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Marcia M. Meis
Committee Secretary
Supreme Court Rules Committee
222 N. La Salle Street, 13th Floor
Chicago, IL 60601

Re: Proposal No. 12-01 (P.R. 0196) -- Defendant's Appearance by Videoconference

Members of the Supreme Court Rules Committee:

We, the undersigned, have reviewed Proposal No. 12-01, which we understand promulgates rules by authority granted by 725 ILCS 5/106D-1. We submit these comments for your consideration.

We believe that videoconferenced hearings in Cook County Criminal Division proceedings will adversely affect criminal defendants whose rights have already been limited by virtue of being in custody. A large body of academic research, as well as Cook County's own history, has shown that videoconferenced communications reduce empathy, understanding, and trust when compared to in-person exchanges. While videoconferencing will undoubtedly cut costs to the justice system, we believe it is unwise to adopt videoconferencing in light of the certain and serious impact.

I. Proposal No. 12-01 would experiment with videoconferenced proceedings conducted with individuals whose rights are already severely restricted.

While Proposal No. 12-01 does not restrict the use of videoconferencing to hearings where the defendant is incarcerated, that is its practical end. Financial savings and courtroom safety are the main motives for the growing use of videoconferencing in criminal proceedings across the country. In Cook County, savings arise almost exclusively from eliminating the need to provide supervised transfer of defendants from the Cook County jail to the Cook County Circuit Court's Criminal Court adjacent to the jail, as well as its five suburban district courts located throughout the county. Notably, an overwhelming majority of Cook County jail inmates are awaiting trial and presumed to be innocent.

Cook County experimented unsuccessfully with videoconferenced court proceedings in Central Bond Court, from 1999 to 2009. A study of this practice revealed that videoconferenced bonds went up substantially even as in-person bond amounts did not rise. *Efficiency and Cost: The Impact of Videoconferenced Hearings on Bail Decisions*; 100 J. Crim. Law 869, 897 (Diamond, Bowman, et al. 2010).

The results of the study are tempered by changes that were implemented at the same time as videoconferencing, including the assignment of different judges to Central Bond Court. Nonetheless, it is fair to say that the Central Bond Court experience raised more concern than confidence about videoconferencing, thereby challenging the wisdom of reintroducing and expanding its use.

II. Videoconferencing technology reduces empathy, understanding, and trust between parties, and thus undermines essential aims of the justice system.

In a world where many important interactions occur via technology, videoconferencing court hearings may seem like a logical, even inevitable, step in the administration of justice. However, social science research overwhelmingly supports arguments against the use of videoconferencing to conduct criminal proceedings.

There is ample evidence that videoconferencing reduces core empathy, understanding, and trust between the parties, when compared with face-to-face exchanges. See *Criminal Justice and Videoconferencing Technology: The Remote Defendant* 78 Tul. L. Rev. 1089 (Poulin, 2004). Even in controlled research settings, decision-makers have been shown to evaluate subjects more negatively via video than in person--finding subjects to be more ignorant, less trustworthy, and less likeable. *Id.* Undoubtedly, these disadvantages would be exaggerated amidst the noisy shuffle of our criminal courts and the realities of technological failures.

During any of the hearings Proposal No. 12-01 permits to be videoconferenced, judges and counsel will evaluate defendants, based upon information provided by and about them. Social science research suggests that defendants who appear via video alone would be severely disadvantaged by this technology.

III. Videoconferencing technology would compromise defendants' right to effective assistance of counsel as well as the flexibility to resolve cases at the first opportunity.

Because hearings happen frequently and are often brief, videoconferencing may seem to be an ideal way to avoid unnecessary and costly in-person appearances. However, in-person appearances are in fact essential to effective representation. In-person hearings also save time and resources by limiting the need for multiple appearances.

For example, unexpected plea offers are often made during something as preliminary and routine as a status hearing. Defense counsel will often deliberate privately with the client and accept or decline the offer right then. Such critical, confidential exchanges cannot take place via video. If unable to discuss an offer, a defendant would presumably be detained until the next hearing date,

and the parties could miss the opportunity to resolve the case. In this scenario, in-court appearance would also save the court time and money by closing resolved cases.

Even hearings that simply result in a continuance provide defense counsel and their clients the opportunity to speak confidentially when they otherwise might never meet in-person. It is an unfortunate reality of our system that many defense attorneys do not visit clients in jail, and instead make use of court appearances to counsel clients. In other words, for many defendants, the courtroom is the only place he will see his attorney. Videoconferencing will eliminate even this interaction. Defendants in the Cook County jail cannot hold confidential telephone conversations with counsel. Thus, in a context where counsel neither visits his client in jail nor him in court, the effectiveness of representation is unquestionably undermined.

Advocates of the use of videoconferencing suggest that the technology will expedite cases--a theory that has yet to be tested. We seriously question whether videoconferencing will, in fact, speed case disposition. Studies of large urban criminal courts, including Cook County, have established that the main causes of case delay are *not* defendant transfer time or transition time between defendants--both of which would be reduced through videoconferencing--but rather issues relating to the sharing of evidence between agencies, lack of attorney preparedness, and other organizational weaknesses. See, e.g., *Review of the Cook County Felony Case Process and Its Impact on the Jail Population* American University, Bureau of Justice Assistance, Technical Assistance Report (Edelstein, Trotter, et al 2005); *Efficiency, Timeliness, and Quality: A New Perspective From Nine State Criminal Trial Courts*, National Institute of Justice (Ostrom and Hanson, 2000).

IV. Potential financial benefits do not justify the human cost of videoconferencing.

Videoconferencing will undoubtedly save money for Cook County in the short run, and may well enhance security for the court and its Sheriff's deputies. Savings increases with transport distance and number of defendants. Yet, where potential savings are greatest, potential for harming defendants is also the greatest.

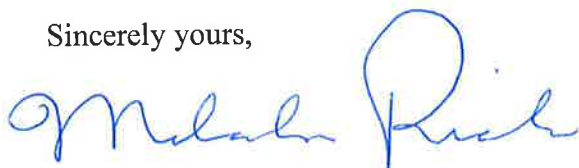
As described above, for many defendants, court is the only place where they may speak face-to-face with counsel. This is more often the case with defendants who are represented by counsel who spend the majority of their time at suburban district courts, all of which are located a considerable distance from the Cook County jail.

Similarly, pursuant to 725 ILCS 207/1, persons classified as "Sexually Violent Persons" are detained at the Department of Human Services's Treatment and Detention Facility, located in Rushville, IL. Once committed, these individuals remain there for an indefinite period until a judge permits them to return to the community. Transporting these defendants 230 miles to Chicago for hearings is undoubtedly costly. Yet, many of these defendants, who are committed to the facility indefinitely, would not otherwise speak in-person with counsel or judges

Videoconferencing reduces both decision-makers' empathy for subjects, as well as defendants' understanding of proceedings. The population that will be subject to this experimental form of administering justice is already deprived of its rights by virtue of incarceration. For these and the

other foregoing reasons, we strongly advise the Illinois Supreme Court Rules Committee against adopting Proposal No. 12-01.

Sincerely yours,



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