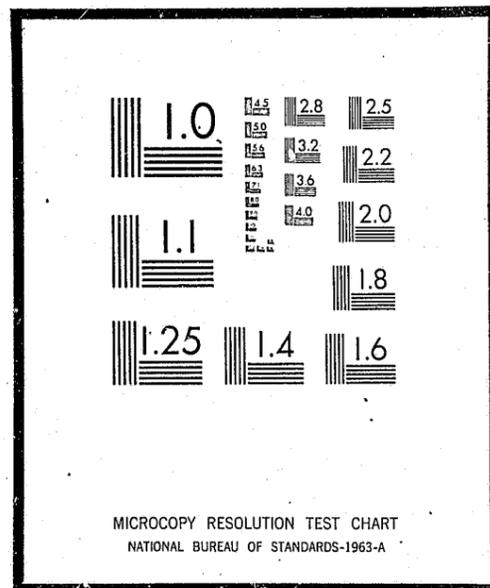


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VIDEO SUPPORT IN THE CRIMINAL COURTS

VOLUME I

Project Summary

Prepared by the National Center for State Courts

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ABSTRACT

This is the first of a four volume work entitled Video Support in the Criminal Courts. This volume describes project design for the entire work, and project results in terms of the project's two overall objectives: analysis of the technical feasibility of court-related uses for video technology, and clarification of legal and procedural issues concerning video. Legal issues associated with major uses of video technology are identified and discussed, and impacts and problem solving potential of the medium are evaluated. Recommendations for its use in legal applications are also provided. Volume I is intended to be used in conjunction with recommendations found in Volumes II and IV of this report.

PREFACE

The material presented here is the result of a project entitled Video Support in the Criminal Courts, a project designed to extend the technical analysis of the feasibility of using video technology in criminal courts, and to clarify legal and procedural issues which affect its use. This work is comprised of four volumes as follows:

Volume I: Project Summary describes project results, identifies relevant legal and procedural issues associated with court-related video applications, evaluates impacts, and offers recommendations for its use.

Volume II: Users Guide to Performance Standards and Equipment Costs presents the court user with a summary of video system configurations for specific legal applications, and recommends video system performance requirements and equipment features.

Volume III: List of Case and Reference Material Abstracts presents for the interested reader a summary of case and reference material relevant to the uses of video technology in courts.

Volume IV: Equipment Technical Analysis and User Experience presents a detailed and comprehensive technical discussion of the operation and features of video system components, analyzes available equipment models for major components, and discusses the design and uses of single camera and multi-camera video systems.

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D	Processing Flow for Case Appeals.

I. INTRODUCTION

The search for solutions for improving court operations has occurred on many levels. One area which has come under increasing scrutiny and experimentation is the use of video technology as a mechanism for alleviating court delay problems, while at the same time improving the quality of the adjudicative process itself. Proponents have extolled the virtues of this technology and its potential for reducing backlogs and improving trial and appellate procedures. Its usefulness, however, hinges both on its ability to avoid interfering with the administration of justice or individual rights, and its cost and quality benefits relative to alternative methods.

It is especially important to resolve pertinent legal issues and procedural questions which surround the use of video technology in the area of criminal justice. The extent of application of video technology to criminal courts will be directly guided and constrained by appellate decisions as to legal acceptability and proper procedures for use. The call for resolution of these legal issues and procedural questions was made in a pioneering report done by the National Bureau of Standards in 1971, on the court-related potential of video technology.

The National Institute of Law Enforcement and Criminal Justice, Law Enforcement Assistance Administration, responded to this need by funding institute grant 72-NI-99-0033-G, titled Video Support in the Criminal Courts: Video Demonstration Project. This project, conducted

by the National Center for State Courts, has two stated objectives: first, to "extend the analysis of the technical feasibility of this technology by observing its operation in the courtroom environment;" and second to, "clarify the legal and procedural issues which affect its implementation" in criminal courts.

To achieve these objectives, this project focused on analysis and evaluation of the performance requirements and video system features needed for court related recording, and on exploration of the legal issues and procedural questions raised by the following applications (uses) of video technology in criminal courts:

- * Pre-record depositions/testimony,
- * Pre-record evidence,
- * Pre-record trial,
- * Record of proceedings.

Secondary emphasis was placed on exploration of other uses of video technology in criminal courts, including education/broadcast, two-way communication, and courtroom security. Supplemental efforts were directed toward compilation of a library of video case reference material, analysis of available video vendor services and costs, and technical analysis of video system components. The ensuing discussion will describe: 1) project design; 2) effectiveness of video technology for criminal courts; 3) recommendations relative to video technology; and 4) detail project results.

II. PROJECT DESIGN

An advisory committee was formed to aid project staff in identifying and exploring relevant legal issues and procedural questions concerning criminal court applications of video technology. Committee members, listed at Figure 1, consisted of judges from trial and appellate courts, including state supreme courts, court administrators, private counsel, a representative for public defenders, and a representative for district attorneys.

A multi-site project of national scope was selected as the most effective mechanism for obtaining project objectives. Results obtained from only one locale might have limited validity due to divergent rules of procedure. Further, a cooperative court in one jurisdiction, statutorily and innovatively willing to apply video technology in one application area, was usually proscribed or simply unwilling to undertake ventures into others. Even within a given application area (e.g., record of proceedings), multi-site experience was advisable to assure airing of relevant issues.

The project concentrated on criminal case video applications. Although improvements in civil case processing free judicial resources for criminal cases, there is less need for concentrated developmental work on the civil side because the private bar is in a position to stipulate away potential legal problems. This cannot be said for criminal case applications in the medium. Considerable video recording activity has occurred during the past several years in civil jurisdictions around the country, most notably Ohio. Yet, even in as boldly experimental an environment as Ohio's, video experimentation is only now beginning to systematically address the field of criminal case processing. Appropriately, courts and lawyers

VIDEO ADVISORY COMMITTEE MEMBERSHIP

Honorable Albert W. Barney, Jr.	Justice, Supreme Court of Vermont
Robert G. Brady, Sr., Esquire	Bryan, Cave, McPheters & McRoberts, Attorneys at Law, St. Louis, Mo.
Honorable Murray Goodman	Judge, Circuit Court for Dade County, Florida
Marshall Hartman, Esquire	National Director of Defender Services, National Legal Aid and Defender Assoc., Chicago
Guy O. Kornblum, Esquire	Pettit, Evers & Martin, Attorneys at Law, San Francisco, California.
William M. Madden, Jr., Esquire	Assistant Director, Administrative Office of the Illinois Courts, Chicago.
Honorable James L. McCrystal	Judge, Erie County (Ohio) Court of Common Pleas
Honorable Thomas J. Moran	Justice, Appellate Court of Illinois, Second District
Honorable Tim Murphy	Judge, Superior Court of the District of Columbia
Arlen Specter, Esquire	District Attorney for Philadelphia, Pennsylvania
Honorable Harry A. Spencer	Justice, Supreme Court of Nebraska
Honorable John B. Swainson	Justice, Supreme Court of Michigan
Honorable Zita L. Weinshienk	Judge, Denver District Court
Frank Zolin, Esquire	Executive Officer, Los Angeles Superior Court

in criminal cases are prudently cautious in insisting upon further court user experience, development of case law, resolution of procedural problems, and evaluation of effectiveness prior to supporting wide-scale implementation through authorizing rules and statutes.

A primary objective was appellate court review and comment on legal issues and procedural questions concerning use of video technology in criminal courts. Few appellate courts are legally empowered to issue advisory opinions on such a subject, and few would be inclined to promulgate general rules on such a new trial method. Accordingly, the only practical way to secure appellate rulings was to help generate cases which, on appeal, would present questions to be ruled upon. If the video-related question was determinative, the appellate court's decision would set precedent; otherwise, the appellate court might still express views on the use of video which, while not binding, would be both interesting and persuasive. Cases with a potential for appeal were selected for video recording, and were followed to identify those actually going on appeal. For those on appeal, project staff contacted counsel and court, offering relevant video recordings for review and comment.

Project videotaping yielded case examples in each of these major applications: pre-recorded depositions/testimony, pre-recorded evidence, pre-recorded trials, and records of proceedings. The states where recording took place are listed in Figure 2. Although situations for education/broadcast, two-way communication, and courtroom security applications were also sought, substantive results were not obtained.

Each video application involved the same methodological approach. First, cooperative participants (judge and counsel) were obtained for the

LIST OF PROJECT STATES, BY APPLICATION AREA

Pre-Record Depositions/Testimony

Colorado
Florida
Kentucky

Pre-Record Evidence

Georgia
Missouri
New York

Pre-Record Trial

California
Vermont

Record of Proceedings

Georgia
Kentucky
Missouri
Vermont

Education/Broadcast

None

Two-Way Communication

None

Courtroom Security

None

Figure 2

video application; this step included the necessary preliminary task of familiarizing prospective participants with the video medium and its potential court related uses. Second, a case was selected which would likely result in a challenge to the video application being used. Third, the actual video taping was conducted. Fourth, participant comments were solicited. Fifth, observational data from project staff was collected, including data on equipment performance. Sixth, case processing was followed from time of recording through appeal, if appealed.

III. EFFECTIVENESS OF VIDEO TECHNOLOGY

Recording efforts during the project, coupled with extensive discussions by the Video Advisory Committee, have brought into sharper focus the legal issues and procedural problems associated with uses of video technology in criminal courts. This section identifies specific issues and problems which require resolution, some of which are being raised on appeal. The impact and problem-solving potential of the video medium in the criminal courts is also discussed.

A. Legal Issues, Procedural Problems, and Impacts

The use of the video medium in criminal courts raises many issues and questions which are yet to be resolved. Currently, proponents and detractors can only speculate as to the legal effect of many applications of the video medium in criminal courts. The following is a discussion by application area of the relevant issues and problems requiring resolution.

1. Pre-record Depositions/Testimony

Discussion papers presented by members of the Video Advisory Committee and the appeal of Hutchins v. Florida (see Section V. A. Appendix A for fuller discussion of issues raised in Hutchins) raised several issues involving the use of the video medium to pre-record criminal testimony for later presentation at criminal trial. The Constitutional questions raised are of paramount importance.

The central Constitutional issue is the Sixth Amendment right of the accused to confront witnesses testifying against him. The United States Supreme Court has held confrontation to be a fundamental

right essential to a fair trial. Without confrontation, the accused would be deprived of the right to due process of law, as guaranteed by the Fourteenth Amendment. Pointer v. Texas, 380 U. S. 400, 85 S. Ct. 1065 (1965). Included in the Confrontation clause are the rights of the accused to be present at every stage of the trial, to have witnesses placed under oath, to have the opportunity for cross-examination, and to allow the trier of fact to observe demeanor evidence while the witness is testifying. Of these, the opportunity for cross-examination has been held by the United States Supreme Court to be the essential element. Barber v. Page, 390 U. S. 719 (1968). Key to the use of the video medium is the determination of whether this right to confrontation requires physical face-to-face confrontation at trial, or whether the right can be satisfied by video pre-recording testimony for trial.

The principle of fairness to the accused, upon which the right to confrontation is based, resulted in the traditional practice of requiring that the witness comes into physical proximity of the jury. The video medium appears to alleviate this requirement while still adhering to principles of fairness to the defendant. The quality of video and audio recording and evidence of demeanor presented must be resolved to make it an acceptable replacement for the live witness.

Another Constitutional question raised when examining video pre-recording of testimony for trial use is its effect on the accused's Sixth Amendment right to counsel, and effective assistance of that counsel. First, because discovery usually takes place at trial

in criminal cases,¹ live questioning of witnesses who may bring up questions which should have been asked in a previously video recorded deposition. Secondly, a related problem to be faced is that of recalling a witness whose testimony has been presented on video tape at trial.

However, this same situation can arise with a live witness; for example, the witness who has been permitted to testify out of sequence and allowed to leave the courtroom. Exercising its discretion, the trial court might grant a continuance to recall this witness; this same procedure can as easily be applied to a video recorded witness. The witness may be recalled to testify live, or a video tape of his additional testimony could be prepared and presented at trial.

This procedure can lead to another question: once the initial witness' testimony is video recorded, can the live testimony of this recalled witness (or another witness) be used for impeachment?

A related procedural issue concerns how the court can issue timely court rulings on pre-recorded objections which pertain to the form of the question (e.g., leading questions). Unless counsel exercises restraint, prejudicial questioning may occur which will require an immediate ruling before taping can resume.

In regard to the rights of witnesses, it is not likely that their Fourth Amendment right to privacy would be violated by a video pre-recording of testimony so long as the testimony was secured in accordance with regular court procedure. If video depositions

1. "The Use of Discovery is Changing". See ABA Standards, "Approved Draft, 1970" Discovery & Procedure Before Trial.

are found to meet the Constitutional requirements of criminal testimony, then ancillary procedural issues must also be resolved to insure that the maximum potential of this medium is fulfilled. The central issue is whether or not the video medium should be construed to fit within the accepted definition for deposition, thus requiring adherence to current rules for deposition usage. Or should the unique qualities of this medium be permitted to allow special uses of discovery in criminal trials, thus necessitating a revision of procedural rules by redefining the term "deposition" or defining a new term for the video medium.

Regardless of the medium used, a deposition in a criminal trial constitutes hearsay--although some depositions meet exceptions to the Hearsay Rule--and violates the accused's right to confrontation. However, an argument can be made that the video medium offers a new method of presentation of testimony because the opportunity for cross-examination can be preserved and demeanor established.

Involved in this issue is the question of who is entitled to order or ask for a video deposition and under what circumstances. Should it be only upon motion of the defendant, or should the state also be authorized to move for a video deposition? Should the court also be allowed to direct the taking of a video deposition? Rule 15A of the Federal Rules of Criminal Procedure permits a deposition upon motion of the defendant. The Organized Crime Control Act of 1970 [18 U.S.C. Section 3503 (a)] permits a deposition upon motion by the government. In the Hutchins case, the court, upon its own motion, ordered the video recording. The Florida Rules of Criminal Procedure [Cr. Pr. 3, 190 (L) (1)] limit the taking of depositions to those taken upon motion of the defendant, although it does not

specifically exclude the court from such action. The Florida Third District Court of Appeals denying the Hutchins appeal suggests that the Florida Rules did not intend to so limit the procedure.²

The capability of using the video medium to preserve testimony and present demeanor evidence also raises questions with respect to requirements of witness unavailability. Most current statutes and court rules narrowly define unavailability; it is applied only to those witnesses who cannot be obtained through compulsory service of process, despite continuances. The continuance of criminal cases because of witness unavailability is a factor in case backlog. Requiring users of the video medium to adhere to the traditional concept of unavailability would frustrate the medium's potential problem solving ability. If video recording can meet the Constitutional requirements of good evidence, consideration should be given to liberalizing the definition of unavailability to permit more frequent use of video depositions.

In many states, the use of the video medium to pre-record testimony would require a re-draft of statutes and/or court rules. To insure proper use of the medium, it may be necessary for statutes and rules to define and elaborate the proper recording, editing, storage, and presentation methods. These statutes and rules should specify at least the following:

2. This case is currently on appeal to the Florida Supreme Court. See Section V. A. and Appendix A.

- (1) Statements of who is authorized to order, record and edit a video pre-recording of testimony. The court must exercise supervision and integrity of editing, and preserve the unedited tape intact.
- (2) Rules for allocation of cost to parties, including provision for indigent defendants;
- (3) Designation of video equipment including the maintenance and procedure (e.g., format);
- (4) Performance requirements of video systems (e.g., verification of a video record; faithful reproduction; presentation from juror's orientation; removal of biased camera work);
- (5) Definition of the proper method of indexing the video tape for uniform and rapid referencing of objectives and events;
- (6) Requirements for administration of oaths;
- (7) Description of a procedure for verification of the video tape by the recorded witness, equipment operator, and officer of the court. (e.g., the court might require certification on the tape or within an established time period prior to filing).
- (8) Procedure to allow counsel's objections to be recorded, ruled on, and if deemed objectionable, excluded from presentation to the jury. The approved method of editing, electronic or manual skip editing, should also be described.

- (9) Manner of preserving, filing, safe-guarding and re-using the video tapes.
- (10) An explanation of the procedure and equipment to be used for courtroom playback (e.g., the number, size, and location of monitors).
- (11) The procedure for presenting the videotape on appeal.

More experience is needed to truly evaluate the impact of video pre-recorded testimony. Comparative costs--in terms of dollars, time, and quality of record--have yet to be fully ascertained. Project experience has shown that video pre-recordings save a substantial amount of juror and witness time and that the use of video technology helps relieve juror and court scheduling problems. However, to truly evaluate this time-saving, time and cost statistics need to be also developed for the judge and attorney.

The behavioral impact of a video pre-recording needs further investigation. Studies should be conducted to evaluate the effect of video testimony on juror information retention and mental fatigue as compared to other methods of communication. These studies should develop procedures to insure maximum attentiveness.

Additional studies should focus on the novelty or "Hawthorne effect" of video testimony during trial? Project experience, although limited, indicates that the jury does not consciously give weight to video testimony. Juror reaction also needs to be studied, in regards to the effect of artistic productions, and the effect of the video witness recalled for live testimony.³

3. "The Knowledge of What Influences a Jury is Limited". See The American Jury, Kalven and Zeisel (1966), University of Chicago Press.

Video pre-recording of testimony has little practicality if done in parallel with a stenographic record because it simply doubles costs without quality gains. While one recording approach may be preferable in a given instance, only one medium should be used to maximize benefits while minimizing costs.

