



# IS VIRTUAL JUSTICE REALLY JUSTICE?

COVID-19 has forced many courts all over the world to close their doors—leading to a global backlog of cases. Some say virtual technology is the answer, but...



## What Should Virtual Justice Look Like in the Legal Space? Remote Courts

COVID-19 has created an enormous crisis for criminal justice systems. At least initially, the threat of contagion forced many courts to close their doors and postpone non-urgent hearings. Many jurisdictions have begun using video conferencing for at least some essential court proceedings<sup>1</sup>, while others are working mainly in-person with physical distancing protocols<sup>2</sup> or are still suspending hearings without contingencies. The initial court closures have led to an incredible backlog of cases in many places<sup>3</sup>. World-wide there is urgent concern: denying justice and risking lives are both unacceptable.

Technology has been touted as a solution, allowing the courts to function remotely, in part or entirely. Technologies that allow the courts to function remotely run the gamut from electronic signatures and digital document management systems, to the more concerning telepresence technology (also known as video conferencing). Because of the great concern about the potential harm, we focus mainly on the later.

Many of guidelines being produced and shared<sup>4</sup> are intended to apply to hearings that have already been deemed legally and logistically appropriate for a remote hearing. So in this document we focus on examining:

- What are the concerns about remote hearings?
- When should they be considered?
- What can be done to mitigate harm and allow justice to move forward at this urgent time?

**This document is part of a series on technology and justice produced by *Incarceration Nations Network (INN)* and its global justice partners.** We aim to provide a resource for practitioners and advocates worldwide on the use of remote court technology during the global pandemic. Of course, every jurisdiction is different and there is not a single “right” approach. However, based on the best research and experience of INN partners, we aim to provide a resource to help global advocates and practitioners come together and find innovative solutions so that justice can prevail, despite obstacles.

## GENERAL CONSIDERATIONS

1. **Seize the opportunity for reform.** With disruption comes opportunity for reform. As the courts are forced to adapt to new circumstances, there are opportunities for wider reform of outdated requirements, policies, and practices. For example, determining which hearings to hold remotely also presents an opportunity for considering how and why in-person appearances are required, scheduled, and excused. While considering if bail hearings should be held remotely, there may be new opportunity to incorporate bail or pretrial reforms. It's imperative that we don't simply graft a new digital layer onto the existing procedures and systems. **We must create new rules and policies alongside the new digital tools.**
2. **Don't overestimate the transformative capacity of technology.** Technology is only a tool adapted by the systems and the people that use it. To believe technology can dramatically alter abilities to fulfill the justice system's mandate is to overestimate the abilities of technology and to underestimate the stable, stubborn nature of justice systems. Where the basic pillars of fair trials (i.e. access to defense attorneys) are not already upheld, technology—specifically use of remote trials—can even further exacerbate existing problems, instead of improving them.
3. **Don't underestimate the digital divide.** There is both a divide in access and in skills. Not all litigants, lawyers, prosecutors, and witnesses have the same technological capabilities – especially if they are connecting from the safety of their home (rather than a police station, an office or court building for example). Not every geographical area has bandwidth and internet speed required for quality videoconferencing. There are digital deserts where whole areas are not served by a single internet provider. As we explain further in this document, poor audio or visual quality can end up prejudicing the disadvantaged party.
4. **Don't underestimate cost and implementation challenges.** Virtual justice reforms in the courts need to be comprehensive, and therefore can be expensive and complex to implement. Holding remote hearings requires not only the audio-visual hardware, software/platforms, and connectivity, but also requires accompanying secure systems for sharing documents and evidence, among other considerations. It's important for each jurisdiction to identify the needs and sources of funding to have infrastructure to support remote hearings.

## REMOTE COURTS

### *Why are remote hearings happening?*

**Justice cannot stop.** Postponing justice until risks of infection are lower, or risking exposure to infection for all involved parties, are both bad options. Even during the pandemic, courts need to continue to carry out essential functions, including processing of criminal cases,

and safeguarding the rights and welfare of defendants, especially those who are detained. Especially given the potential for second waves and of COVID-19 and other potential future pandemics, it's worth considering the potential of remote courts to keep cases moving while respecting travel restrictions and health and safety concerns.

