detainees: that lawyers proposing to represent such detainees were more interested in opposing the policies of the government than protecting the rights of individual accused persons.

Giving the Chief Public Defender a personal right to intervene and make objections with regard to the defense of criminal cases raises such concerns about the focus of the Public Defender's office. Once there is a justified perception that individual defense lawyers are subject to veto or control by their superiors, faith in the integrity of the public defender system as a protector of individual defendant's rights can only diminish. As if to underscore this concern, the proposed Criminal Rule 1.05 does not even restrict the objection by the Chief public defender to cases where the defendant is represented by a public defender. A privately-retained attorney should not have his strategy dictated by the policy concerns of the Public Defender's office.

The provisions with respect to the location of the participants seem similar and reasonable.

The provisions for hearing are not particularly clear, at least with respect to the comparison summary I have been furnished. The fact that a party may request an in-person hearing following an ITV-hearing would seem to be no different

than the current rule that any party may request a rehearing at any time. But there is an implication in the summary that the requested re-hearing will be automatically honored. If so, why? Other than the issue of bail or conditions of release, what is going to happen at a Rule 5 or Rule 8 hearing which does not involve a guilty plea or waiver of omnibus that could possibly justify a re-hearing? And if a guilty plea or omnibus waiver is contemplated at a Rule 8 hearing, there should be an explicit decision to hold a hearing by ITV or by personal appearance made by the Court before the plea or waiver. It simply makes no sense to permit a party who agrees to an ITV procedure to obtain "two bites at the apple" on a ground not available to any other defendant.

Naturally, there will be legitimate cases where one might want a rehearing after the ITV proceeding. The most obvious reasons involve technical difficulties. Perhaps the screen went dead at a crucial time. Perhaps key words were garbled. Similarly, things might have gone on in the courtroom which affected the proceedings. But the issues here are no different in kind which confront the court any time a party wants a rehearing because of such "glitches." For these reasons, rehearsals should perhaps be more freely granted in ITV cases than in cases involving personal appearances. The idea that a party should have an *automatic* right to a rehearing, however, seems as pointless in the case of ITV as in any other case.

The proposals for multi-county use of ITV seem similar and are sound. But if they are sound for multi-county use, it should raise questions about why they are not sound for single-county use as well.

Finally, let me make some more general comments. Minnesota has an excellent and well-respected public defender system. The State Public Defender is a highly respected lawyer and an asset to our State's legal system. But there is more to the Minnesota Criminal Justice system than the Public Defender's office. The Supreme Court should not prejudice the administration of the Criminal Justice System or the rights of defendants who are able to afford private counsel simply because certain proposed procedures inconvenience the State's public defenders.

In rural areas, ITV procedures can save thousands of dollars. In a typical week, I spend 5 to 10 hours on the road going to Rule 5, Rule 8, or Rule 11 appearances for a ten-minute appearance. Often this appearance is for a boilerplate

appearance, such as a non-bail arraignment. I could save about half this time (and, accordingly, client money) if I could do all the uncontested Rule 5, Rule 8 or Rule 11 appearances by ITV or by telephone. In the great majority of such cases, there is no good reason for a personal appearance; in the cases where there is such a reason, the parties can present their arguments to the Court and the Court can order a personal appearance. We need more, not less, time-and-labor saving procedures such as appearances by ITV.

This logic applies to public defenders in the rural areas as well. Those who are not full time public defenders must often travel fifty to one hundred miles in order to attend a proceeding at a courthouse in another county. As about half of the public defenders in this district are located in Willmar, this means that a considerable amount of money is lost to "windshield time." Were our public defenders full time, this would be a bit less of a problem; but even then, the public defenders would have to consider mileage into their budget. As it is, part-time public defenders have to bill for both their mileage and the extra hours occasioned by the personal appearance requirement.

If the Judicial Counsel's recommendations cannot be adopted in substance, then at least any changes in the Rules of Criminal Procedure along the lines suggested by the Minnesota Public Defender's office should be limited to the Second and Fourth Judicial Districts. A Minneapolis or St. Paul attorney can appear in person at any of the courtrooms in their area within a reasonably short period of time. By contrast, an attorney in the Eighth or Ninth Judicial Districts may have to travel over 100 miles if he or she cannot appear by ITV at the local courthouse.

We should not exalt form over substance. Where procedures are critical, they need personal, individualized attention. Where procedures are formal, they need quick, inexpensive resolution. ITV procedures and procedures for personalized appearances should reflect this distinction. The proposed rules exacerbate the problem rather than work toward its resolution.

Yours truly,


John E. Mack

cc. Honorable Paul A. Nelson
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MAY 3 2007

FILED

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May 1, 2007

Mr. Frederick K. Grittner
Clerk of the Appellate Courts
25 Martin Luther King Jr Blvd
St Paul MN 55155

Re: Revision of Criminal Rules-ITV

Dear Mr. Grittner:

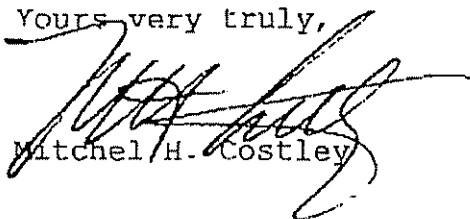
I am a part-time assistant public defender in Two Harbors. I have been in practice in Two Harbors since 1967. Prior to being a public defender I was the City Attorney for Two Harbors and then the Lake County Attorney.

I have been made aware of the proposed change to the Criminal Rules to allow the use of ITV for criminal hearings.

I practiced during a time when Lake County only had a District Court Judge appear at the Two Harbors Courthouse once a month for a day for Special Term matters. Additionally, the District Court Judge would only come to Two Harbors twice a year for jury trials. With that limited schedule of appearances by the District Court Judges, the Judges always wanted me to take my clients to "their courthouse in Duluth" because they did not want to come to Two Harbors. It was too inconvenient. Even today when matters are removed from the Lake/Cook County District Court Judge and transferred to a Duluth Judge I have to go to Duluth for the court appearances.

This letter is in opposition to the use of ITV for criminal hearings. It is my belief that defendants have a right to appear in a court room in the county where the charges are pending and before a sitting judge with their attorney present.

Yours very truly,


Mitchel H. Costley

MHC/s