2. Pre-record Evidence

In pre-recording demonstrative or real evidence, the video medium acts as the vehicle through which fact is presented. Contrasted to testimonial evidence, which only describes what occurred, videotaped evidence actually depicts what occurred. Four legal issues which serve as obstacles to the utilization of video tape to record demonstrative evidence have been resolved by case law. Therefore, the legal acceptability of video technology for this application has been largely established.

The first legal barrier overcome was the question of the accused's Fifth Amendment privilege against self-incrimination. Precedent has been established that this right is not impaired or waived by appearance on the videotape. Use of video pre-recorded evidence at the trial does not limit the defendant's free choice in deciding whether or not to take the stand. Hendricks v. Swenson, 456 F. 2d 503 (1972), People v. Ardella, 276 N.E. 2d 302 (1971), People v. Heading, 197 N.W. 2d 325 (1972), State v. Lusk, 452 S.W. 2d 219 (1970).

Secondly, admissibility into trial of real evidence videotapes has been established predominantly under standards for rules of evidence used for photographs and moving pictures, rather than the more stringent requirements for the admission of an audio tape recording. The tapes have been admitted on the condition that some witness

authenticate them by testifying as to the circumstances of the recording and to the accuracy and relevancy of the events portrayed. Hendricks v. Swenson, 456 F. 2d (1972), People v. Mines, 270 N. E. 2d 265 (1971), State v. Lusk, 452 S.W. 2d 219 (1970), State v. Howman, 484 P.2d 473 (1971), State v. Thurman, 498 P. 2d 697 (1972). Precedent also exists which establishes that the admissibility of the audio portion of video tapes must meet the requirements of electronic sound recordings. People v. Heading, 197 N. W. 2d 325 (1972). Video tape confessions must meet not only the requirement of accuracy, but the voluntariness of the statement must be established. Paranore v. State, 229 So. 2d 855 (1969), State v. Lusk, 452 S. W. 2d 219 (1970).

Thirdly, precedent has been fostered resolving the question concerning the Sixth Amendment right to counsel during evidentiary proceedings. This limited issue deals with the accused's right to counsel while being video taped for identification proceedings. It has been determined that the defendant does not have an absolute right to counsel while being video taped for identification purposes. However, if the accused exercises his right to counsel at the time of his arrest, he is entitled to have counsel present when the video tape is shown to a victim, or other witness, as a substitute for a lineup or other confrontation, Cox v. Florida, 219 S. 2d 762 (1969).

Finally, case law has clarified the question of the accused's right to confrontation during trial presentations of video taped lineup proceedings. This issue concerns the necessity of the witness or victim repeating his identification of the defendant at the trial, even though the witness or victim previously identified the accused

while viewing the video tape. It has been decided that a video tape of a lineup does not replace in-court testimony. If the identifier does not testify at the trial and thereby offer the defense the opportunity for cross-examination, the tape is hearsay evidence and denies the accused his right to confrontation. People v. Heading, 197 N. W. 2d 325.

Legal procedures should be designated which establish uniform standards of admissibility. Either the rules of evidence governing photographs, or those governing sound recordings, or, as People v. Heading suggests, a combination of the two should be procedurally established by the State for admissibility of video tape evidence. Such standards would resolve the existing uncertainty surrounding the proper foundation for the admissibility of video tape evidence.

Also, procedural guides are necessary for police and prosecutorial officers conducting video taping sessions of confessions, lineups, coordination and breath-analyzer tests, etc. to insure the accused's Constitutional rights are not violated. For instance, one solution might be to tape the police or prosecutorial officer conducting the evidentiary proceedings while he reads the accused the preliminary Constitutional Rights Notice and Miranda warnings along with a notice that the events are being video recorded and could be used against him at trial.

As long as procedural steps are taken to insure that individual rights are not violated and the rules of evidence are followed, the only impairment to the utilization of video tapes of pre-recorded evidence would be an operator-controlled production shortcoming

or a mechanical failure so prejudicial as to cause the video tape to lose its probative value.

Procedures must be developed to assign responsibility for the control and operation of video equipment used to pre-record real evidence, and to outline the circumstances under which video evidence is to be taken. Procedures must detail the type and format of event log or written record the operator must keep, the equipment standards which must be used, and the indexing method deemed acceptable in taping evidentiary proceedings. In essence, the quality and comprehensiveness of the recording will depend entirely upon how well the equipment is handled by its operator and how well he adheres to production procedures. Proper use of the equipment will insure an impartial video tape devoid of operator-bias.

The impact of wide-scale use of the video medium to pre-record real evidence, particularly lineups, confessions, and drunk driving tests is that the video tape will act as a tool which will serve to protect defendant rights rather than impinge upon them while reducing specious appeals. Based upon staff observations made during project recording in this application area, the real difficulty lies in providing proper training to equipment operators in police, prosecutorial, and defender agencies.

3. Pre-record Trial

Video pre-recording all trial testimony raises many of the same legal issues involved in pre-recording single witness testimony; hence, much of the prior discussion applies here. Assuming admissibility of video recording in criminal actions when the accused is present

and represented by counsel in cross-examination, a fully video pre-recorded trial is a logical extension.⁴

The video recording of a complete trial also raises several issues of the accused's Sixth Amendment right to effective counsel. A major concern is the effectiveness of counsel's cross-examination and opening and closing arguments to a jury which he cannot see or know the composition of. An approach to this problem is to video record only testimony and evidence, leaving opening and closing arguments and jury selection to be done live. Although the ability to adjust the line of questioning to juror reactions is lost through this process, counsel gains the ability to tell the jury at the outset what the case will show, and to modify closing argument based on juror reactions of the video tape.

The capability to impeach a witness through testimony of later witnesses would be simplified when pre-recording all testimony. This testimony could easily be recorded and inserted prior to trial. An expressed concern of some defense attorneys is fear that the video medium might be used to unfairly manipulate the order of presentation of witnesses. An approach to this problem is to implement language clearly specifying that both the state and defense have the right to present their witness's video taped testimony in the order which would most strongly support their case, with the court being in power to resolve disagreements as to order.

Another concern of defense attorneys in this situation is

4. See Section V. C. Vermont v. Moffitt, for full discussion of such a case.

the possible loss of practicing his trade in the proper trial forum; in particular, the courtroom is where defense counsel effectively employs discovery. Yet, the opportunity to impeach a witness or confront a witness with other testimony would not be lessened when pre-recording all trial testimony, but would just require additional video recording sessions. The court must resolve when such testimony would terminate. Procedures must be established to prohibit state or defense to unduly prolong the process.

Similar to video recording depositions, proceedings to cope with objections pertaining to the form of the question must be resolved. This may require a procedure for temporarily stopping recording until a court ruling is obtained.

The defendant's Sixth Amendment right to be present at every stage of the trial raises a practical problem for the pre-recorded trial. This right would seem to require examination of the state's witnesses in the presence of the accused and his counsel. Obvious difficulties arise in transportation of the incarcerated defendant to many different locations or even to a fixed location at many different times. When felony charges exist and the accused has a known record of violent behavior, this problem is compounded. A voluntary waiver of this right with representation by counsel would simplify the recording procedure; however, the legality of such a waiver has not yet been examined.

The Sixth Amendment right to a public trial by an impartial jury also raises legal issues for this video application. The primary issue here is the resolution of what constitutes public trial.

It must be determined if video pre-recording of testimony and evidence at different times and places violates the integrity of the courtroom, the effectiveness of counsel, and the integrity of the trial itself. The appellate court's view of the video medium's capacity to be used for perpetuating testimony for trial versus the requirements at trial are crucial.

To preserve due process, the public must be able to view the video pre-recorded testimony at the time of trial as it is presented to the jury. Within the context of video capabilities to perpetuate testimony for trial, the specific elements which constitute a public trial need to be delineated.

The operator controlling the video recording and the type of equipment used has great potential to influence juror or judicial perceptions of the testimony. Objective recording requires rules on the use of special effects (split-screen, corner insert, close-ups) to enhance presentation but removing distortions.

Important camera views are: a frontal view of the witness, showing facial expression and body as normally would be seen from a jury box, a view of the defendant while witness interrogation occurs, and a view of counsel conducting examination.

The impact of the video medium upon jury's decision making process compared to a live trial needs to be studied. Project experience suggests that the use of video record does not adversely affect jury decisions, but jurors do feel a loss of the "live atmosphere". While the demeanor evidence presented through the video medium is less than obtained in live testimony, the demeanor is totally lacking in the reading of a stenographic deposition.

Although the operational procedures developed through studies in pre-recording single testimony for trial may be simply extended to meet this expanded use, video recording an entire trial does have unique circumstances which call for specific evaluation. The unavailability of a single witness is a common problem at trial which could be solved by pre-recorded video testimony. Video recording witnesses who would be available to testify live may incur costs which are not warranted by savings in juror and witness time and capability of more precise trial scheduling. Also, pre-recorded testimony raises the possibility of allowing appellate court review of allegations of error prior to presentation of the videotape to a jury; jury decisions would then be final. The special qualities of this use of video technology require comparative cost effectiveness studies and behavioral impact research.

4. Record of Proceedings

Statutory and technical problems are the greatest obstacles to the use of the video medium for recording court proceedings as the record for appeal. Currently, most statutes and court rules require court proceedings to be recorded by a particular method in the presence of the official court reporter. Most of these statutes and court rules were adopted before the development of new electronic recording technologies.

Canon 3A (7) of the American Bar Association's newly recommended Code of Judicial Ethics overcomes the obstacles presented by former Canon 35, which prohibited cameras in the courtroom. The only impediment to local application of this technological tool is state adoption of the new American Bar Association Code; and the adoption of rules

and statutes which permit a videotape transcript to replace the typed transcript as the official record for appeal purposes.

Procedurally, statutory or court rule adjustments needed for this application are the same as outlined for pre-recording of deposition/testimony; however, an edit procedure would not need to be delineated since the video record of a court proceeding would remain intact for appellate review. The only tape duplication which would occur for this use would be the duplication of the record for interested parties, or perhaps production of an abbreviated record showing only those portions of the trial which are contested on appeal.

Statutes and rules must be developed to:

- 1) Reach a balance between the Sixth Amendment right to a public trial and a public record and the possible invasion of the privacy of a trial participant by the use of video records for private interests.
- 2) Define equipment and operating standards, including guidelines for camera placement and focus, camera microphone control and accessibility; indexing methods, and the control and maintenance of video equipment. For example, the practical implementation of video recording suggests the use of narrow camera angles to focus on one or two participants, while following other events by camera switching, split-screen or corner inserts. The camera should focus primarily on the witness and examiner, and additional views of the defendant, judge, and counsel as appropriate. Wide angle camera views should depict surrounding area and show overall action.

- 3) Resolve the question of where to put the video equipment control center. The video medium offers the flexibility of remote operation; therefore, the operator/court reporter can be remotely located in another room, viewing and hearing courtroom activity through his control center monitors.
- 4) Establish responsibility for possession, safeguarding, and storage of video records of proceedings. The availability of the video record immediately after recording would dispense with the need of having the court reporter hold the public record until transcribed. This shift in responsibility for the record from the court reporter to the court can be accomplished by simply turning the video record over to the clerk upon completion of the trial proceedings. The video tape of court proceedings should replace, not supplement, a transcript. The video tape should be the official record of proceedings; i.e., it merely becomes an advanced method of court reporting.

Appellate rules should be established for use of video records on appeal. Decisions must be made as to whether the ability of a video record to capture the demeanor evidence of a witness should allow the appellate court to go beyond their judicial role as a reviewer of questions of law. The appellate court might be inclined to "re-try" cases, thereby infringing upon traditional trial court and jury prerogatives.

Further study is needed to measure the impact of the video tape record on appellate caseload. Time, accuracy and cost comparisons should be made between the different media used for preparation of an official record--audio, video, and written; operational procedures should be developed to expedite work with each medium; and the comparative effect of a video record upon the appellate process should be examined.

5. Other Application Areas

Potential use of video in the areas of education, broadcast, two-way communication, and security bring up legal and procedural issues which must be resolved.

The broadcasting of court proceedings, both for public and educational institution purposes, has been prohibited by Canon 35 of the American Bar Association's Canons of Judicial Ethics. The ABA's recommended new Canon 3A modifies this ban to allow cameras in the courtroom so long as the resulting production is used for educational purposes within educational institutions. However, Canon 3A still does not lift the ban on public broadcast of live trials, or even broadcast of a live trial over a public educational television network.

Utilization of the video medium for two-way communication and courtroom security face legal issues similar to those examined through pre-recorded testimony. The control of the use of either application is a favorable resolution of questions concerning possible violations of Sixth Amendment rights. A video hook-up enables the defendant and jury to see and hear live, remote testimony, and

also provides the means for an isolated defendant to communicate with his counsel at trial. There are possibilities for video hook-up between: 1) the court and geographically distant witnesses; 2) between the court and remote defendants; 3) between the court and counsel for at-trial motions by counsel.

Questions arise as to whether or not these uses of the video medium violates the accused's rights to public trial, confrontation and effective assistance of counsel. However, if the Sixth Amendment right to a public trial and confrontation requires a physical, face-to-face confrontation in a public place, then these uses of the video medium would violate those rights both for pre-trial discovery and at-trial issues. The right to effective assistance of counsel would also be violated if appellate decisions conclude that the physical presence of counsel is required for all motions and trial proceedings, so that the defendant can avail himself of instant and private communication with his counsel. For two-way communication the determination of which jurisdiction has venue for perjury committed by a witness in a distant location needs to be resolved.

As in other uses of this new medium, procedural guidelines need to be established to insure that the rights of the accused are not violated and that high caliber audio/video transmissions are produced. Legal clarification of the Constitutional issues surrounding this application is of paramount importance. Also, equipment and operational standards must be established to insure production suitable for the purposes of the court participants.

B. Problem Solving Potential

The video medium is a useful technological tool for the courts. Within each application area, several specific uses have a potential for widespread beneficial impact to the justice system.

Impact will be most significant in the area of pre-recorded depositions/ testimony. Effects would be: 1) aid in reducing trial delays which arise from continuances needed to secure unavailable witnesses; 2) reducing the inconvenience of coordinating court and expert witness schedules by the videotaping of testimony of expert and alien witnesses; 3) reducing trial delays by extending the concept of unavailable witnesses to witnesses substantially inconvenienced even though living locally, and then videotaping their testimony; 4) augmenting the trier-of-fact's ability to judge demeanor by videotaping depositions and video recording depositions at the scene in question.

The application area of pre-recorded demonstrative or real evidence could be particularly beneficial for police and prosecution investigative efforts. Properly employed, the video medium would assure and safeguard an individual's Constitutional rights, and at the same time would provide better quality evidence from which to base an evaluation of the strength or weakness of a respective charge. Ideally suited to this type of video recording would be lineups, suspect statements, confessions, Miranda warnings, and Constitutional Rights Notices. Additionally, the medium would be quite useful in recording on-the-scene arrests and riots to record in evidence the actions of participants. Drunk driver suspects could be video recorded to prove sobriety, suspect interrogations could be fully depicted, and surveillance scenes could be recorded.

The video pre-recording of all testimony and evidence for later presentation at trial, if this becomes a legally acceptable method of conducting criminal trials, will have the greatest impact on the judicial process. Court schedules could be accurately docketed and met; trial witnesses would be video taped at their convenience; and jurors, judges and counsel would know with certainty the time and approximate length of their trial. This procedure would aid in reducing appellate delay if the video record is accepted as the official record of proceedings.

Video recording of court proceedings whether the proceedings are live or already video pre-recorded, offers immediate potential as an aid in reducing delay. Use of the medium as the official record would reduce the time necessary for completion of appellate review by that portion of delay which is attributable to transcript preparation. However, study is needed to determine whether the time needed by appellate judges for review of the video record negates the time saved by videotape's instantaneous transcription process. Video records of proceedings could have further utility to the justice system by being used as evidence to disqualify incompetent judges, to initiate grievance proceedings against attorneys, and to preserve historically significant trials.

Much potential of the video medium can be realized through educational uses. Law schools could introduce video tapes into their curriculums to provide students with a link to existing practice. Video tape could be used for self-evaluation of skills, methods, and procedures in continuing legal education programs, judges' training programs, prosecutorial and defender training programs, and law enforcement training programs. Video tapes could be produced, bringing together the best ideas and practices

from leading professionals, and dispersed by mail for individual viewing at the students' convenience. On a much broader scale, the medium could be used to instruct high school students, college students, police, and the public at large as to the structure and function of the judicial system, thereby fostering and encouraging public confidence in the adjudicative process.

IV. RECOMMENDATIONS

Presented below are recommendations concerning the use of video technology in criminal courts. Attention is focused on guides and standards, priorities for court-related uses of the medium, equipment requirements, and areas identified for further study. It is anticipated that these recommendations will provide the potential user with a better perspective from which to evaluate the utility of the video medium and the considerations necessary in planning and in implementing its use.

A. Guides and Standards

In order to identify and implement appropriate uses of video technology in criminal courts, it is recommended that:

1. Additional case law be accumulated concerning legal issues involved with the various criminal court applications of this technology, thereby adding insurance that Constitutional rights are preserved. Several project cases, notably the appeals in Hutchins v. Florida and Moffitt v. Vermont, have initiated this process of resolving specific legal issues.
2. States desiring to use video technology in their criminal courts adopt Canon 3A of the American Bar Association's newly recommended Code of Judicial Conduct. This expressly allows a judge to authorize electronic or photographic means of recording for the presentation of evidence, for perpetuating the record, for purposes of judicial administration, and for educational uses by educational institutions.
3. States desiring to specifically authorize the use of video recording add the following wording to their statutes or rules governing the recording of trial proceedings and depositions: "[... recorded verbatim stenographically or mechanically] or by use of electronic means, including video recording".
4. Procedural standards be developed to insure the accuracy, integrity, and good quality of the video record; assigning costs for video recording; to provide a means for use and review by indigent defendants; and to provide for the use of the video medium in appeals.