## *What are the concerns about remote hearings?*

- 1. They can interfere with the rights of the accused.** A persons' physical absence from the courtroom seriously undermines their ability to participate in proceedings effectively and the exercise of the rights of the defense. Defense attorneys, researchers and human rights advocates have already outlined concerns about remote justice and its impact on the rights of the accused.<sup>5</sup> The rights in consideration include:
  - *Access to a lawyer and effective legal representation* – The lack of face-to-face contact makes it harder to build the attorney-client relationship and for the attorney to assess the mental and emotional state of their client. Limitations during COVID-19 on visitation in prisons and jails, together with use of remote hearings can make it difficult to communicate effectively and confidentially before and during proceedings.
  - *Effective participation* - Attorneys and their detained clients can be prevented from participating effectively and be discouraged by logistical and technical difficulties. Physical separation from other participants such as judges, prosecutors, and their attorney, as well as a limited view of the court room, can result in a defendant's decreased understanding the proceedings and of their rights, and in the inability of the lawyer to confer with their client or "approach the bench."
  - *Presumption of innocence* - If defendants do not leave their places of detention to attend their hearings, they may appear in court as "prisoners"—particularly if they are wearing prison clothes, or screens with a background showing them in prison. Appearing on screen can lessen the speaker's ability to connect emotionally with listeners and reduce their perceived credibility.
- 2. They can lead to unjust outcomes.** While more research is needed, there is some evidence that participants in remote hearings can fare significantly worse compared to participants in in-person ones in terms of *pleading guilty*, *bail amounts* and *sentences*.<sup>6</sup> The dehumanization of defendants who are denied the opportunity to present in person is a real concern, and may have an especially negative impact on people who already face discrimination due to race, class, caste, ability, gender, native language or other quality.
- 3. Virtual interaction effects perception and decision-making.** When interacting virtually we have a reduced amount and "richness" of information available compared to in-person (i.e. physical attributes, facial expressions, tone, gaze, posture). A growing body of literature from the social sciences finds this can influence perceptions and

decision making. Virtual interaction can result in lack of engagement and participation of all involved<sup>7</sup>. It can make defendants feel isolated, like outsiders, especially defendants of overrepresented groups, and make the process more difficult to understand.<sup>8</sup> It can also influence judgements about credibility, character, and likeability of the accused.<sup>9</sup> Biases can be affected and more pronounced<sup>10</sup> and virtual interaction could potentially lead to more extreme or risky decision-making than in face-to-face interactions.<sup>11</sup> **Many of these effects are not obvious to participants, so explicit mitigation strategies are called for.**

- 4. There are concerns about intimidation, privacy, and security.** In remote proceedings it can be impossible to know whether individuals (defendants or witnesses) are experiencing dangerous pressure, or even torture, beyond the frame of their webcam that impacts their ability to speak truthfully and free of coercion.

There are also concerns about surreptitious recording and dissemination of proceedings (which can violate both witness and party rights), as well as insufficient public access to trials. Finally, there are concerns about remote identity verification, potential for fraud and concerns about transmission of sensitive files.<sup>12</sup> Emerging technologies such as *blockchain* can be used to authenticate evidence, documents and signatures, however there are still concerns about privacy and vulnerability to hackers.<sup>13</sup> Other emerging technologies such as *deepfakes*, can allow users to manipulate images and audio in real-time and could present additional problems.<sup>14</sup>

## *When should remote hearings be used?*

- 1. Consider for non-criminal cases.** Videoconferencing may be less damaging and more useful for certain types of civil and family law proceedings that might not require a physical presence in courthouses. For example, it might be worth considering telepresence technology for some *commercial, matrimonial* or *trusts and estates* cases, *protection/restraining orders*, as well as in cases of *mediation* or *arbitration* (See [Guidelines for virtual arbitration](#) and [Online tools and guidance for mediation and arbitration](#)).
- 2. Consider for some procedural criminal hearings.** It's worth drawing a distinction between hearings which impact substantive rights (first appearance/bail/release, pleas, sentencing, trials) and those which are purely procedural (scheduling, evidence, compliance with judicial orders). The former should rarely be conducted remotely, while the latter have less impact on rights and can potentially free courts to more safely and efficiently conduct in-person business. For some procedural matters which are handled almost entirely by lawyers (i.e. scheduling, serving motions, settling discovery disputes) courts should even consider waiving the requirement for defendants to appear, so that the attorney can represent them (in-person or remotely) if the client is not able to be present.
- 3. Avoid use in substantive criminal hearings.** Because of the incredibly high stakes in criminal trials, courts need to seriously consider the potential interference of use of videoconferencing on justice outcomes. Even in extreme and unusual circumstances under

the pandemic, there should be a strong push for court proceedings that effect substantive rights to be conducted in person, using social distancing measures where necessary. It is especially crucial that the accused be physically present during trial.

