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CAN INTERACTIVE VIDEO WORK IN WAUKESHA COUNTY? AN ANALYSIS AND SURVEY

Interactive video (video) is the simultaneous two-way use of video and audio that allows individuals from remote locations to communicate in real time. The use of video in the courts for testimony is still in its infancy. Although used as early as 1975 in the courts, this technology still has not fulfilled its potential. This research paper focuses on evaluating whether successful implementation of video can occur in a specific jurisdiction - Waukesha County, Wisconsin. The significance of this research is its impact not only on the Waukesha County Court System but the entire state of Wisconsin. The use of video in the private sector is rapidly expanding; however, the courts have not readily embraced this technology. Interactive video has the potential to be an effective tool for the disposition of cases, enhancement of security, and the reduction of operational and capital expenditures.

The goal of this research paper is to determine if Waukesha County can successfully implement video into its court system, by addressing the major factors involved: technology, cost/benefit, constitutionality, Wisconsin statutory authority & legal culture that inhibit successful implementation. A deficiency in any one of these factors could seriously inhibit any implementation.

Video technology has changed dramatically over the last 10 – 15 years. The ability to connect, the number of users and available transmission options to system users has expanded to

the point that practical application is possible. Furthermore, the cost of these systems has dropped substantially both in hardware and on-line costs. Court systems around the country are using video in a wide variety of case types; however, none are using it to its full potential.

The reason may be that the law has not caught up with the technology. Current case law, both federal and state, does not address the constitutionality of interactive video as it relates to the sixth amendment. In Wisconsin, the statutes are both limiting and out-of-date. This paper seeks out a review of current Wisconsin statutes and existing case law to determine if there is a constitutional issue that would prohibit Waukesha County, or any other Wisconsin County, from implementing video into its court system for a wide range of hearing types and appearances.

Furthermore, this paper identifies types of users and their beliefs on the potential use of video in the courts in order to capture local legal culture. To obtain that information, a survey was needed. Unfortunately, the only surveys found that met the needs of this research focused primarily on post implementation questions relating to functionality and technical problems. There were no surveys that actually captured a target group's opinion on the potential uses of video and its possible benefits or failings. As a result, a survey was created to determine the views of the Waukesha County Bar. The survey needed to be:

- ?? long enough to capture a wide variety of critical opinions as they relate to the potential uses of video for case types and appearances;
- ?? short enough in order to obtain a high response rate;
- ?? usable, so that jurisdictions across the state and nationwide could use the same survey with minor modifications;
- ?? able to perform not only as a pre-implementation survey but also as a post-implementation survey.

The survey accomplished all of the above and assisted in capturing critical opinion data from the target group: the District Attorney's office, the Public Defender's office, and the Waukesha County Bar. Additionally, if in the future there is an interest in seeing how the opinion of the target group has changed, this survey could be reused for that purpose.

The research and survey results establish that Waukesha County does have the ability to successfully implement video into its court system. The hurdles that would prohibit the effectiveness of implementing such technology appear to have been mitigated by the advancement of technology, the reduction of cost, and the perceived desire by the practicing bar to use video. However, the Wisconsin Statutes are outdated and need revision. The statutes need to place the authority and decision-making responsibility into the hands of the circuit court judge. The language in the statutes should determine in what case types, appearances or situations video should be used to better serve the entire court system. Unless new statutes or supreme court rules are created explicitly allowing circuit court judges the latitude to use this technology, there will always exist doubt in the eyes of judicial officers, litigants, and counsel as to when video can be used, ultimately resulting in severe under-utilization of this resource.

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