5. Procedural guidelines and standards be implemented and controlled through the use of judicial discretion. Video usage, in time, will result in development of a subset of specific procedures geared to this medium, but proper development requires that initial implementing rules provide users with working flexibility. Judicial discretion offers the best available mechanism for regulating this flexibility during development.
6. Video recording be in place of other recording mediums, when used, not as a supplement or duplication of them.
7. Procedural standards be developed to specify the use of production techniques. Completeness of the record may require limited use of split screens and corner inserts.
8. Video recording be examined as a new form or method of presenting testimony and evidence, not strictly in relation to traditional procedure definitions.
9. The Court be provided with authority to allow any recording medium to be selected to produce a record. Courts should not rely on or be locked into only one method of recording.

B. Priorities for Use

The utility of video recording in a given instance should depend upon the user's evaluation of: 1) availability of reporters; 2) type of case; 3) workload volume, and 4) costs versus quality and other gains. Generally, however, certain uses suggest themselves more than others, and appear to offer the greatest immediate advantage to the judicial system. Identified by project experience and discussions with members of the Video Advisory Committee and the legal community as a whole these uses are listed below and are recommended as areas in which to concentrate initial efforts:

1. Pre-recording of testimony for unavailable witnesses, non-controversial expert witnesses, and substantially inconvenienced witnesses.
2. Pre-recording of evidence for confessions, statements, lineups, Miranda warnings, and Constitutional Rights Notices.

3. Recording of video records of proceedings for criminal trials and taking of pleas.
4. Sharing with educational institutions video tapes of actual court proceedings that illustrate learning points, and recording educational video tapes to show model jury instruction (for judges), model juror duty explanations (for jurors), and model explanations of defendant rights and obligations.

C. Video System Performance, Features, and Configurations

In order to provide uniform standards for video equipment, standards which will insure that video recordings are accurate and reasonably portray and depict the recorded event with good quality, it is recommended that:

1. The video system performance requirements and equipment features recommended in Volume II of this report be adopted.
2. The video system configurations described in Volume II of this report be used as a guide when selecting specific systems for each type of application.
3. Consideration be given to development of a lighting standard for court-related recording to insure clear identification of participants.
4. Operational guidelines include recommended camera views; for example, a requirement that close-ups stop at a view of the head and shoulder when showing facial expressions and demeanor.

D. Further Study

As this report shows, much ground work has been laid for the use of video technology in many areas in criminal courts. Yet, two areas require additional work: completion of the process of resolving legal issues and procedural problems associated with this medium, and the determination of the cost effectiveness of video in relationship to other available media. With this in mind, it is recommended that:

1. Further study be initiated to develop cost effectiveness statistics, behavioral impact experience, and proper operational procedures for each video application area.

2. Uses for video technology be examined and evaluated in light of maximum problem solving potential.
3. Courts continue to explore this and other technologies in order to ascertain the improvements that can be made to the justice system through technology.

V. PROJECT RESULTS

The following discussion will summarize each video recorded case.

Case descriptions include: staff observations; participant reactions and comments; legal issues and procedural problems raised by use of video; case status; and case value beyond use of video recording. For each application area, cases are presented by state in the order in which they occurred within the state.

A. Pre-recorded Depositions/Testimony

Three criminal cases selected during the project involved pre-recording a witness' deposition of testimony, for later presentation at trial.

Trial proceedings were conducted as normal, except that a witness's testimony or deposition was presented by means of video tape. The information pre-recorded in these cases varied from that of a crime lab expert's testimony in Florida, to the deposition of a shooting victim in Colorado, to the testimony of a theft victim in Kentucky.

1. Florida

On December 6, 7, and 8, 1972, the testimony of an expert witness was video recorded, edited and presented at criminal trial. The case, State of Florida v. Victor E. Hutchins, involved the charge of unlawful possession of a narcotic drug (heroin).

Approval for this video recording application was obtained from the Honorable Murray Goodman, Judge of the Circuit Court of the Eleventh Judicial Circuit of Florida, in and for Dade County (formerly Miami Criminal Court of Record). In the case, the Assistant State Attorney prosecuting Hutchins sought a continuance because

of unavailability of an expert witness. The court upon its own motion then ordered that this witness' testimony be video recorded; thereby avoiding the necessity of a continuance.

In a pre-trial order, the court formally ascertained that the state's expert witness, a chemist, would be unavailable to appear at the courthouse to give testimony in Florida v. Hutchins, which was set for trial on December 8th. The court ordered a video recording of the witness's testimony to be taken at his home on December 6th. The pre-trial order detailed the manner of recording, preserving, and filing the testimony of the witness. In it, the court ordered that a video record be made; using 1/2 inch format video equipment, and that a separate audio tape be made for each counsel. Since the video equipment operator was not a notary public for purposes of this case, the court ordered a notary public to be present to administer the oath; mark for identification the exhibits entered by counsel, and certify as to the administration of the oath.

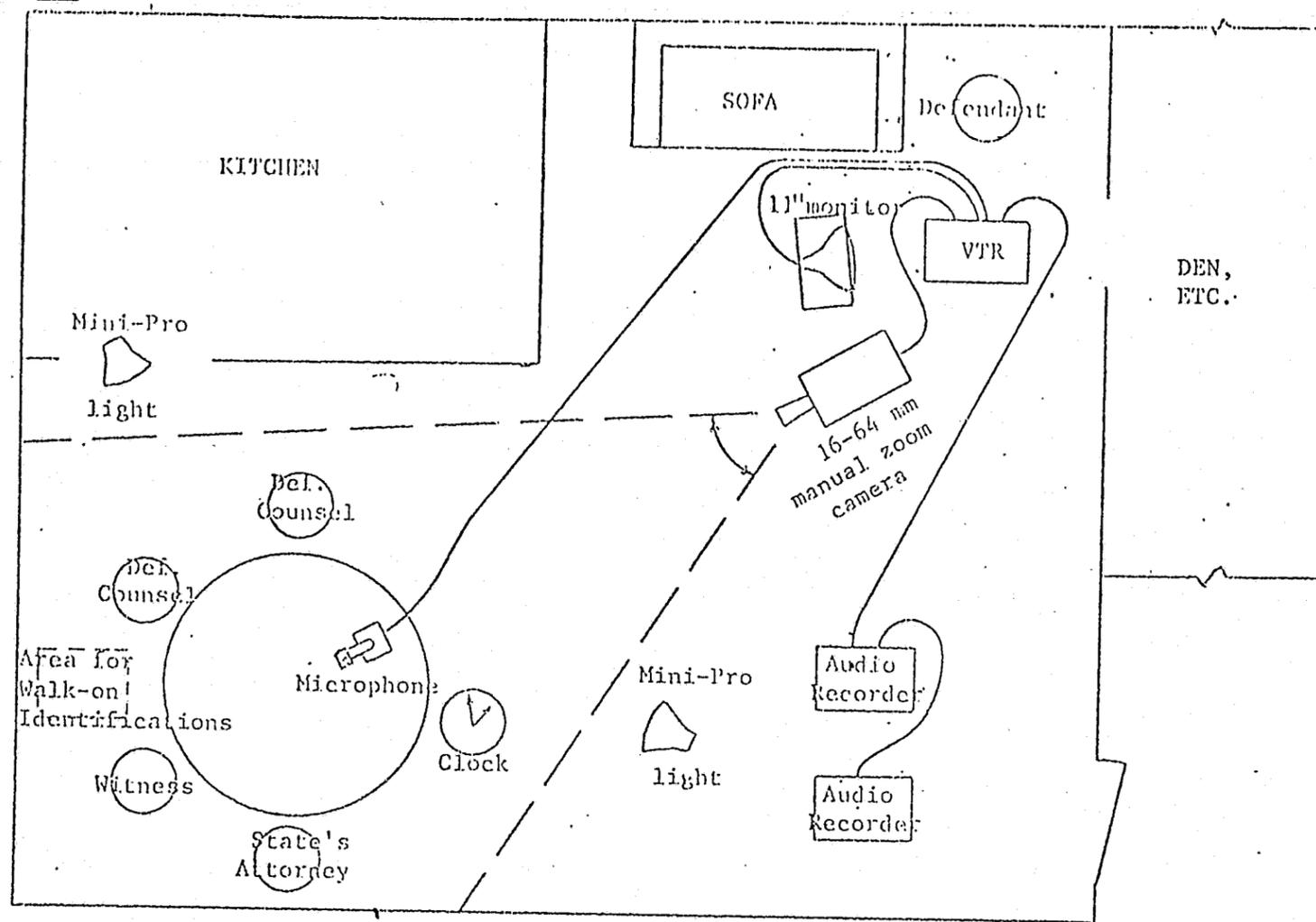
The order required that: the defendant, Victor E. Hutchins, be present and appear at the recording of testimony, and be present with his counsel throughout; the assigned Assistant State Attorney appear on behalf of the State; and the assigned Assistant Public Defenders appear on behalf of the defendant. All motions and objections were required to be made on the video taped record during the proceedings; and the witness was required to answer all questions.

Motions and objections were scheduled to be ruled upon by the court on December 7th in the presence of assigned counsel, defendant, and video equipment operator. The master video tape

was required to be preserved intact along with any edited video tape produced as a result of rulings by the court, until filing with the clerk of court.

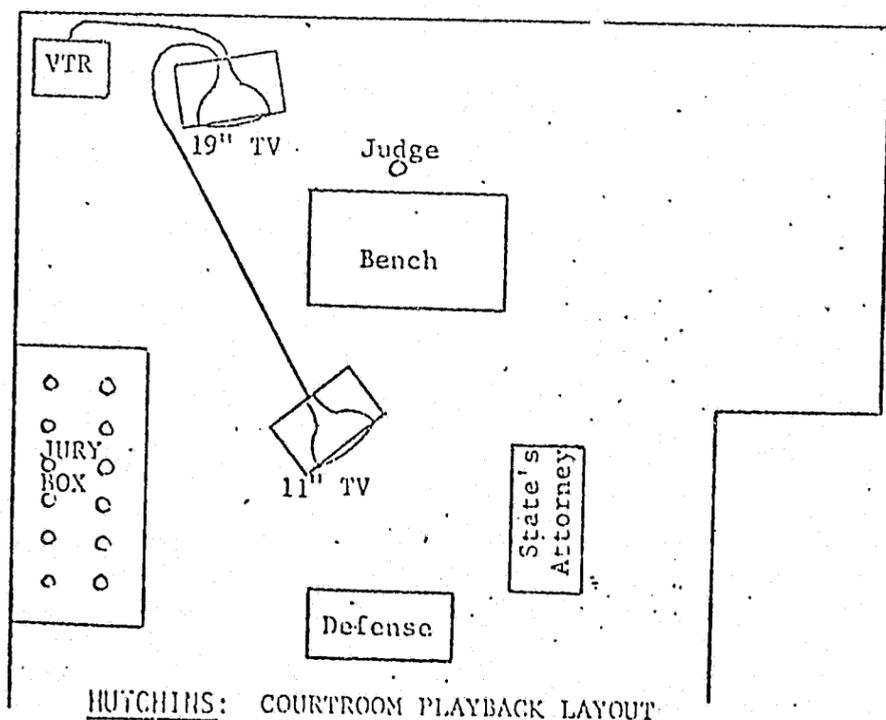
The testimony of the expert witness, Melvin Brewer, a Criminalist for the Dade County Safety Department, was video taped at his home pursuant to the pre-trial order on the afternoon of December 6, 1972. Prior to testimony being given, a defense counsel objection to the proceedings was video recorded; defense stated that the defendant was being denied his right to confront witnesses against him at trial, thus denying him fair trial and due process. In addition, objection was made on the ground that the proceedings was without precedent. With that preliminary objection on record, the video taping of testimony proceeded to conclusion.

Video recording equipment was brought to the home of the expert witness on the afternoon of December 6th; set-up time was one-half hour. Recording took place in the living/dining room as shown at Figure 3a. Extra lighting was added by means of portable studio lights to compensate for the low light level encountered. Audio cassette reproductions of the sound track of the video tape were produced simultaneously with the video record by linking two small audio tape recorders to the video tape recorder. Significant events which occurred during the recording session such as motions and objections, were indexed to two reference bases: the digital counter of the video tape recorder (VTR), and the second-sweep-hand of a wall clock which had been placed in the scene. A single, stationary camera with fixed focus was used after establishing (identification) shots had been completed. Video equipment used



HUTCHINS: EQUIPMENT LAYOUT FOR PRE-RECORDING TESTIMONY

Figure 3a



HUTCHINS: COURTROOM PLAYBACK LAYOUT

Figure 3b

during recording in Florida v. Hutchins is listed at Appendix B.⁵

Time required for video recording this testimony was 35 minutes. Once underway, taping was continuous; counsel conducted direct, cross, redirect and re-cross examination of the witness as if they were in court. Questions objected to were answered fully by the witness; the equipment operator simply noted and indexed them in a log book.

Although adequate, the seating arrangement was less than ideal because participants were required to seat themselves around a circular dining table in rather cramped quarters. Minor problems which arose included: added lighting caused defense counsel discomfort; background noise from a nearby room air conditioner was strongly amplified by the automatic gain control (AGC) on the VTR until the air conditioner was turned off; incidental noise (airplanes overhead and resonance through the table being used) was also picked up and amplified by the AGC causing occasional mild distractions in the audio portion of the tape during playback.

On December 7th, the court reviewed the video tape and ruled on motions and objections. State and defense counsel, defendant, and equipment operator were present. The defense counsel once again objected to the use of the video medium. The video record was ordered to be edited in accordance with judge's rulings; in response, staff prepared an edited version of the video taped testimony. Sustained objections resulted in deletion of legal argument and the objectionable response, but the question objected to or the

5. All cases, summarized in an abbreviated chart form at Appendix B, are listed within application by state.

objection itself was retained. Overruled objections resulted in deletion of legal argument only.⁶

The edited version (original was kept intact) of the video record was presented at trial on December 8th. After opening arguments and the testimony of two prosecution witnesses (two police officers), the edited video tape was played for the jury, using the equipment layout shown at Figure 3b. Although only one large and one small TV monitor were used for courtroom playback, the courtroom was small and had enough easy viewing angles to avoid the need for additional monitors for the public.

The video testimony lasted 32 minutes, after which defense counsel moved to recall the video taped witness because of testimony obtained from an earlier witness. This motion was denied, as was a defense motion at the end of the trial calling for a judgment of acquittal. The four-woman, two-man jury deliberated for one hour prior to returning a verdict of guilty, whereupon the court sentenced Hutchins to ten months in jail, to be followed by three years of probation.

Participant Comments

Participants were surveyed, both immediately after participation in the trial and later by letter. Commenting about the video recording of his testimony, the criminalist witness stated that, for him, this use of video technology was quite effective because of his

6. This method, although paralleling what would be done at trial, allowed the jury to be influenced by the question. Subsequent editing for project recording eliminated the question objected to and the objection itself, in addition to legal argument and the objectionable response.

unavailability at time of trial. Advantages cited were: elimination of hours of witness waiting time outside a courtroom; elimination of the need to have all witnesses physically present at one time; and the capability offered to a jury to see the exact testimony or portion of testimony given earlier, as is desired. Disadvantages were: the witness could not be recalled if a juror or the court desired further clarification or explanation of a point; and the witness loses some personal interaction with the jury by being viewed via video tape instead of live.

This criminalist, who had been called on to testify in court hundreds of times, thought that video recording would be effective for expert witnesses whose testimony was not lengthy or made complex by introduction of numerous items of physical evidence (e.g., fingerprint experts, chemists, firearms examiners); he did not think it would be effective when long and involved procedures needed explanation and illustration.

Juror comments indicated a generally favorable impression of this application of video recording; the central advantage cited was a time savings to themselves, the court, and both counsel. One even stated that the testimony given on video tape was more clear and understandable than the live witnesses' because the voices of live witnesses tended to drop below an audible level at some points. (It is interesting to note that the juror failed to request a repeat of inaudible live testimony.) Jurors emphasized that the preliminary explanation given by the court was excellent and critical to their understanding of what was about to transpire on video tape.

Jurors stated that: in comparison with live testimony given at trial, the video testimony was good; the video tape satisfied the jury's need to see facial expressions and gestures of witnesses, and gave a clear picture and understandable audio in an uninterrupted flow that contributed to concentration. The existence of edit points (sudden shifts in scene) on the tape did not influence their thinking; and it would have been preferable to delete sustained objections and edit points because they sometimes caused confusion.

Jurors added that tape integrity was enhanced by the fact that the second hand of a clock could be seen continually, and that the presentation was not too long. Jurors felt that they should not be required to view video testimony for longer than an hour without a short "stretch" break to rest eyes.

Several jurors indicated that the video taped criminalist would not have been any more or less effective even if presented live. One juror stated that video pre-recording of testimony should be restricted to impartial or expert witnesses who have nothing to gain from the outcome of the case and who are in no way acquainted with the defendant. This juror would want a witness-defendant confrontation in court in the presence of the jury if the witness knew the defendant.

Comments from Judge Goodman in Hutchins revealed a favorable attitude toward pre-recording testimony. In the Judge's opinion a video tape recording is interchangeable with a witness' live testimony. He predicates this on the Hutchins experience, saying that Hutchins showed that a jury can get a satisfactory amount of

demeanor evidence from a video taped witness. The procedure using video tape flowed smoothly into normal trial procedure, and use of video in no way lessened the significance of demeanor of witness nor affected any other rights of the defendant. He suggests that the contention by some that a jury cannot completely or properly ascertain the attitude of video taped witnesses is without foundation, as demonstrated by Hutchins. Concluding that the video presentation was effective and edit point distortions well within reasonable bounds, he underscored the importance of making clean edits to avoid distracting interruptions.