4. **Apply clear criteria to determine if a case should proceed remotely.**

While we strongly advocate against videoconferencing in substantive criminal hearings, it is also clear that criminal justice systems need to continue to function during this global health crisis. Courts may need to temporarily resort to remote hearings to deal with some urgent cases. An emergency, temporary remote trial regime would be justified only with **consent of the accused in each case, and only while necessary to prevent irreparable harm to the accused.**

When determining whether or not a hearing should take place remotely, additional factors to be considered should include those outlined by [Fair Trials](#):

- The length of delays and their impact on the rights of defendants.
- The nature of the hearing (complexity, need to call witnesses, if accused is at risk of deprivation of liberty).
- The availability and quality of equipment and systems.
- The existence of impairments or other factors that could negatively affect the defendant's ability to participate effectively.

5. **First appearances/ bail/ remand hearings should be in-person where possible and must not be delayed.**

First appearances before the court are particularly difficult to generalize about because they differ greatly between jurisdictions. On the one hand, the first appearance after arrest also serves as a check on arbitrary arrest and on custodial violence by police during interrogation/arrest – which can be difficult to determine via remote hearing. For this reason, these hearings should be in person and cannot be postponed.

Bail or remand hearings, however, are an opportunity for the accused to be released from custody during this particularly dangerous time. In some cases, defense attorneys have considered that a remote hearing is better than no hearing at all.

Overall, it's important to consider that experience with remote bail hearings prior to the pandemic has shown many real reasons for concern. In addition to potentially increasing the likelihood of pleading guilty<sup>15</sup>, remote bail hearings have been documented as leading to significantly higher bails than live hearings.<sup>16</sup> Moreover, they may also actually take longer and be less efficient<sup>17</sup>.

**The video below discusses the advantages to in-person, council present, first appearance.** *Click on the image to hear Lindsay Blouin -Deputy Chief District Defender, East Baton Rouge Office of the Public Defender- speak about an 8-week pilot project in Louisiana (United States). The pilot provided an alternative to the previous no-council-present, remote, initial appearance of defendants via CCTV. During the 8-week pilot they began having council*



*and client present and moving the initial hearing to occur within a three-day period after arrest. There was massive improvement in appearance rates (95%), along with lower bond amounts and 64,000 detention days saved.*



If remote bail hearings are used as an emergency measure during this urgent time, they should follow the criteria above regarding irreparable harm, with the consent of the accused. They should, **at minimum, ensure that the accused have had the opportunity to talk confidentially to a lawyer prior to the hearing and that both participate in the hearing (even if remotely)**. One way to guarantee legal representation in first appearances and bail hearings could be to appoint legal aid lawyers to be present in videoconferencing centers in jails, for those that might not have legal representation. The suggestions in the following section below should also be applied.



*Click on the image above to hear from Jonathan Osei Owusu, Executive Director of the POS Foundation in Ghana on the **urgent need for remand cases to move forward and their initiative to conduct remand hearings remotely**. The POS Foundation's Justice for All Programme (JFAP) began setting up Mobile In-prison Special Courts to adjudicate remand/Pre-trial prisoner cases throughout the country of Ghana.*

## *What can be done to mitigate some of the harm and allow justice to function during this urgent time?*

*Click on the image below to listen to Defense Attorney Michael Hueston talk about considerations for remote hearings and his experience during COVID-19 in Brooklyn, New York (USA).*



*Click on the image below to see considerations for prosecutors on remote courts from Jaclyn Quiles-Nohar, a former prosecutor and senior program associate with the Vera Institute's Reshaping Prosecution program.*





1. **Maximize capacity for in-person hearings in criminal cases.** Many jurisdictions have been implementing less tech-driven, but equally creative ways to help courts to continue with in-person hearings safely.

- **Change the physical environment in the courtroom** – In order to maintain social distancing some courts have begun using non-court buildings for additional court rooms, redesigning courtrooms, building jury boxes with additional space and inserting plexiglass dividers to keep jurors safer. Shields are being put in front of witness stands and at lecterns where lawyers argue.
- **Prioritize courtrooms for criminal hearings** – For example, the UK has created new “Nightingale courts”<sup>18</sup> operating under extended hours and weekends, which will hear civil, family and tribunals work as well as non-custodial crime cases. This will free up room in existing courts to hear more criminal cases, including jury trials, with social distancing. Although it’s important to consider this may also have negative impacts for staff, legal professionals, victims, defendants, and witnesses who may have child-care or travel difficulties after hours.
- **Improve court scheduling practices** - Court appearances should also be scheduled in narrow time windows, to reduce the number of people waiting in the courtroom, allowing those who need to be there to socially distance. For court appearances that must happen in person, defendants should also be allowed to reschedule based on unexpected childcare, work, and safety needs, which will all be exacerbated by the pandemic.