The biggest advantages from video recording, in the view of Judge Goodman, are a considerable reduction in required continuances, and a flexibility given the court to allow trials to proceed in the absence of witnesses. These advantages accrue only if uncomplicated and expeditious video procedures can be promulgated. Consideration must be given to development of procedures for impeachment and questioning on new matters which have come to light subsequent to the video recording.

The assigned Assistant State Attorney commented that use of video tape represented a time savings to him. He was able to proceed with the trial as originally scheduled. He also stated that, given careful guidelines, use of video technology in criminal cases could be a beneficial tool for both prosecution and defense.

Defense counsel comments were generally opposed to wide use of video pre-recorded testimony for criminal cases. Defense counsel

contended that at least the Hutchins use of video results in violation of the Constitutional right to confrontation because confrontation at trial before a jury does not occur. Defense counsel opined that the use of the video medium, especially when defense planned to affirmatively attack a witness' testimony, would be somewhat cold and indifferent because the video medium does not offer the capability required for visual interplay between witness, defendant, and jury.

Defense counsel did not think that witness credibility was in any way affected by the video medium; that time and money savings could accrue from its proper use, and that what defense considers to be a limitation may be considered an advantage by the state. A disadvantage seen in this instance was that the confined quarters (living room table) in the recording environment limited movement and offered no relief from heat. The ability to create rapport with the jury was more difficult to achieve than would have been the case in a live setting in the courtroom. Defense counsel suggested use of more cameras or even color equipment to allow mobility and overcome the coldness of black and white reproduction. Larger screen size (or several screens) for the jury was also mentioned as an area where improvement could be made.

The case of Hutchins v. Florida was appealed to the Third District Court of Appeals of Florida. The appeal raised the sole issue of whether the trial court erred in ordering a video tape of the testimony of the state's main witness, and in permitting that video tape to be played at trial to the jury in lieu of the live witness. This

action is purported to have deprived the defendant of his Sixth Amendment right to confrontation and cross-examination, effective assistance of counsel, and fair trial, and deprived him due process of law as guaranteed by the Fourteenth Amendment.⁷

The outcome of the Hutchins appeal has special importance for potential criminal court users of video pre-recorded testimony. The recorded testimony was central to the case, in that it established the corpus delicti of the crime charged. Appellate court resolution of issues raised will establish criminal case law precedent for accepting or rejecting use of video tape to perpetuate trial testimony by means of pre-recording, and will have a direct bearing on the legality of video pre-recording testimony of unavailable expert witnesses. For further information regarding the flow for this case appeal, the reader is referred to Appendix C for a discussion of the organization and jurisdictional authority of the Florida Courts, and to Appendix D for a graphic illustration of case processing flow on appeal in Florida.

2. Colorado

People of Colorado v. Steven P. Martinez involved charges of assault with intent to murder and assault with a deadly weapon. This case included the presentation at trial of the pre-recorded video deposition of an unavailable victim.

On February 7, 1973, the Honorable Zita L. Weinshienk, Judge of District Court in and for the City and County of Denver, granted

7. The Third District Court of Appeal, in an opinion issued November 6, 1973, upheld the trial court in Hutchins. The case is now on appeal to the Supreme Court of Florida.

the state's motion to take a video tape deposition of a witness, John H. Folks, who was confined to a respirator and unable to respond to a subpoena.

In its pre-trial order, the court ordered that the video taped deposition be taken in the hospital room of the victim on March 2, 1973. The manner of taking was to be by video tape, in the 1/2 inch EIAJ-1 format. The preservation, possession, and control of the completed video tape, was the responsibility of the video tape operator, until filed with the court; proper measures for securing and preserving completed tapes were to be taken as required.

All motions and objections were ordered to be made on video tape during the deposition, and the witness was ordered to answer all questions, with the court to rule on any motions and objections that same afternoon in the presence of the assigned Deputy District Attorney, the assigned defense counsel, the defendant, and the equipment operator. An edited tape, made in accordance with court rulings, would be preserved by the operator until time of trial, at which time both the intact master tape and the edited copy would be turned over to the clerk of court. Ordered present for the recording were: both counsel; the witness and his attending hospital personnel; the defendant and attendant security; a video equipment operator; and a designated notary.

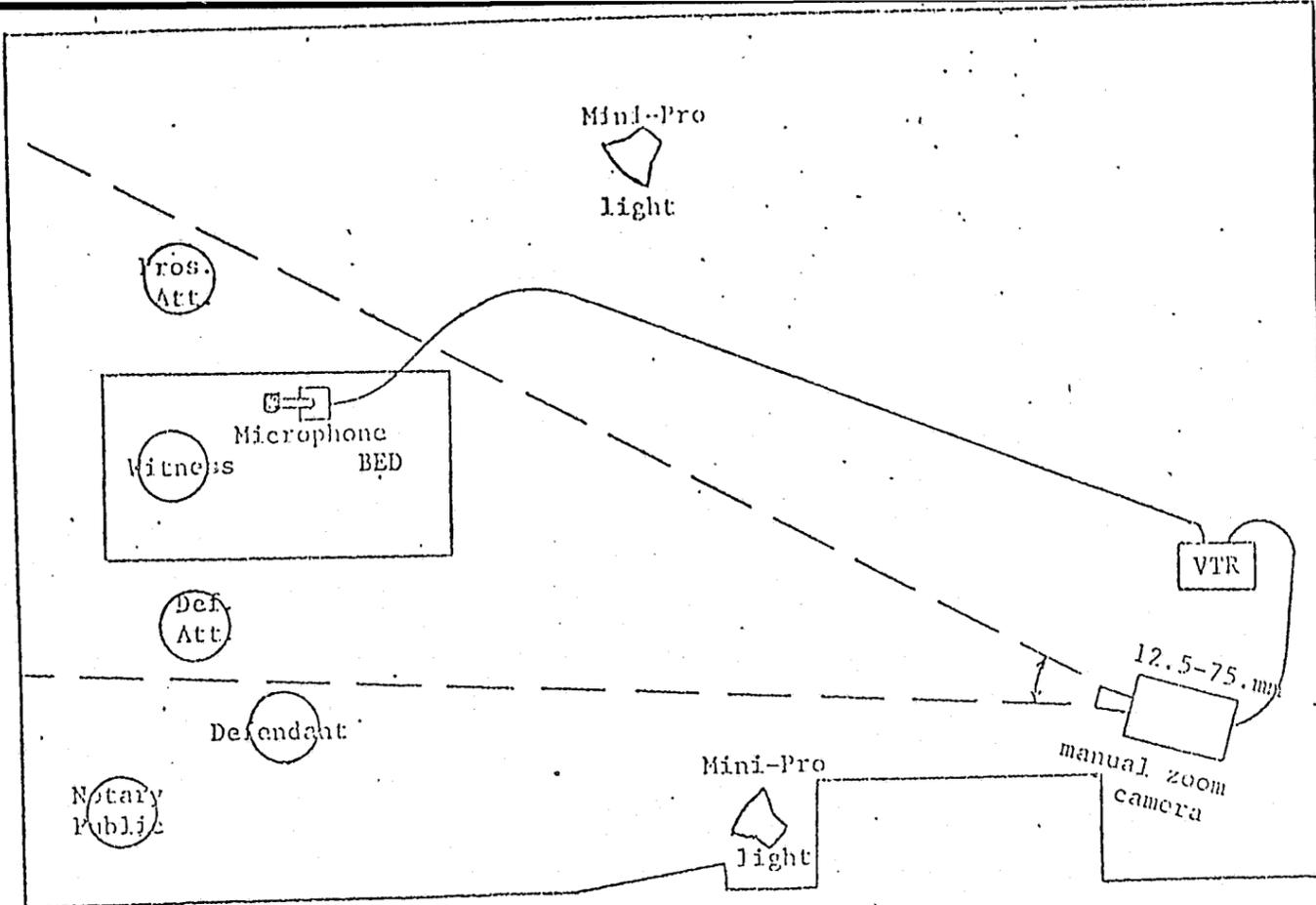
Video recording equipment was set up in 15 minutes inside the hospital room of the witness on the morning of March 2nd. Portable lighting was added to provide good contrast in the subdued lighting of the hospital room. A single camera with a zoom lens, manually controlled, was used to identify individuals at the beginning and

end of testimony, and to shift from one speaker to another at appropriate times during conversation. During the deposition, primary scene emphasis was placed on witness and both counsel, with secondary emphasis and camera shifts to other speakers as they interacted with the main trio. The configuration and equipment layout used is shown at Figure 4a.

Video recording of the deposition began at 10:20 a.m. but was interrupted after approximately 12 minutes because the witness signaled that his throat was becoming very dry and needed moisture. The video equipment was stopped long enough for a nurse to administer to the witness. Taping was resumed and except for the one interruption, concluded after approximately three more minutes of videotaping.

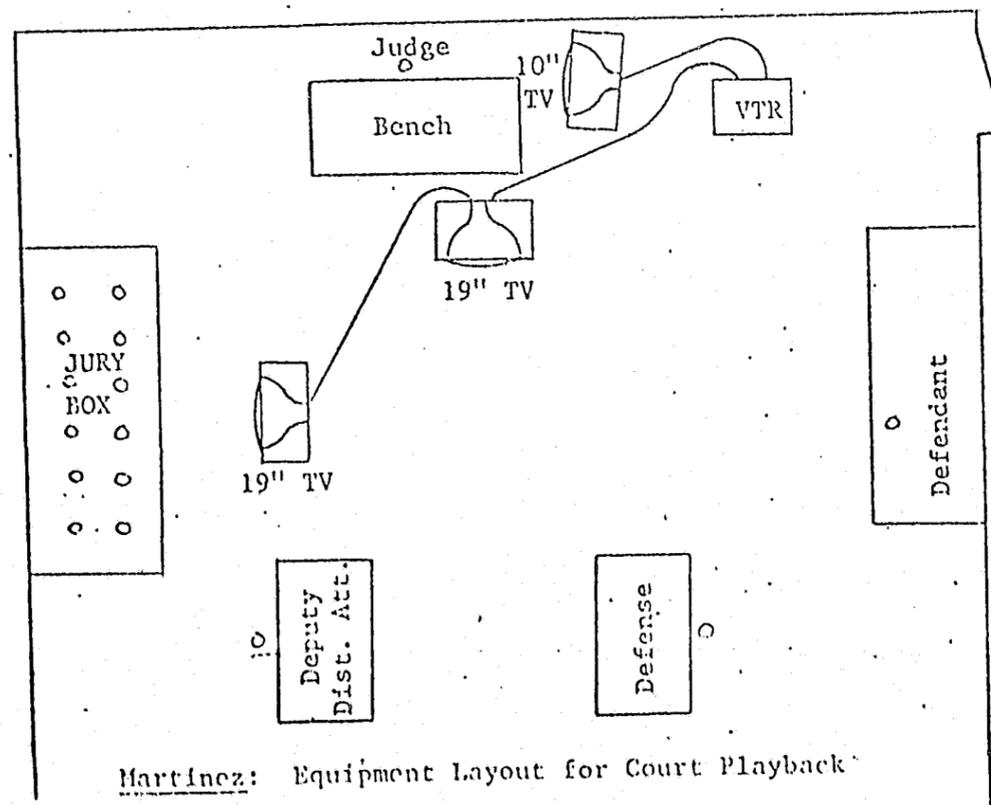
The digital counter on the video tape recorder was used to index events (in lieu of a clock or timing device). This method worked smoothly in this instance because total recording time was short, no "tight" edits were later required, and the original tape was duplicated and played back on the same brand equipment.

From a technical standpoint, the witness' respirator caused difficulty by creating a constant audible background noise which was picked up by the microphone and amplified by the AGC on the VTR. No attempt was made to screen out any part of the sound since it was considered by both counsel to be an integral part of the scene being video recorded. Although constant and quite noticeable on playback, this noise did not prevent listeners from understanding conversation. One additional technical difficulty occurred. The added lighting was not diffused enough to eliminate shadows--because



Martinez: Equipment Layout for Pre-Recording Deposition

Figure 4a



Martinez: Equipment Layout for Court Playback

Figure 4b

of restrictions on where the lighting could be placed.

The video tape was shown in Judge Weinshienk's chambers that same afternoon. Since neither counsel had made any objections, Judge Weinshienk simply reviewed the video record itself. Neither attorney objected to use of the video medium, and both stipulated to the reliability, integrity, and accuracy of the medium. At the review, defense counsel requested deletion of the portion of the record which showed the witness asking that proceedings be stopped. The court thereupon issued instructions for removal prior to playback at trial.

On March 13th, the video tape was shown to the jury. At trial, both counsel stipulated as to the accuracy, reliability, and integrity of the video tape deposition, and to the expertise of the operator and chain of control. The equipment layout shown at Figure 4b reflects the courtroom playback used at this time. On March 19th, a jury of seven women and five men returned a verdict of guilty to two counts of assault with a deadly weapon, in lieu of the original charges of assault with intent to murder and assault with a deadly weapon. The video tapes, turned over to the clerk of court after showing at trial, became a part of the court record. Specific equipment used to record, edit, and play back this video recorded deposition is listed at Appendix B along with a summary of the case.

Participant Comments

Comments included a statement by the witness that he was pleased to be able to give his testimony, and that being video recorded did not bother him.

Juror reaction was favorable. All thought the video deposition effective, and were of a mind that the background respirator noise

was necessary, despite being initially distracting. Most indicated they preferred this method of presentation for this particular testimony; the witness was spared the difficulty of attending court and his deposition did not have to be read. All jurors were sure the use of the video medium in no way affected their thinking, and that witness credibility was able to be satisfactorily ascertained from the video tape.

Judge Weinshienk, the trial judge, commented that the quality of the recording was quite good; its use demonstrated quite well the ability of the medium to bring to court testimony which would otherwise be unavailable or available only in cold transcript form.

The Deputy District Attorney indicated that the medium had been most helpful in presenting rather difficult testimony to the jury. This counsel expressed the opinion that the video tape fairly and accurately portrayed the testimony of the witness/victim, and gave the jury the opportunity to see the full impact of the alleged crime.

The defense attorney also indicated that the video medium had been helpful in presenting this difficult testimony, and that it fairly and accurately portrayed the witness' testimony. This counsel expressed the opinion that this video recording was neither helpful nor harmful to his client; his defense was that the event did occur, but that his client was not responsible.

The video testimony in Colorado v. Martinez is currently not at issue in the appeal being taken in this case. Video recording

had been stipulated to by both counsel, and the issues on appeal are other than video. However, it is possible that the appellate court will review and comment on it by obiter dictum. The appeal currently rests in the State Supreme Court, with appeal not yet perfected. This case represents the first Colorado use of video technology to pre-record deposition testimony in perpetuation of trial testimony, for presentation at criminal trial. A summary of the organization and jurisdictional authority of Colorado courts is located at Appendix C, while a flow-chart description of the appeal process is located at Appendix D.

3. Kentucky

A third project case involved video pre-recording testimony in the case of Kentucky v. Edgar Hull, Jr. In this case the testimony of a victim (auto owner) was pre-recorded for presentation at the trial of a defendant charged with auto theft.

Approval for recording was obtained from the Honorable Henry Miggs, Judge of the Franklin Circuit Court, Frankfort. Judge Miggs gave approval for both this presentation of pre-recorded video testimony, and video recording of the trial proceedings for use as the official record. For the pre-recording application, the prosecuting attorney, with the concurrence of the defense counsel, gave approval for the video taping of the testimony of one State's witness as a demonstration of the video medium's capabilities.

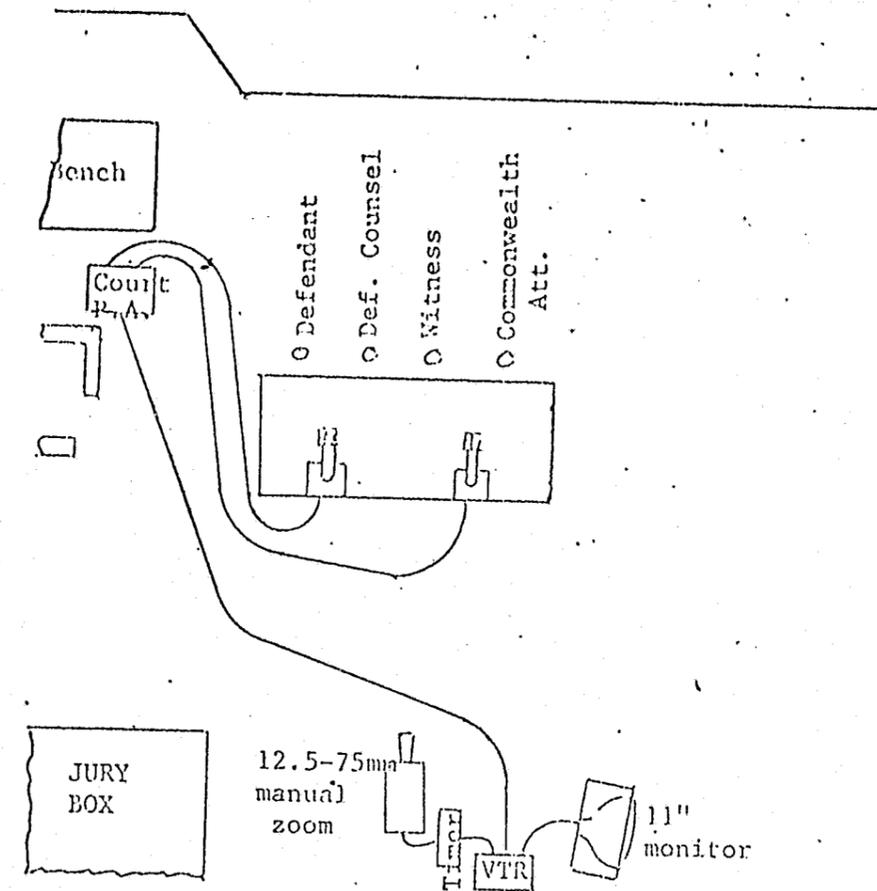
On the morning of June 27, 1973, video recording equipment was set up in the courtroom of Judge Miggs. Present for the video recording session were: prosecution and defense counsel, the witness, the video equipment operator, an official court reporter, a notary, and the

judge. Judge Miggs was present to observe proceedings and rule on motions and objections as needed.

Approval for video recording had included the requirement that a court reporter also be present and take the proceedings. This was accomplished by means of connecting the reporter's audio cassette recorder into the VTR, such that the audio track of the video tape was simultaneously recorded onto the court reporter's audio tape. The Judge was present to observe proceedings and rule on motions and objections as needed.

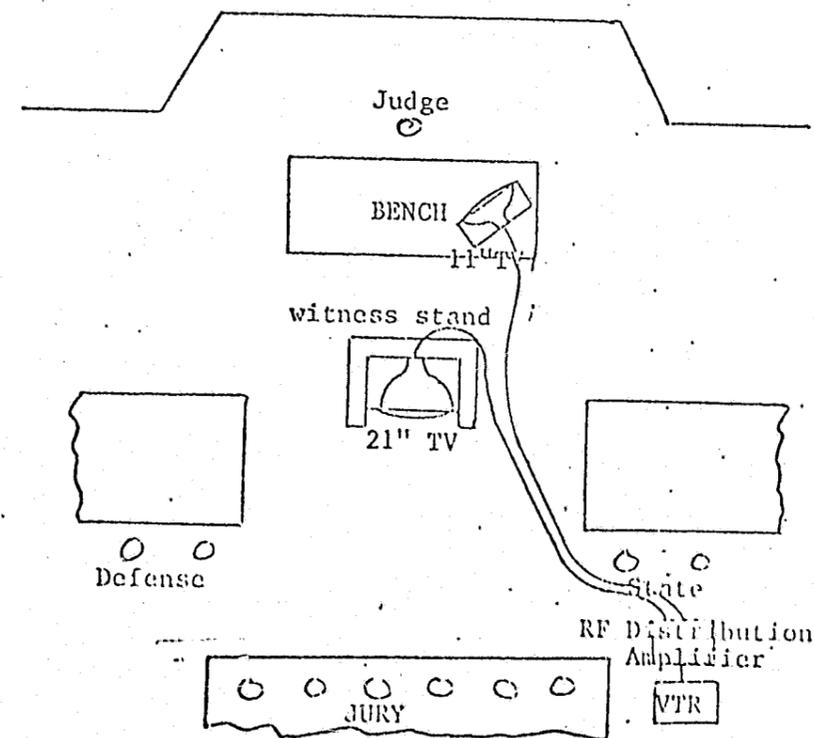
Recorded testimony lasted about 15 minutes, with one major objection edited out at time of recording. The editing procedure used was to immediately re-record over objectionable material as the judge issued rulings sustaining objections. Using this procedure, the video tape was able to be immediately edited for presentation to the jury, while still preserving on audio tape the original objections, ensuing legal argument, and judge's ruling. This procedure resulted in a single edited video tape for presentation to the jury; however, no original untouched video tape was available. This method would not have been employed if an audio track had not also been simultaneously recorded.

From a production standpoint, the recording environment was marginal at best. Available light level in the courtroom was low, and courtroom acoustics were poor; audio and video quality suffered as a result. The equipment layout used to record testimony in this environment is shown at Figure 5a.



Null, Jr.: Equipment Layout for Pre-Recording Testimony

Figure 5a



Null, Jr.: Equipment Layout for Court Playback

Figure 5b

At trial, later that same day, the edited video tape testimony was presented to the jury as shown in Figure 5b. The pre-recorded testimony established ownership of the stolen auto and the circumstances of its recovery. At the conclusion of the trial, the jury returned a verdict of not guilty; thereby eliminating any possibility of review and comment by the Court of Appeals of Kentucky. A summary of Hull, Jr., including a list of video equipment used is at Appendix B.

Participant Comments

Reaction of participants, obtained immediately afterward, were reserved.

Jurors accepted the video tape presentation with little reaction. Most agreed that the quality of the recording was not as good as it should have been, but that this defect did not prevent them from obtaining necessary facts and witness demeanor.

The judge also indicated that quality of the recording was not as good as it should have been; he thought tape quality suffered because of his courtroom's poor public address system and low light level. The judge, cooperative but cautious, suggested that it might be desirable to have a court reporter available as a backup until the system proved itself.

The Assistant Commonwealth Attorney assigned to the case, like the witness, had no comment.

The defense counsel said video tape was not effective in this instance because the witness was immediately available for trial, but it did show that the medium could be used. He thought the medium would be extremely effective in presenting unavailable and expert witness testimony, especially the testimony of local crime laboratory

experts. It is interesting to note that, although the defense counsel had agreed to the video taping only under the circumstance that a court reporter be present, he did not object to use of the video system to generate the reporter's audio track.

This application represented the first Kentucky use of video technology to pre-record the testimony of an available lay witness and then present it at criminal trial.

B. Pre-record Evidence

Evidentiary applications of video technology were conducted in cases in Missouri, Georgia, and New York. The case application in Missouri resulted in video taping of a suspect's statement at police headquarters, whereas the Georgia and New York cases resulted in video taping of line-up identifications.

1. Missouri

While project staff was in Kansas City, Missouri, in mid-April, 1973, recording court proceedings, contact was made with the then Chief of the Kansas City Police Department, Clarence B. Kelly, who agreed to have his Department cooperate in selecting a felony charge which would lend itself to video recording.

On April 18th, police notified project staff that they were about to take the statement of a suspect in regard to a killing. Since recording of courtroom proceedings was occurring simultaneously, project staff retained a local video vendor to go to police headquarters and video record the statement for the police.

The statement of the suspect, Lionel Henderson, was recorded over a period of 50 minutes on the afternoon of April 18th. Present were a police detective, the suspect, and suspect's counsel. The suspect and his counsel were made aware of the fact that a video

record was being prepared in parallel with a typed record; both acknowledged the presence and use of video equipment. The equipment layout used for this effort is shown at Figure 6.

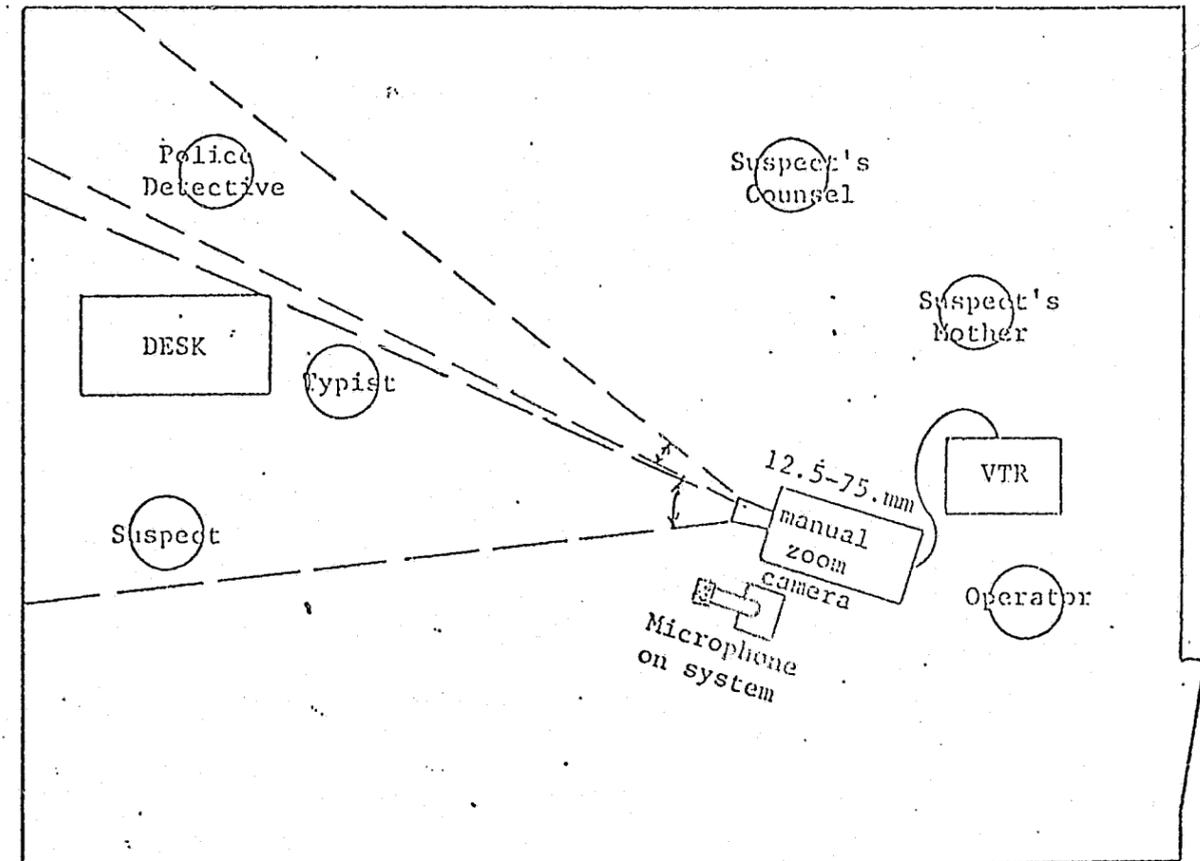
Because of a lack of prior knowledge about the recording environment, and due to the inexperience of the operator in recording legal applications, background noise picked up by the microphone at times almost completely drowned out the conversation of the suspect and interrogating detective. Typing noise was inherent in the recording environment because the police typist sat next to the suspect. Noise problems were compounded by poor microphone placement; the operator simply pointed the microphone in the direction of the speakers and typist. Individual microphones for each speaker would have screened out much of the noise in the situation.

Subsequent police investigation resulted in a charge of second degree murder being brought against the suspect. The case, Missouri v. Henderson, went to trial on June 26th, 1973, at which time the defendant plead guilty to manslaughter; this plea was accepted by the court.

Although this attempt to pre-record evidence did not result in an at-trial use of video, it did demonstrate the usability of video technology to record evidence, the need for well-planned recording procedures, and the fact that the defendant gave his statement to the police freely and knowingly. A summary of this case, including a list of the equipment used to record the statement, is shown at Appendix B.

2. Georgia

Georgia v. Webb-Roe involved the video pre-recording of a line-up identification of a suspect as evidence.



Henderson: Equipment Layout for Pre-Recording Evidence

Figure 6

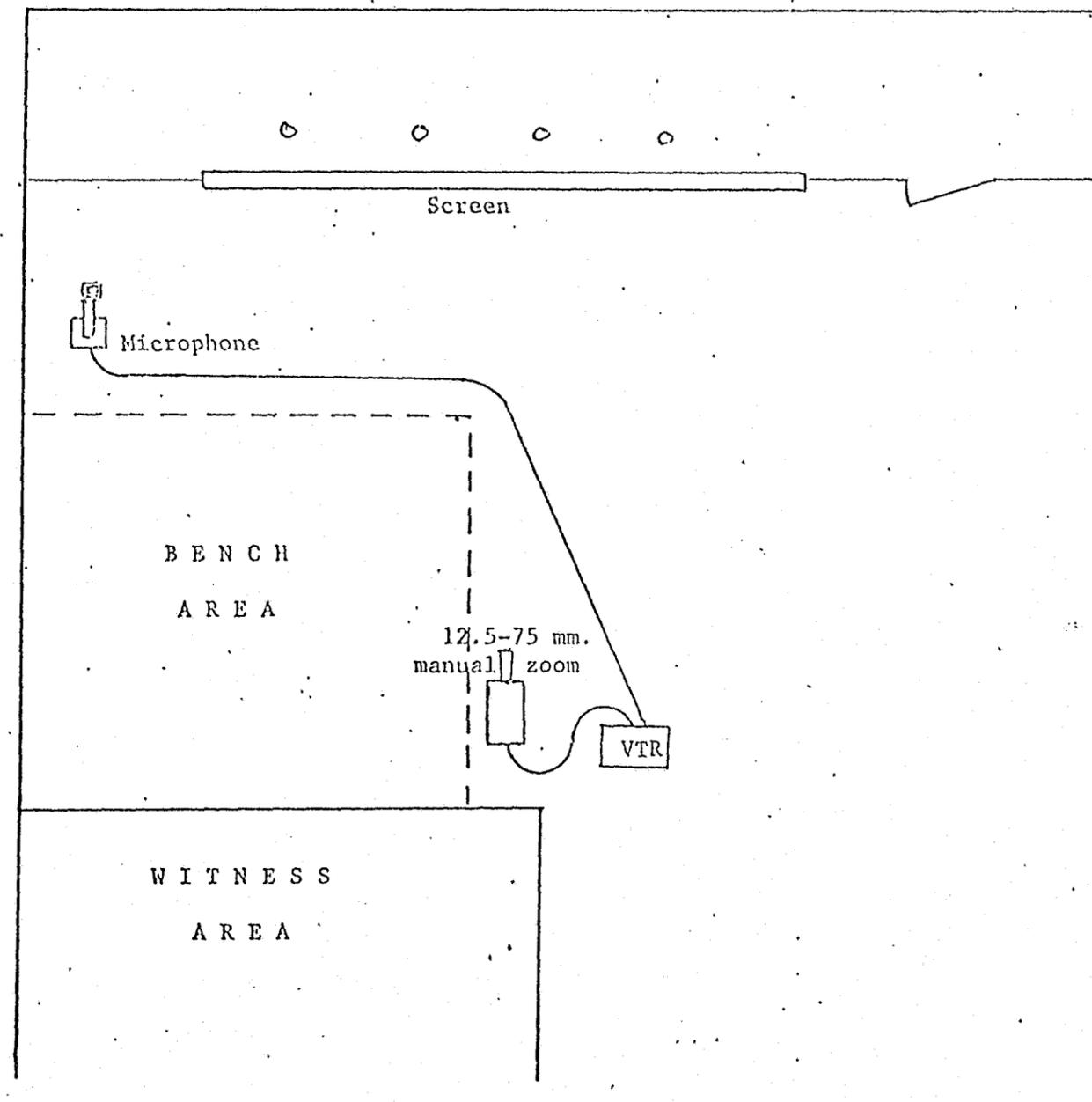
The Atlanta Police Department was contacted and offered video recording support for evidentiary purposes in the same manner as had been done in Kansas City.

On May 11th, the Atlanta police notified project staff that a line-up was to be conducted. Simultaneous recording of proceedings in Fulton County Superior Court in Atlanta precluded project staff from video recording the line-up, requiring that a local vendor be given the task. Equipment was set up to video record the line-up (Figure 7) at Atlanta Police Headquarters; present were a police investigative officer, the identifying witnesses, and the suspect.

A problem was encountered when the equipment had to be set up so far away from the men in the line-up that the single Porta-Pack microphone being used could not clearly and distinctly pick up all audio. The darkened nature of the room also contributed to less than clear video reproduction, thereby emphasizing the need for a special, low light level camera for this type of recording environment. The degradation of video and audio quality, while noticeable, did not impair use of the tape.

The identifications made at this line-up resulted in 17 counts of rape, armed robbery, burglary, and aggravated assault being brought against the suspect. The Assistant District Attorney assigned to the case was contacted and the video recorded line-up made available to him. He reviewed the tape and indicated a possible need for it at trial, depending upon defense strategy.

When trial date arrived on July 23rd, necessary viewing equipment was set up for courtroom playback; however, the prosecutor did not



Webb-Roe: Equipment Layout for Pre-Recording Evidence

Figure 7

see fit to enter the video tape as evidence. In a word of explanation after the trial, the prosecutor stated that since defense did not bring up or contest the issue of the line-up identification process, prosecution did not desire to open that line of inquiry. Other evidence assured him of obtaining a conviction.

Enthusiasm was expressed by the police department and the prosecuting attorney for this form of evidence presentation, especially in regard to line-ups and confessions. Defense counsel, however, indicated a mixed reaction to the video recording of evidence. He felt the potential for abuse was present, but with proper safeguards could be out-weighed by the potential for protecting a client's rights.

Summarized at Appendix B, which also lists the video equipment used, Webb-Roe was of value in that it was the first Atlanta Police Department use of video technology to pre-record evidence.