*Click on the image below to see a video from Deputy Director, Ogechi Ogu PRAWA in Nigeria about their work to ensure physical hearings can continue in the courts using social distance protocols.*



2. **Develop protocols and practices to safeguard the rights of the accused during remote proceedings.** Where there are strong justifications that mandate the use of remote justice procedures, remote hearings should only take place if there are adequate safeguards in place that address various threats to the right to a fair trial. Detailed protocols<sup>19</sup> should be developed to ensure the following rights of the accused<sup>20</sup>:

- ***Access to legal representation and confidentiality***

Prisons and detention centers should have proper accommodations to ensure that detainees are able to have effective, frequent, and free access to telephones. To compensate for the limitations on in-person visits, prisons and detention centers should also lessen restrictions on frequency and length of phone calls and aim to make video-conferencing facilities available for defendants. Confidentiality in defendant-lawyer communications must be respected, so defendants should have access to secure spaces for confidential discussions and private phone calls that cannot be intercepted or recorded. This includes both prior to and during hearings.

- ***Effective participation***

Video-link equipment should attempt to mimic courtroom participation. The accused should be given a full view of the courtroom, the ability to contact their lawyer confidentially during proceedings, and, when applicable, access to facilities that enable them to inspect and submit evidence during the proceedings. In addition to full view, audio testing is essential, as there could be noise, low volume, or other problems. Ensuring proper quality of audio-visuals is a must. The accused must also have control of the equipment – or at minimum it should be in control of non-prison personnel – to ensure that there is no compulsion in participating and for there to be free and open communication with the judge if required.

The accused must be given a sufficient opportunity to understand the equipment and the courtroom procedure prior to hearing. If remote participation is from a prison or jail, this orientation should be given either by the prison officer, the legal aid authorities or the paralegal volunteers; and the court, before initiating the proceedings, should ask the accused whether he understands the process or not.

Further, any person participating in the proceedings off-camera should be identified for the record. Cameras should be setup in a manner that allows a 360-degree view of remote points in jails or prisons so that judges and magistrates can see all individuals in the room and check for any injuries or harms to the accused.

- ***Access to information***

The accused and defense lawyers must have access to case files, free of charge, that allows defendants to exercise their rights.

- ***Presumption of innocence***

To avoid preconceived notions, dress requirements should be the same as for face-to-face hearings. Other environmental factors are regulated, such as the

location of the cameras, the need for a neutral background and good lighting in the room.

- ***Special considerations for vulnerable defendants and other defendants with special needs.*** Defendants participating in remote proceedings should undergo an individualized needs assessment to identify any impairments that affect their ability to participate effectively, decide if a remote hearing is appropriate at all, and make individualized procedural adjustments to facilitate effective participation. This should include provision for interpreters when the defendant is not conversant in the language of the court.



*Listen to Madhurima Dhanuka, Programme Head of the Prison Reforms Programme at Commonwealth Human Rights Initiative (CHRI), discuss how they have been working in India during the COVID-19 pandemic to safeguard rights of the accused in remote hearings.*

### **3. Assess needs and invest in the right technology**

- ***Asses what is needed***– A first step to adopting remote hearings should be an assessment of the existing access to technology in a jurisdiction. Such an assessment should include the available infrastructure and assess access for all parties to videoconferencing equipment and connection (judge, prosecutors, defense attorneys and the accused). It should also determine needs for making documents, files, and evidence accessible remotely. A **preliminary list of equipment** can be found in

[endnote 21](#) of this document.<sup>21</sup> The assessment should identify gaps, needs and sources of funding to ensure access and use by all parties.

- **Compare advantages of different videoconferencing platforms** – Some courts have been using videoconferencing platforms already widely accessible and easy to use (i.e. Zoom, Skype, GoTo Meeting, MS Teams and WebEx). There are also some litigation-specific platforms such as Courtcall. In the later there are options for “Privacy” mode where calls during a hearing can be directed exclusively to a particular party. A Courtcall operator connects litigants and judges and handles adding or dropping parties, which can reduce error and support parties with less familiarity with the technology.
- **Invest in high quality technology and preparation** - Good quality connection and equipment (large screen and good audio) may offset some of the potentially harmful effects by providing more “richness” of information and by creating fewer delays that can impede the flow of proceedings and negatively affect participation. Potential technical problems should be anticipated, and steps taken to address them before they occur. Useful resources include the Handbook on [Best Practices for Using Video Teleconferencing in Adjudicatory Hearings](#) and other ACUS materials<sup>22</sup> which cover many technical aspects of how to ensure the best use of the technology,