3. New York

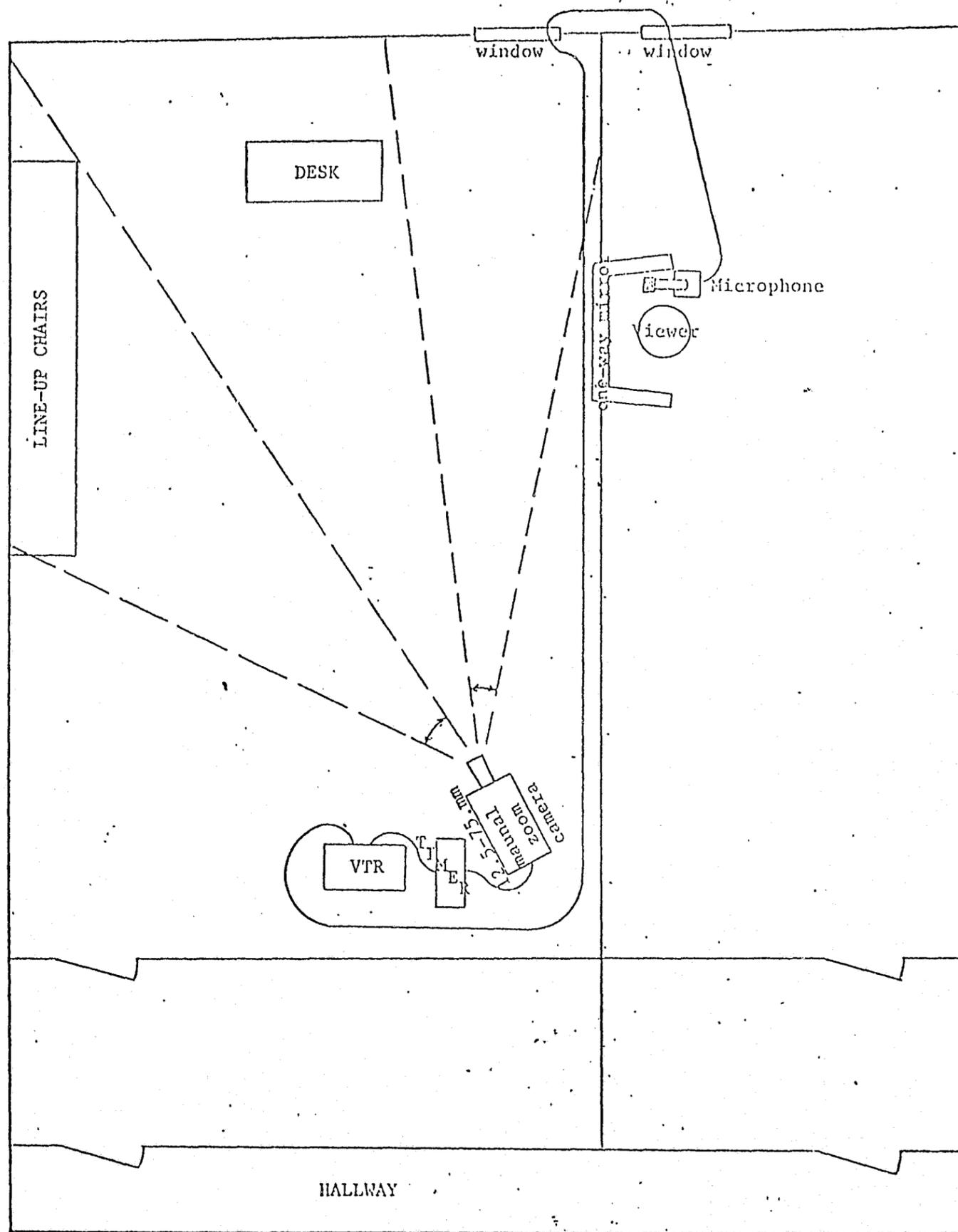
During the period May 31st to June 8th, 1973, seven separate suspects were video recorded in line-up situations in New York City. The Office of the District Attorney of the County of New York had expressed an interest in the medium because of recent problems encountered during Wade Hearing proceedings in the Supreme Court of New York City. The video medium was seen as a means through which the court could be given conclusive proof that the identification process used by the District Attorney's office was fair and conducted properly.

The line-up room in the District Attorney's office, where video equipment was set up, posed a special problem because the viewing area used by the witness was in an adjacent room, and viewing was

done through a small, one-way glass mirror between the two rooms. If the camera had been placed in the viewing room, unacceptably low picture contrast would have resulted. This situation was overcome by placement of the camera in the line-up room, off to the side but in line with the viewer on the other side of the mirror. A microphone connection was made to the viewing area so the identification conversation could be picked up at the same time the camera was recording the line-up. All line-ups video recorded here used the equipment layout shown at Figure 8.

As suspects were brought in for a line-up, the video operator established the identification of each individual by means of a close head and shoulders zoom. The camera also followed each individual as he passed in front of the mirror so that an identification made at that point could be coordinated with the audio.

Of the seven suspects for which line-ups were recorded: one had charges dropped, based on the lack of a positive identification during the video recorded line-up; three have trials pending; one has an investigation continuing; one was sentenced as a Youthful Offender on all charges; and the last plead guilty at trial (line-up was not used as evidence). Hence, four of the seven are already beyond the point (Wade Hearings) where video recorded line-ups would logically have been used as evidence in adjudication. All New York line-ups which were video recorded, including equipment used, are summarized at Appendix B. The structure and jurisdiction of New York courts is at Appendix C, and the flow for possible appeals is at Appendix D.



New York: Equipment Layout for Pre-Recording Evidence (Line-ups)

Figure 8
-61-

The prosecutors who cooperated in recording the line-ups expressed strong interest in the potential displayed by the video medium. Emphasis was placed on the value it would have in a Wade Hearing to establish the fairness and conduct of the identification process used during a line-up. Interest culminated in a request for evaluation of the design of a planned new line-up room, to accommodate the possibility of video recording.

In its evaluation, project staff suggested that no windows be included in future room design. The line-up room used during the video recording process was small, and had been modified for line-up use. This small size, while allowing the camera to record events satisfactorily, did cause awkward camera angles and lighting problems. Sunlight from a large window opposite the camera caused the camera's automatic light compensation (ALC) control to over-compensate and lose picture detail. This could only be overcome by complete shading of the window with a heavy, dark material, or by the elimination of the window in room design.

C. Pre-record Trial

The most difficult application for which to secure cooperation was video pre-recording of an entire trial for later presentation to a jury. Generally, neither court nor counsel were enthusiastic about the idea of pre-recording all testimony and evidence in a criminal trial. Aided by members of the Video Advisory Committee, project staff was able to obtain the cooperation of court and counsel in Vermont and California. Although it would have been easier to locate this application in Ohio, which explicitly

permits its use, this was avoided in order to break new legal ground in other states.

1. Vermont

The case of Vermont v. Moffitt, in which all testimony and evidence was video recorded and later presented to a jury, is of major significance. It has the potential for securing appellate review and comment in regard to the legal acceptability of using video technology for pre-recording all testimony and evidence in criminal proceedings. It is currently on appeal by the defendant, who has directly raised the issue of the use of video tape as the mechanism by which to present testimony.

During Spring, 1973, approval was obtained from John S. Morrisey, Judge of District Court Unit One, Bennington Circuit, Vermont, for the video pre-recording of Vermont v. Moffitt, a case involving the charge of driving while intoxicated, was selected.

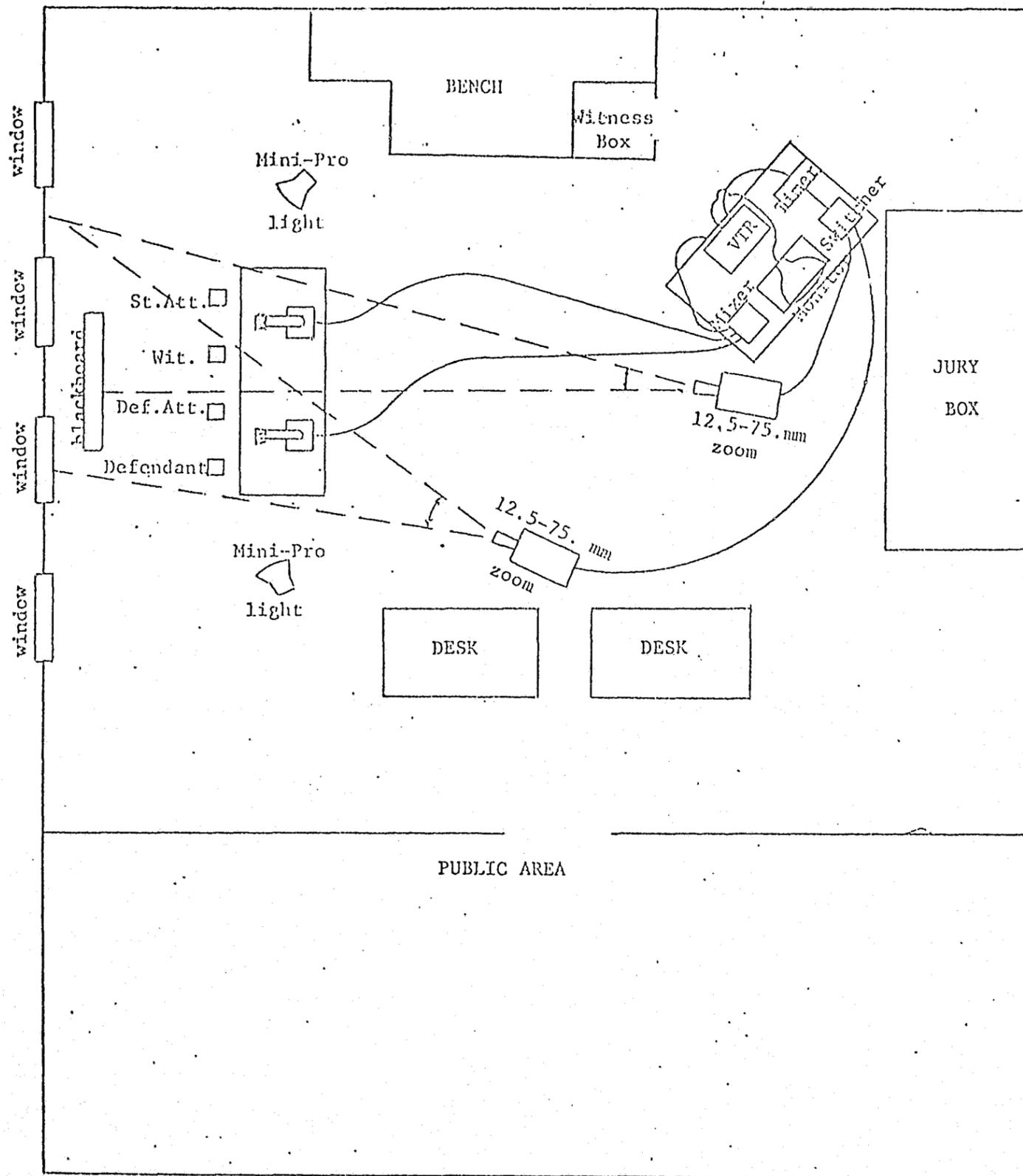
On the morning of June 18th, video recording equipment was set up in Judge Morrisey's courtroom; set-up time was approximately three hours. Vermont v. Moffitt required the video pre-recording of the testimony of three witnesses: a criminalist, a clinical pathologist, and a state trooper.

Video recording of testimony began at 2:00 p.m. on June 18th. Present were both counsel, the three witnesses, the video equipment operators, and a court reporter who administered the oaths in his capacity as a notary. For his record, the court reporter used an audio copy of all testimony, made off the audio track of the video tape.

Two cameras equipped with zoom lenses were used, with each being manually operated by one person. Cameras were frequently switched from a close-up shot of exhibits to views which included all participants, but zooming on participants was not used. Since at least one counsel and the witness were in the recorded scene at all times, because of the camera locations, simple camera switching was used to follow conversation. Available room lighting was inadequate for sharp contrast; therefore, additional lighting was added in the form of portable lights. An internal time/date generator was used as the reference base for indexing. The equipment layout used for pre-recording is shown at Figure 9a.

Staff observed that all equipment functioned well, but the use of additional lighting caused the area where the participants were seated to become uncomfortably warm. A lesser problem arose when voice levels varied more than anticipated; this sometimes resulted in a word of conversation beyond the pick-up range of the two microphones used and beyond the compensation ability of the automatic gain control (AGC) circuitry of the VTR. Other problems were outside radio frequency (RF) interference and some sunlight bleedthrough from the venetian blinds of the window facing the cameras.

By joint agreement, counsel held objections until questions were answered; this procedure was used to try to avoid unnecessary objections and to allow a slight pause for later possible edits. During recording, however, objections were frequent and much legal argument followed, resulting in often overlapping speaker conversations. The recording session resulted in two hours of testimony from the criminalist, and one hour each of testimony from the clinical pathologist and the state trooper.



Moffitt: Equipment layout for Pre-Recording All Testimony

Figure 9a

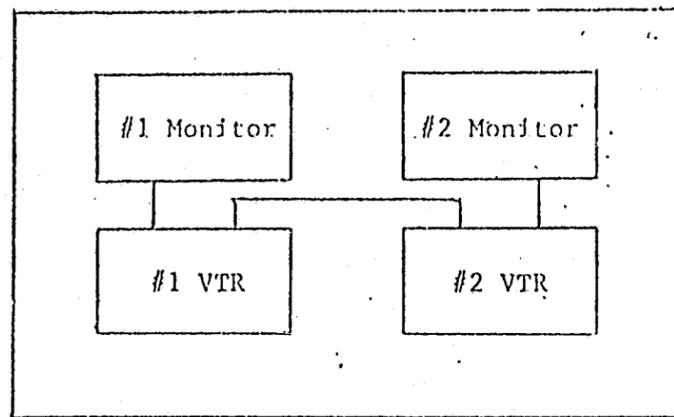
Objected to material was reviewed and ruled upon by the court the next day to allow editing prior to trial. The court directed that approximately 30 minutes of testimony and leading questions be deleted, this amounted to 19 individual edits on video tape. An important legal problem raised by this procedure is to determine how to adequately deal with objections during pre-recording which go to the form of the question (e.g., leading questions). A belated ruling does not necessarily provide the best solution here.

Editing and duplication of a second video tape was completed in accordance with court instructions by means of the equipment layout shown at Figure 9b.

At trial on June 20th, using the playback arrangement at Figure 9c, the jury was shown the edited video tape of testimony in Vermont v. Moffitt. By joint stipulation of counsel the order on the edited tape was adjusted to allow the testimony of the state trooper to be shown first, followed by the criminalist, and then the clinical pathologist. Opening statements, closing arguments, and the jury charge were live. Video testimony was presented over a period of three and one-half hours, with 15 minute breaks each hour. At the conclusion of the video recorded testimony, the jury deliberated and returned a verdict of guilty as charged (driving while intoxicated). A summary of the case and equipment used is at Appendix B.

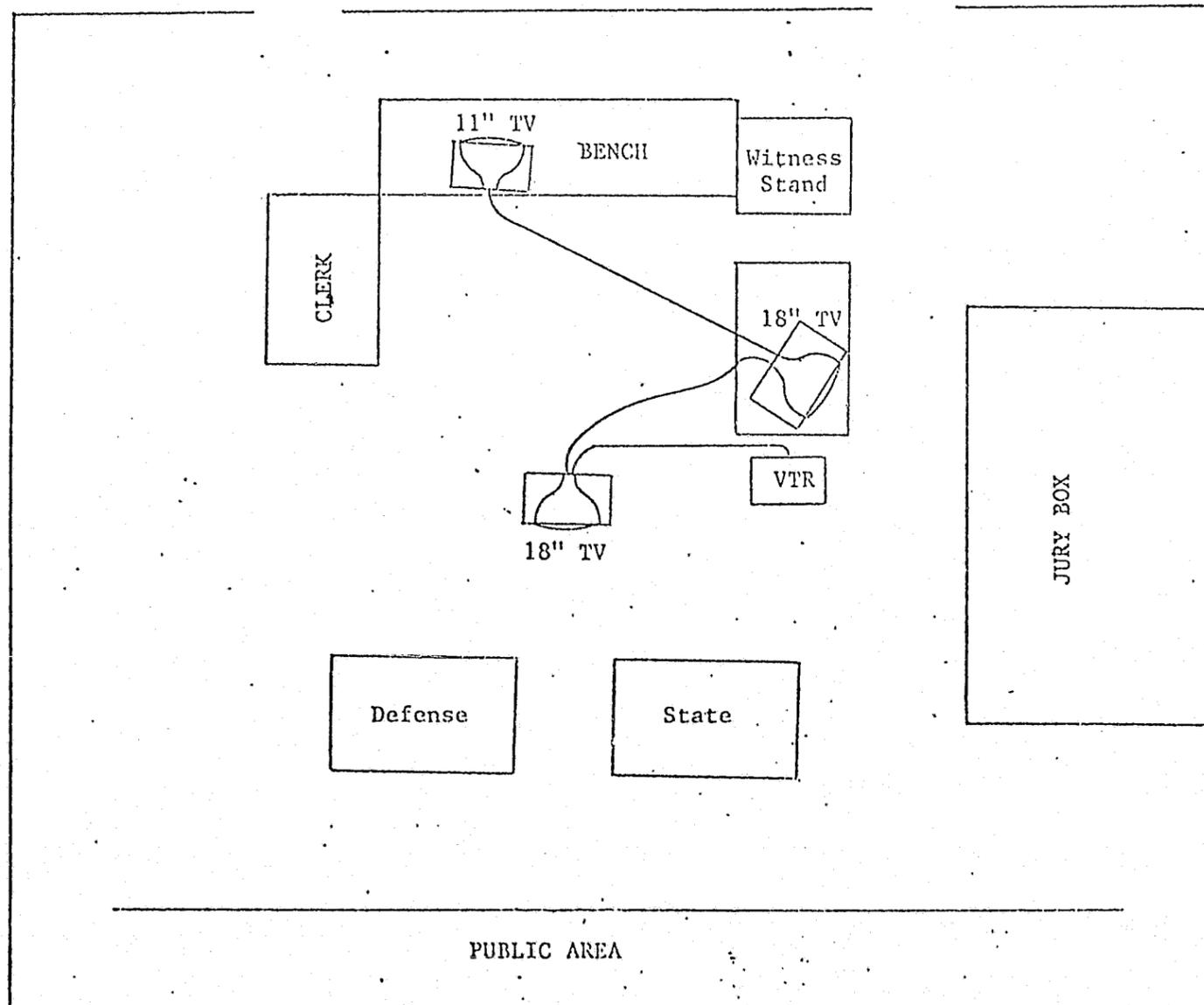
Participant Comments

The witnesses had no reservations about presenting testimony via video. The clinical pathologist added that it could be used to ease scheduling problems when he or the criminalist had a number of trial appearances pending.



Moffitt: Equipment Layout for Editing

Figure 9b



Moffitt: Equipment Layout for Courtroom Playback

Figure 9c

Juror reaction was generally noncommittal. The video method of presenting testimony was received attentively for the most part, but most jurors said that watching TV for an extended period under courtroom circumstances had been quite tiring because of the dissimilarity between it and home television. These jurors said the video medium did not affect their decision making, but did suggest that even longer breaks than the 15 minutes given each hour be considered.

The trial judge commented that video taping had saved the jurors about a half day's work, but at the expense of several more hours spent by attorneys and the judge for pre-recording and editing.

The prosecuting attorney commented that some personal contact had been lost by not having the jury present when questioning the witnesses. He thought this use of the medium had been effective, but had lengthened his questioning process because he wasn't sure which questions would be allowed; he had to cover this uncertainty by approaching a subject from several different aspects.

The defense counsel also indicated that some personal contact with the jury was lost through pre-recording. Further, he said he did not like to sit while questioning, and wanted to pace in front of the witness; sitting and having to object at the end of the question was unnatural for him, and had affected his method of trying the case.

The case of Vermont v. Moffitt is currently on appeal to the Supreme Court of Vermont. The public defender who stipulated to the original pre-recording of testimony is handling the appeal; he is appealing on the basis of the use of video recording, that stipulation notwithstanding. Defense contention is that the use of video tape

to pre-record the trial testimony deprived the defendant of his Sixth and Fourteenth Amendment rights.

The value of appellate review and comment in this case is two-fold for potential court users of video technology. First, it raises before the Vermont Supreme Court the issue of the legality of pre-recording all testimony in a criminal trial for later presentation to a jury. Second, it raises for comment the use of video tape as the record of proceedings on appeal. Since this is the first Vermont use of video tape to pre-record a trial in a criminal case, it will be followed closely and may significantly impact case law nationwide in this area. For an understanding of the organization and jurisdictional authority of Vermont courts, the reader is referred to Appendix C. The flow for the appeal in this case is shown at Appendix D.

2. California

Liggons v. Hanisko marked two significant departures from prior project recording. First, this case was a civil suit seeking damages for personal injuries resulting from an automobile accident; all other project recording concerned criminal cases. Second, extensive amounts of equipment were used in a studio location to do the pre-recording; prior pre-recording had been done on-site. The case is extensively discussed because of its relevance to criminal case applications.

In early March, 1973, several private counsel in California expressed an interest in video pre-recording an entire case's testimony and evidence for later presentation at jury trial. Although a civil suit, Liggons v. Hanisko offered several advantages: 1) it was in a California court, a state where pre-recording of all trial testimony

had not yet been done in either criminal or civil cases; 2) a civil case done by cooperative counsel offered procedural flexibility through the mechanism of stipulations; and, 3) the exposure generated by such an application would invite widespread review and comment.

Trial court approval was obtained, and due to the special video nature of the trial, the Honorable Robert F. Kane, Justice of the California Court of Appeal, First Appellate District, San Francisco, offered to preside.

Counsel entered into a joint stipulation which provided for: all testimony to be pre-recorded on video tape in the absence of judge and court reporter; the resultant edited video tapes to be shown at jury trial; and jury selection, opening statements, arguments of counsel, and instructions to the jury to be live.

Stipulated objection procedure required that objections be made after the answer to a question had been given or after the non-responsive answer, with the objecting party giving grounds for the objection at that point. All objections, including those to documents and other physical evidence were to be made at the time of pre-recording only, with events and objections being noted and indexed to a reference base.

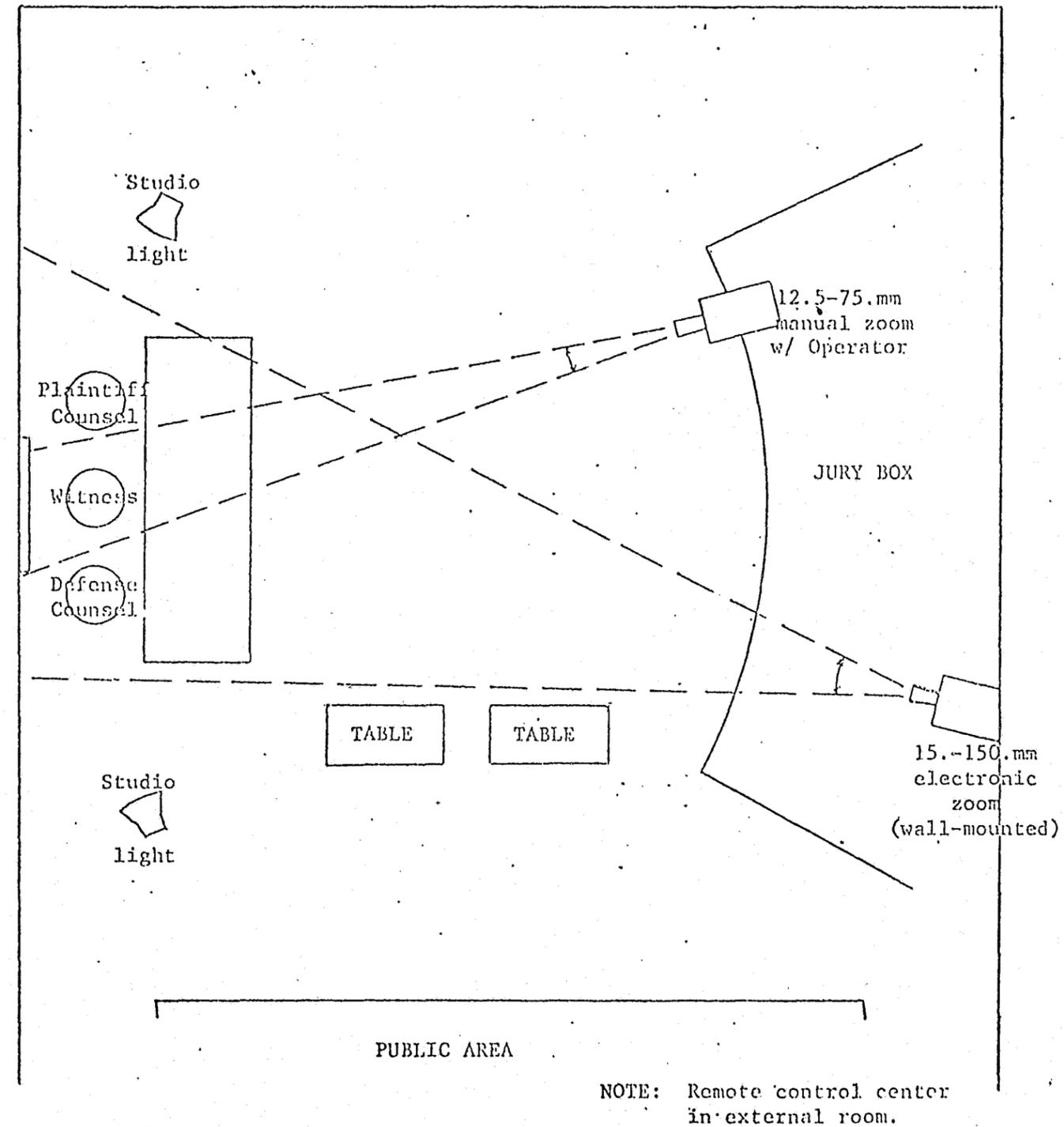
The parties agreed that, not less than 20 days prior to trial, each would file and serve a referenced list of objections made during the pre-recording which the party wished to urge prior to jury presentation, supporting each objection with a brief statement of why it should be sustained. Objections made during recording but not included on the list would be deemed waived. Not less than 10 days prior to trial, counsel for each party would file and serve a statement of reasons

for resisting each objection listed by his adversary, briefly stating his reasons why the objection should be overruled. Any objection made by his adversary but not referred to in the counter statement would be deemed to have had the non-objecting party withdraw opposition to the objection.

Parties further stipulated that the trial judge would rule on objections prior to trial, and issue edit instructions. Edits, whether by ruling of the trial judge or joint agreement of counsel, would delete references to objections, attendant legal argument, and in the case of sustained objections, the objectionable material. The clerk of court was to retain custody and safe-keeping of the video record and all physical evidence until the time for appeal expired without appeal having been taken; in the event of appeal, the video recorded testimony would be made available to the appellate courts for use in the manner they saw fit.

Pre-recording for Liggon v. Hanisko took place on July 9-10, 1973, at Hastings College of the Law, San Francisco. Using equipment as shown at Figure 10a, a total of approximately six and one-half hours of video testimony was obtained from the five witnesses in the case: the driver of the plaintiff's car, the plaintiff (Liggon), the defendant (Hanisko), a policeman, and a specialist in orthopedic surgery. Oaths were administered by one of the project staff, who had been deputized a temporary Deputy County Clerk.

Although the Moot Courtroom used possessed video capability (two pan and tilt control cameras mounted on the walls and remotely operated from a central equipment control center in a room across the hall), one of the available cameras was not used because of a



Liggon v. Hanisko: Equipment Layout for Pre-Recording All Testimony

Figure 10a

permanent "burn" spot on the Vidicon tube. Since the recording format normally used for Moot Court activity was one inch, whereas playback at trial would be employing one-half inch equipment, recording was done using one-half inch EIAJ-1 equipment.

From a technical standpoint, good contrast required the addition of studio lighting; fortunately, the room was large enough so that the extra lighting did not cause overheating. Noise from the room air-conditioner dictated use of a highly directional lavalier (worn around the neck) microphone for each participant.

Audio distortion was noted during the first day; trouble-shooting showed an impedance mis-match between the EIAJ-1 video tape recorder being used and the audio input from the Moot Courtroom audio system. This problem was easily corrected prior to restarting the next day.

Room constraints limited participants to a straight line seating configuration in which counsel were seated close to the witness, who was between them. Witnesses were observed to react to being seated close to an adversary counsel; during questioning witnesses tended to move their chair slightly away from the questioning adversary counsel. Also, two witnesses had a tendency to turn toward the questioning counsel; this sometimes resulted in the cameras obtaining only a profile view. Counsel reinforced the inadequacy of such close quarters by stating a preference for standing or at least being further away. A vee seating arrangement, with the witness at the point, would have minimized this problem. Editing differed from past editing in that a second, edited video tape was not made for the jury. Instead, the original video record was left intact and edits were performed at

trial by means of manually fast-forwarding through objectionable material (manual skip-editing). Jurors and other viewers heard nothing during these edits, and saw only a blur. Material to be deleted was identified by means of the case event log, which was indexed to an internal (on the video tape) time/date generator. A sample of the format used for the event log is shown at Figure 10b. Operator instructions for edits were keyed to the internal timer and the last acceptable phrase, as shown at Figure 10c. Using this method, 17 edits were made at trial; this amounted to deletion of approximately eight and one-half minutes of material.

Although effectively used in this case, experience with the use of this editing method identified two inescapable shortcomings. First, unless a court reporter or VTR records the courtroom playback scene, no tangible record remains of what was shown to the jury at trial because the original video tape is left intact and only portions of material which are supposed to be deleted are skipped. Second, there is always the danger that the operator will forget the edit or miss the edit exit or re-entry point, causing the jury to see objectionable material. Use of editing method requires close operator attention, and perhaps close supervision from the judge.

At trial on September 17-19, 1973, playback of pre-recorded testimony was accomplished using the equipment layout shown at Figure 10d. Jurors were given a 10-15 minute break at logical points during playback. Tape reels lasted from 45 to 65 minutes in length, with breaks after each reel. Seven tapes were presented, three on the afternoon of September 17th and four on the afternoon of September 18th.

Tape # 2 of 7
3 of 7

Start Pre-recorded in the Moot Court at Hastings College of Law, San Francisco

Court Convened (Time): _____ Date July 9, 1973.

Present: Deputy County Clerk Francis Taillefer

Case # 637-707 Case Title: Liggon VS Hanisko

Proceedings: Civil Damage Suit

Counsel Present for: Plaintiff Lucius A. Cooper Defendant Joseph W. Rogers, Jr.

Defendant: Present Not Present In Custody Not in Custody

Time	Counter	Event Description
11:02:07		Begin Reel #1; oath to Wit #1, James H. Liggon, driver of Plaintiff's car (Cooper)
11:03:25		Begin testimony of Wit #1, Liggon; Direct examination by plaintiff counsel
11:19:47		Defense Obj: question calls for legal statement of law on speed limit
11:20:17		Plaintiff & Defense stipulate to speed (25 mph)
11:45:56		Defense Obj: withdrawn (stipulation was to hold objections until answer completed)
11:56:49		Defense Obj: everything after "no" is a non-responsive answer
11:58:00		End of Reel #1; break for lunch

(cont.) 3 of 7
Tape # 4 of 7 Case No. 637-707 Date July 9, 1973.

Time	Counter	Event Description
15:29:21		Both counsel stipulate to AF lien of \$1896 out of any recovery by Main
15:37:44		Begin Cross-exam by Defense counsel (Rogers)
15:43:26		Stop testimony (pause in taping)
15:54:06		Re-start taping
15:54:14		Begin Re-direct; end Re-direct and Re-cross
15:54:30		End testimony and reel; Plaintiff rests case, subject to testimony of Dr. Samilson

EVENT LOG FORMAT
Figure 10b

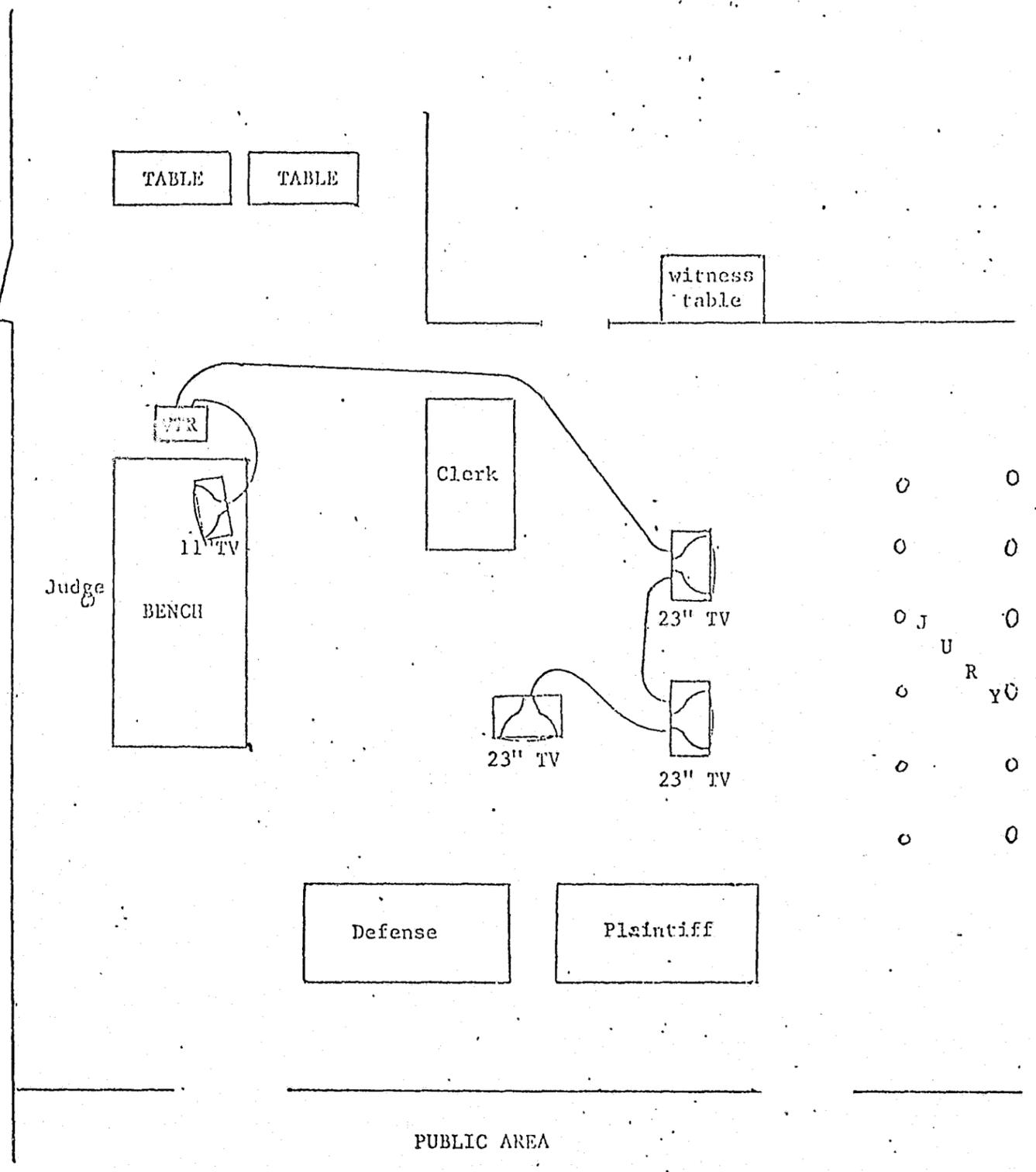
AT TRIAL

MANUAL SKIP EDITS
(September 17, 1973)

STOP	RESTART	COUNTER SKIP (SEC)	STOP PHRASE	RESTART PHRASE
REEL #1				
11:19:35	11:20:17	12 (42)	"... automobiles on Field Street?" (Lou Cooper)	"I would be happy..." (Joe Rogers)
11:45:56	11:46:12	3 (16)	"have in fact drawn it?" (Lou Cooper)	"Sure, it could be, this is an..." (James Liggon)
11:56:36	No. - R.R.	To end (86)	"No." (James Liggon)	None
REEL #2				
13:37:51	13:38:00	4 (9)	"... comparing himself at the time?" (Lou Cooper)	"He appeared upset..." (James Liggon)
13:38:13	13:38:35	9 (22)	"... you ran a red light?" (James Liggon)	"Now, from your observations..." (Lou Cooper)
13:40:12	13:41:17	27 (65)	"... so was Annie doing?" (James Liggon)	"Now, how did Lillian..." (Lou Cooper)
14:11:58	14:12:06	1 1/2 (8)	"... me to pinpoint specifically..." (James Liggon)	"Do you now recall..." (Joe Rogers)
REEL #3				
15:20:55	15:21:19	5 (24)	"... she was ill." (Lillian Liggon)	"When did your husband's..." (Lou Cooper)

OPERATOR INSTRUCTION SHEET

Figure 10c



Staff observed that the two playback monitors used for the jury had excellent contrast, and that the large-size (23 inch TV) was easy to view. However, the contrast and tone on the monitors for the judge and public should have been better adjusted. All monitors had been initially adjusted for picture and sound quality while the courtroom was empty; they required additional adjustment during trial to satisfy respective viewers.