Video webinars covering some technical aspects of remote hearings include<sup>23</sup>:

- [Early Adopters of Online Technology](#) (conversation with practitioners already familiar with the technology and using it widely)
- [Tools You Need for Working Virtually in the New Age](#) (focus for private practitioners on how to transition to a paperless office)
- **Take special precautions to address security, public access, and privacy concerns** – Courts should address privacy issues on the front end by agreement with participants and the technology provider before engaging in remote proceedings to mitigate any risk. Courts should go beyond conventional terms of service, to ensure that every person whose privacy is impacted by virtual courts understands the risks, has the option to opt out and can provide truly informed consent. This means clearly communicating what technologies they use and how individuals’ personal information will be impacted, empowering participants to hold operators of virtual court to account for errors.

An additional point of concern is that many VC hearings are not open courts. It’s important to ensure that proceedings conducted through VC are open to the public to join in, if they so choose – except in cases where a “closed” trial is required.

To guard against potential hacking, an independent government watchdog should conduct routine and impartial security audits.<sup>24</sup> Tele-hearings should have very clear rules for the identification of people, either by digital signature, biometrics, email

addresses validated by special systems, or simply by showing the identity document to the camera.

- [Online Courts: One Month-In](#) (This webinar covers lessons learned, with a special focus on **security issues**)
- **Consider non-telepresence technologies** - Information Communication Technologies (ICTs) support various operational areas in the justice domain to compliment videoconferencing: from filing to disposition, to case registration, to managerial control and the exchange of procedural documents. Non-telepresence technologies include: *Case Management Systems (CMS)*<sup>25</sup>, *Criminal justice interoperability platforms*<sup>26</sup>, *E-filing and electronic exchange of procedural documents*<sup>27</sup>. If well implemented, these management and e-document tools can potentially streamline and standardize procedures, documents, and data, as well as establish new digital channels to exchange procedural documents. [Digital Technologies for Better Justice: A Toolkit for Action](#) provides a methodology and toolkit to navigate the design and assessment of e-justice projects to guide decisions on e-justice investments.

#### 4. **Develop strategies to mitigate harmful effects of virtual interaction.**

Where virtual proceedings will be held, all parties need to be aware of the science on how virtual interaction affects perception and cognition<sup>28</sup>. Adequate steps need to be taken to minimize harm; these include:

- **Training and Awareness Raising** - Trainings should be held for the different court actors to make them aware of how remote hearings can impede the rights of the accused and how technology affects perception and cognition. It would also be helpful for the courts to consider implementing “mock courtrooms,” so that court actors/staff can test the new technologies to better develop procedural standards. Also consider having some guidebooks and visual representation in VC room/area in prisons and jails to inform the accused of how the system works. Awareness programs with pretrial detainees should also be considered to enable them to understand their rights during such proceedings.
- **Defense strategy and preparation** - Defense attorneys need to take the above-mentioned factors into consideration when preparing their clients and defense strategies. For example, they should coach clients ahead of time on maintaining eye contact, on proper use of the technology, expectations for demeanor during the proceeding and provide visual aids to clients about the procedures. They should also encourage clients to speak up and ensure communication plans are in place that allow rapid individual response to the client and other participants. Use of separate and secure telephone lines or break-out Zoom rooms are two options. This must always ensure confidentiality and no occasion for misuse of video recordings or telephonic recording should be left.



A helpful preparation checklist for defendants and defense attorneys can be found [here](#).

See a [video introduction on Online Court for Defense Attorneys](#)<sup>29</sup>

5. **Reduce individuals in pretrial custody.** Best practice during the pandemic would be direct release of pretrial detainees in mass in leu of a case-by-case approach. **Courts should simply release all detainees for non-violent or low-level crimes.** To ensure no one is held in custody because they cannot pay, individuals should be **released on their own recognizance** – when the accused signs an agreement that he will appear in court in the future and is not required to pay any money. Many jurisdictions have already increased this type of release in the early months of the pandemic.<sup>30</sup> This can be accompanied by community/supervised release programs which have proven effective in ensuring higher rates of appearance in court after release.

- The [Bail Project](#) offers a successful model for this called [Community Release with Support](#). See how they have been working during the COVID-19 pandemic.



Other measures can help to reduce the in-flow of urgent criminal custody cases, and thus the need for some hearings to happen remotely. These steps are currently being used in many places<sup>31</sup> during COVID-19. They include:

- Working with law enforcement to reduce custodial arrest, especially for minor crimes/petty offenses.
- Suspending/reducing criminal filings for specific charges (e.g., non-violent or low-level cases)
- Suspending issuing/executing of warrants for failure to pay fines & fees
- Suspending issuing/executing of warrants for failure to appear
- Suspending revocations for technical violations
- Increasing case dismissals

- Increasing pre-arraignment/pre-first appearance releases
- Increasing release on personal recognizance for non-violent and low-level cases
- Increasing releases from jail for persons awaiting trial (pretrial period)
- Diverting cases from the criminal justice system through increased use of mediation and restorative justice approaches.

**6. Fund, support, and design robust research.** Now is the time to collect data necessary for making informed policy decisions post-crisis. The perceived time and cost savings need to be accurately calculated and weighed against the potential impact on fairness and justice outcomes.

We need data collected and research conducted by non-governmental organizations, academics, lawyers, international organizations, and governments. Ministries of Justice should be amassing and analyzing vast amounts of data now and carefully preparing impact evaluations using the most rigorous methodologies.

The following information needs to be collected now in each jurisdiction to permit quality analysis of the impact of remote proceedings:

- Data on number, types and categories of cases heard, length of proceedings
- Impact on justice outcomes, including rates of pre-trial detention, bail amounts, conviction, sentences, and guilty pleas. Including demographic information to understand if certain groups are disproportionately affected.
- Data on amount of adjournments related specifically to hearings being conducted remotely
- Experience of defendants, including vulnerable defendants with visual or auditory impairments, cognitive differences, and mental health challenges.
- Experience of lawyers, judges (jurors), prosecutors and other trial participants such as victims and witnesses

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<sup>1</sup> For example in the [UK](#), [Chile](#), and some parts of the [US States](#), video conferencing was already in use for limited types of proceedings before the pandemic (most often for civil cases and bail/remand hearings), enabling them to move quickly to expand use during the pandemic. In other cases, the move to adopt remote technology is new, but is underway ([Germany](#), [Spain](#) and [Kenya](#) for example). In some countries such as [Costa Rica](#) and [Ecuador](#) the option of remote participation in hearings existed prior to COVID-19, but was only offered in isolated cases for people in prison custody. As a result of the pandemic, completely virtual hearings have been authorized, where all parties, their lawyers and in some cases even the judges, can connect by video from their offices or their homes. In [India](#), the law only permits remand hearings (i.e. all subsequent hearings after first appearance to filing of charge-sheet) to be conducted by videoconference. However, in some cases, High Courts have granted permission for conduct of trial through VC. The cases where VC has been used are few and mostly include high-risk offenders, terror cases or where the accused is being tried for multiple cases in multiple states.

<sup>2</sup> Some countries, often where the use of remote technology is new or still not a viable option, have continued with face-to-face hearings under social distancing precautions. In [Uruguay](#), for example, courts are open while they are initiating a small pilot for limited virtual hearings only in Montevideo. To mitigate

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health risks, new measures are being issued such as assigning more spaced shifts, adopting procedures to reduce the flow of people to offices such as summoning witnesses to trials for shorter times and convening hearings sequentially instead of simultaneously.

<sup>3</sup> See a few examples: <https://www.nytimes.com/2020/06/22/nyregion/coronavirus-new-york-courts.html>; <https://www.seattletimes.com/nation-world/pandemic-may-finally-push-germanys-courts-into-21st-century/>; <https://www.nytimes.com/2020/05/25/world/europe/spain-courts-coronavirus.html>

<sup>4</sup> See for example those featured on the new website <https://remotecourts.org/>

<sup>5</sup> See for example: Fair Trials, “[Safeguarding The Right To A Fair Trial During The Coronavirus Pandemic: Remote Criminal Justice Proceedings](#)” (2020); Penelope Gibbs, “[Defendants on video – conveyor belt justice or a revolution in access?](#)” Transform Justice (2017); Camille Gourdet, et al., “[Court Appearances in Criminal Proceedings Through Telepresence: Identifying Research and Practice Needs to Preserve Fairness While Leveraging New Technology](#),” RAND Corporation (2020); Rowden, E., Wallace, A., Tait, D., Hanson, M., & Jones, D. (2013). [Gateways to Justice: Design and Operational Guidelines for Remote Participation in Court Proceedings](#); A, Wallace, “[Virtual Justice in the Bush: The Use of Court Technology in Remote and Regional Australia](#)”(2008).

<sup>6</sup> Shari Seidman Diamond, Locke E. Bowman, Manyee Wong, and Matthew Patton, “[Efficiency and Cost: The Impact of Videoconferenced Hearings on Bail Decisions.](#)” *Journal of Criminal Law and Criminology* Vol. 100, No. 3 (Summer 2010): 869-902. AND Frank M. Walsh & Edward M. Walsh, [Effective Processing or Assembly Line Justice? The Use of Teleconference in Asylum Removal Hearings](#), 22 *GEO. IMMIGR.L.J.* 259, 267–69 (2008).

<sup>7</sup> See overview related specifically to courts in Gourdet, et al. 2020 (citation above) and Lynne Wainfan and Paul K. Davis, “Challenges in Virtual Collaboration: Videoconferencing, Audioconferencing, and Computer-Mediated Communications,” RAND Corporation (2004).

<sup>8</sup> See Ronnie Thaxton, “Injustice Telecast: The Illegal Use of Closed-Circuit Television Arraignments and Bail Bond Hearings in Federal Court”, 79 *IOWA L. REV.* 175, 197- 98 (1993) [“Criminal defendants, especially minorities, often feel they are ‘outsiders’ rather than participants in the adjudication of justice. Given the reality that most racial minorities may already distrust and feel intimidated by the criminal justice system, CCTVs provide another bar to their full understanding of the proceedings and reinforce their distrust of the system. CCTVs only further magnify this distrust and alienation.”].

<sup>9</sup> In one study, mock jurors rated child witnesses who testified in person as more accurate, intelligent and honest than children who testified on closed circuit television (Landström, Sara, and Pär Anders Granhag, “[In-Court Versus Out-of-Court Testimonies: Children’s Experiences and Adults’ Assessments.](#)” *Applied Cognitive Psychology*, Vol. 24, No. 7, 2010, pp. 941–955). See other studies similar studies: Landström, Sara, [CCTV, Live and Videotapes: How Presentation Mode Affects the Evaluation of Witnesses](#), Gothenburg, Sweden: University of Gothenburg, Department of Psychology, 2008. Studies from other fields outside criminal justice have also shown that when interacting virtually, participants may perceive the other as less likeable or even less intelligent than in face-to-face interaction (Fullwood, C., “[The effect of mediation on impression formation: A comparison of face-to-face and video-mediated conditions.](#)” *Applied Ergonomics* 38 (2007): 267-273).

<sup>10</sup> For example, the “Fundamental attribution error” is exaggerated. This is where we attribute action or behaviors to the person’s character instead of situational or external factors, while more likely to attribute our own actions to situational or environmental factors. Several researchers have found that mediated communication (through video conferencing) can exacerbate this error. See Wainfan and Davis, 2004 and Cramton and Wilson’s 2002 series of three experiments (Abel’s 1990 account of dispositional attribution during videoconferencing; Olson and Olson, 2000; Armstrong and Cole, 2002; Herbsleb and Grinter, 1999).

<sup>11</sup> See for example Lee, et al. Nathaniel Fruchter, and Laura Dabbish, “Making Decisions From a Distance: The Impact of Technological Mediation on Riskiness and Dehumanization,” presented at the 18th ACM

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conference on Computer-Supported Cooperative Work and Social Computing, Vancouver, BC, Canada, February 2015. ACM publications.

<sup>12</sup> See a thorough review of security concerns in Alberto Fox Chan and Melissa Giddings (2020). [Virtual Justice: Online Courts During COVID-19](#). STOP – Surveillance Technology Oversight Project.

<sup>13</sup> Ibid. p. 7.

<sup>14</sup> Ibid. p. 8.

<sup>15</sup> Terry, Mathew, Dr Steve Johnson and Peter Thompson. "[Virtual Court pilot Outcome evaluation](#)" United Kingdom Ministry of Justice (2010).

<sup>16</sup> Diamond, et al., "[Efficiency and Cost: The Impact of Videoconferenced Hearings on Bail Decisions.](#)" Journal of Criminal Law and Criminology Vol. 100, No. 3 (Summer 2010): 869-902. [Using data gathered from the Cook County Clerk's Office (USA) regarding cases eight and one half years prior to the video bails and eight and one half years after, the study of 645,117 cases revealed "average bond amount for the offenses that shifted to televised hearings increased by an average of 51% across all of the CCTV cases."]

<sup>17</sup> See Terry, Mathew, Dr Steve Johnson and Peter Thompson. "[Virtual Court pilot Outcome evaluation](#)" United Kingdom Ministry of Justice (2010).

<sup>18</sup> See <https://www.gov.uk/government/news/10-nightingale-courts-unveiled>

<sup>19</sup> See examples for protocols in [Gateways to Justice report: Design and Operational Guidelines for Remote Participation in Court Proceedings](#) (Australia).

<sup>20</sup> The points are summarized based on: "[Safeguarding the right to a fair trial during the coronavirus pandemic: remote criminal justice proceedings](#)" by Fair Trials.

<sup>21</sup> See a preliminary list of minimal equipment necessary based on a working document developed by the Commonwealth Human Rights Initiative:

1. **A computer with high speed internet connectivity**
2. **Video camera of appropriate audio-video relay quality:** 360 degree cameras should be installed at both points. This is especially important if the remote point is a prison or police station, so that the court can inspect any part of the room.
3. **E-signature technology or printing and scanning facility:** For obtaining signature of the accused or the witness wherever required in a VC session, an e-signature system or printing and scanning facility should be available at both the points. The plea can be typed and read to the accused, then signed or thumb impression can be taken. It can then be logged in a cloud system and/or scanned & sent to the court, where it will be printed and marked as a scanned copy.
4. **A separate chamber for lawyer-client interaction**
5. **Quality slip generation system:** At both the remote point and the court point, the computer system should generate a live slip of various quality measures of the VC session, so that the disputes and concerns over the quality can be addressed.
6. **Displaying of documents:** Document visualizer should be at both the remote point and court point.
7. **Headphones for optimum audio and microphone quality**
8. **Power Back-up system for VC setup**
9. **CCTV camera at the entry gate of the VC room:** There should be a CCTV camera at the single entry point to the VC room at the remote point and a register should be maintained detailing the particulars and reasons of each and every person entering the VC room.

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<sup>22</sup> See resources from Administrative Conference of the United States (ACUS): [Best Practices for Using Video Teleconferencing for Hearings](#); Jeremy S. Graboyes, [Legal Considerations for Remote Hearings in Agency Adjudications](#) (June 16, 2020); [Adjudication During the COVID-19 Pandemic: Questions for Agencies to Consider](#) (April 14, 2020); Martin E. Gruen & Christine R. Williams, Center for Legal & Court Technology, [Handbook on Best Practices for Using Video Teleconferencing in Adjudicatory Hearings](#) (Dec. 2015); National Association of Administrative Law Judges, [Platforms Used by Administrative Courts to Conduct Remote Hearings](#)

<sup>23</sup> The Texas Criminal Defense Lawyers Association and the Texas Indigent Defense Commission recently completed a series of six webinars related to Online/Virtual Courts.

<sup>24</sup> The points are summarized based on: Fox Chan and Melissa Giddings (2020). [Virtual Justice: Online Courts During COVID-19](#). STOP – Surveillance Technology Oversight Project.

<sup>25</sup> *Case Management Systems (CMSs)* are applications adopted by courts and public prosecutors to support the administrative tasks of judicial offices, such as case and procedural document registration and monitoring of case scheduling. More advanced systems also offer procedural guidance, deadline monitoring, and the use of case-related data for managerial purposes.

<sup>26</sup> *Criminal justice interoperability platforms* allow electronic exchange between the various bodies that are engaged in the criminal justice chain, particularly prosecutors and courts, but also police, prisons, and different law enforcement agencies.

<sup>27</sup> *E-filing and electronic exchange of procedural documents* support the exchange of the data and the documents in the course of judicial proceedings. The most common include e-filing (i.e., the lodging of procedural documents), e-delivery of deeds, e-summoning, e-payment of court fees, e-signatures and stamping of documents and all other solutions that entail the establishment of electronic channels of communications between courts, lawyers, and citizens.

<sup>28</sup> For an overview see Gourdet, et al., “Court Appearances in Criminal Proceedings Through Telepresence: Identifying Research and Practice Needs to Preserve Fairness While Leveraging New Technology,” RAND Corporation (2020).

<sup>29</sup> Part of the series of six webinars developed by the Texas Criminal Defense Lawyers Association and the Texas Indigent Defense Commission (Texas, United States).

<sup>30</sup> In the United States, under COVID-19 (between April and June 2020) 68% of states reported increased release on personal recognizance in nonviolent cases and 81% reported increased releases from jail for persons awaiting trial. [US National Association of Pretrial Services and Agencies COVID Response Survey](#), June 2020.

<sup>31</sup> The listed measures have been adopted at high levels in a substantial number of US jurisdictions according to a recent study conducted in 40 states between April and June of 2020. [US National Association of Pretrial Services and Agencies COVID Response Survey](#), June 2020.