During playback it was noted that overhead courtroom lights were reflecting off the monitor used for the public; the problem was corrected by reducing room illumination by one-half. The audio on tapes pre-recorded prior to correction of the impedance mis-match sounded slightly "boomy" during playback until a tonal adjustment was made; the audio on later reels was crisp and clear. It was also noted that pre-recorded video testimony allows all jurors to obtain the same relative perspective; by placing monitors at equal distances and heights from the jury, while setting tone and contrast controls to be as nearly matched as possible. Such balance cannot be obtained with live testimony because not all jurors get an equal view.

On the afternoon of September 19th, court reconvened to hear live closing arguments and the jury charge. Upon deliberation the jury found a verdict for the defendant, awarding no damages.

Participant Comments

A survey of witnesses indicated that the policeman and the orthopedic surgeon were quite enthused about the video medium's time-saving potential for them. The involved parties and the witness who was plaintiff's driver had no comment other than that it was interesting.

Liggons v. Hanisko: Equipment Layout for Courtroom Playback

Figure 10d

Jurors had mixed reactions. All stressed, however, that the use of video testimony in lieu of live testimony did not in any way affect their ability to weigh the evidence and facts and come to a decision. Several jurors indicated that: it was harder to concentrate on a TV witness than a live witness; the period of time between breaks should have been shortened because it was hard to watch TV for a long period of time; and, it was difficult to absorb, meaningfully, all information when presented in such a compact and unbroken sequence.

While favorably inclined to use of the video medium in courts, most jurors indicated that they felt the human element was missing in an entirely pre-recorded trial. Some jurors said it would be hard to watch a long trial of this nature on video tape, because it would become boring and tend to drag. Many thought it acceptable to video tape expert and non-contestant type testimony, but that they would prefer to have live testimony for the principals to the action and for the key and involved witnesses.

One juror stated that compared to live testimony, witness credibility was harder to estimate through television because of lack of eye contact. This juror also thought that more close-ups would have been desirable, to gain more facial expression, but did not want to lose the ability to see both the witness and questioner (there is a trade-off here between distance, scene width, and detail).

Another juror was initially reluctant to sit on the jury because he thought video would be ineffective, but he changed his mind after viewing the testimony. All jurors agreed that the time/date numbers superimposed on the picture were not distracting and, to the contrary,

were a reassurance of the integrity of the video tape.

Justice Kane, the trial judge, commented that video and audio quality were very good, aside from portions that preceded the in-courtroom adjustments to monitors. In his opinion, there was no difficulty in judging a witness' credibility, and thought video pre-recording might be quite adaptable to: technical trials, Bench trials, the preservation of testimony, and presentation of testimony of unavailable witnesses.

The judge said that he saw little difference between giving live or video taped jury instructions, but that in any case the trial judge must see all testimony at least once to be able to issue proper jury instructions and rule on motions for new trial. He did not think it would be good for the judge to be gone during playback at trial, even if he had seen the tape prior to trial.

Justice Kane stated that, in his opinion, one striking feature of this type of trial is the lack of an element of "human osmosis". He added that a question for resolution is whether this factor (emotional rapport) is important to a case where video pre-recording the trial is being contemplated. He cited defamation, libel, or slander suits as examples of cases where the use of video would be less effective than live testimony.

Justice Kane commented that a video record appeal could be handled much the same as a written appeal, with a written brief to point out and support the objections and rulings relied on as error. The enumeration of claimed errors would necessarily specify the pertinent portions of the record by means of an index. Since one justice is assigned to each case (California), he or his law clerk could view the record

as needed. If a question arose as to the weight of the evidence, the justice's law clerk would view the entire record to develop a preliminary position; the justice would then review the position taken and change it as needed.

The plaintiff's counsel reflected that his normal courtroom strategy was not affected by use of the video medium, and that the pre-recording procedure yielded three significant advantages: 1) accurate schedules could be set; 2) trial testimony was known prior to presentment at jury trial, 3) much time, effort and expense could be saved if it became necessary to re-try the case, particularly if it was long or technical.

This attorney thought that video recording, with audio review, could remove the need for a transcript, but at the cost of increased time needed to review the record. He had spent extra time on review and preparation for the video recorded case; however, he added that this extra investment of time and effort was well worth the gain of knowing what the trial content would be because it enabled him to better prepare his opening statement and closing argument.

Plaintiff's attorney opined that the best use for video pre-recorded trials would be civil cases involving small and medium-sized dollar claims. His reason: he prefers not to lose the ability of establishing emotional rapport with the jury when larger sums are involved.

The defense counsel commented that his normal courtroom strategy, like plaintiff's counsel's was not in any way affected by use of the video medium, and that its use was quite effective for his purposes

in this case. To him, the ability to pre-record testimony relieves pressure from lawyers in case preparation, and considerable time-saving for the court and jury occurs, but both at the cost of extra preparation time for involved counsel.

Attorney time spent at trial would be the same unless an attorney chose not to be present while the jury was viewing the pre-recorded testimony, or unless he sent a lower salaried individual to monitor the presentation. The attorney would still need to be in court to make any live opening statement and closing argument, but prior knowledge of trial testimony would enable these to be of better quality than if trial testimony had been live. Time lost, mostly in listening to the audio track of the video record would be more than offset by gains in preparation quality.

Other advantages from video pre-recording were seen to accrue:

- 1) Witnesses and attorneys would be more relaxed in performing before a TV camera, in lieu of in a courtroom before judge and jury.
- 2) Unavailable witnesses can be presented at trial.
- 3) A more even flow of testimony is generated by the procedure of objecting to questions and answers only after the question has been answered.
- 4) A logical sequence can be produced by modifying the order of witness testimony.
- 5) Counsel can better select the type of person desired for a particular case.
- 6) Attorneys do not have to worry about the effect on the jury of making an objection.
- 7) An attorney's incentive to commit misconduct at trial is reduced or eliminated.
- 8) Attorneys can be more relaxed in the knowledge that error will not occur.

- 9) Settlement is likely to be encouraged because case content is known.
- 10) Court rulings on admissibility can be made unhurriedly, increasing the probability of correctness.
- 11) Schedules (both for courts and attorneys) can be maximized because trial time is known.

One disadvantage cited is that counsel cannot tell the jurors' reaction to a line of questioning or to the answers being given; thus counsel loses the ability to redirect, and guide the line of questioning in response to that reaction. Another disadvantage is that, although the attorney knows the content of testimony and has an idea of its effect on the jury, he cannot be sure until after presentation to the jury. Effectively, this means only his closing argument can be altered to adjust for juror reaction to testimony. This last apparent disadvantage may simply be an adjustment which attorneys will have to make to the medium.

The defense attorney suggested that the most effective use for video pre-recorded trials would be in short, uncomplicated cases lasting a week or less.

Liggons v. Hanisko was the first use in California of video technology to pre-record all testimony and evidence for a trial. The case did not result in an appeal, but much valuable information was gained. The video equipment used is listed at Appendix B, along with the case summary.

D. Record of Proceedings

The final major video application undertaken was the use of a video tape record as the sole record of proceedings on appeal. Video support was offered to courts for the purpose of recording court proceedings for a period of time, either as a supplement to and in parallel with the official

court reporter, or in lieu of stenographically taken record. Except for two cases in Vermont, courts chose to have the proceedings video recorded as a supplement to, and in parallel with, the official court reporter.

In project cases which were taken on appeal, both prosecution and defense counsel were encouraged to submit the video record of proceedings together with any transcript of proceedings, so that the relevant appellate court would be able to have the video record as a supplement for possible review and comment.

While video taping court proceedings in various states, appropriate appellate courts were informally contacted to apprise them of the video recording being done at the trial level, and to explore with them the possibility of its use on appeal. The possibilities for securing appellate review and comment on the merits of this and other video applications were informally raised with members of these courts who indicated their individual courts could do nothing until such cases became an appeal issue before them. Appellate judges generally thought that their court would be willing to review a video record of proceedings brought to them either as the official record or as a supplement thereto.

Full court proceedings were video recorded in four states: Vermont, Georgia, Missouri, and Kentucky.

1. Vermont

Through the cooperation of a Video Advisory Committee Member, contact was made in February, 1973, with the Honorable Lewis E. Springer, Jr., Judge of the District Court of Caledonia County, St. Johnsbury, Vermont. He expressed his interest and willingness to cooperate in exploring this use of video technology. It was agreed to set up equipment and record proceedings during the week of February 26th through March 2nd.

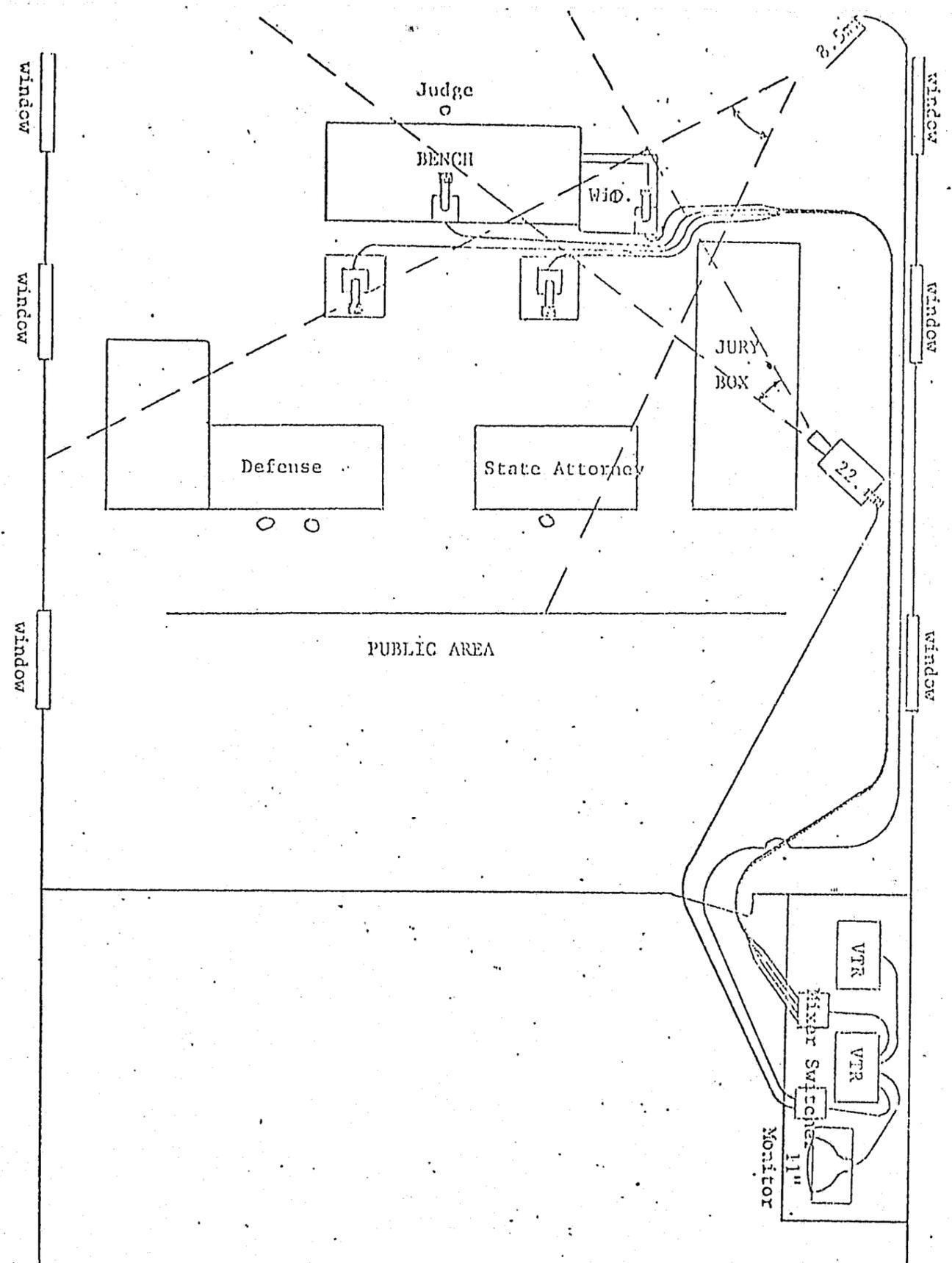
Because of the large courtroom size, correct camera placement to assure adequate pick-up of all participants was difficult. Two cameras were used for this effort; one for a wide angle shot of the courtroom scene, and the other for a close-up of judge and witness.

Overall courtroom light level was low; the many large windows in the courtroom and the position of the cameras relative to them caused a "burning" or "swimming" effect on the video portion of the video tape. To overcome this problem, the window venetian blinds opposite the cameras were closed as tightly as possible, and camera positions adjusted within the small range that would still allow pickup of all parties. To increase this pickup range, the court's permission was obtained to modify the position of counsel tables; this reduced the attorney forum (working) area, but allowed a facial view of the defendant.

Microphone placement, while adequate to pick up all conversation, did not have the range needed for such a large courtroom. Sound tended to become lost; six microphones would have provided more field overlap than the four used.

Three driving while intoxicated cases had been set for trial on February 26th, but all three defendants withdrew their innocent pleas and entered pleas of guilty. Hence, the court proceeding showing the taking of pleas was video recorded.

The video system configuration used, as shown in Figure 11, was left in place for the entire week, during which trial proceedings for two other cases were video recorded. The first, Vermont v. Sibley was recorded on February 28th and involved a charge of leaving the



Leigh and Dunham and Sibley: Equipment Layout for Recording Proceedings

Figure 11

scene of an accident; the jury returned a verdict of not guilty. The second, Vermont v. Leigh and Dunham, involved a felony charge of possession of marijuana (over 10 ounces), and resulted in a jury verdict of guilty.

During recording, the video equipment operator was sworn in as a court reporter and charged with the responsibility of making a video tape record as the official record of trial proceedings. This video record of proceedings by the specially designated court reporter was made in lieu of the normal stenographic record made by a court reporter.

The defense counsel in Leigh and Dunham vigorously objected to the use of video to prepare a record of trial proceedings. Defense counsel's motion for a court reporter to take the record of trial proceedings by stenographic means was denied. At the conclusion of the trial, Defense Counsel for Leigh expressed his intent to appeal the case.

At the end of the trial, the defense attorney made several constructive suggestions on how to improve the taking of a video record of court proceedings. He suggested that separate (from the control center monitors) playback monitors be conveniently located in the courtroom during recording so portions of the record could be played back to the court and jury as desired. Although a playback monitor was available in the equipment control center, and could have been used for such viewing, the control center was located in an adjacent room at the extreme rear of the courtroom and was not conveniently accessible to court viewers.

The local court reporter was instructed in the operation and use of video equipment during the recording period, and quickly learned to operate without flaw a fixed installation of video equipment. This demonstrated its ease of operation.

Use of two different brand VTRs led to the discovery that, although the video tapes could be interchanged between the two VTRs, the digital numbering system on each VTR was different. This variance in digital counters required that a second indexed log of events be prepared later (in real time); this enabled the court to have an accurately indexed log of events regardless of playback VTR used.

Two minor problems arose while recording. First, both VTRs used unbalanced audio inputs, which caused slight hum and pickup problems. The audio lines were well beyond 20 feet in length, and 20 feet is the cut-off point for avoiding this problem. Second, tape handling was made awkward because the Memorex video tape used was wound very close to the edge of the reel. This gives the user an extra amount of tape, but causes handling problems. ⁸

Vermont v. Leigh was subsequently appealed, but in September, 1973, the appeal was withdrawn by stipulation of concerned parties. A summary of Sibley and Leigh and Dunham, as well as a list of the equipment used, is located at Appendix B.

2. Georgia

During the period February to May, 1973, a total of ten criminal

8. The reader is referred to Volumes II and IV of this report for extensive discussion of technical matters.

trials were video recorded in the Superior Court of Fulton County (Atlanta), Georgia. In each case with the approval of the court and involved counsel, a video record was made as a supplement to and in parallel with the record made by the official court reporter.

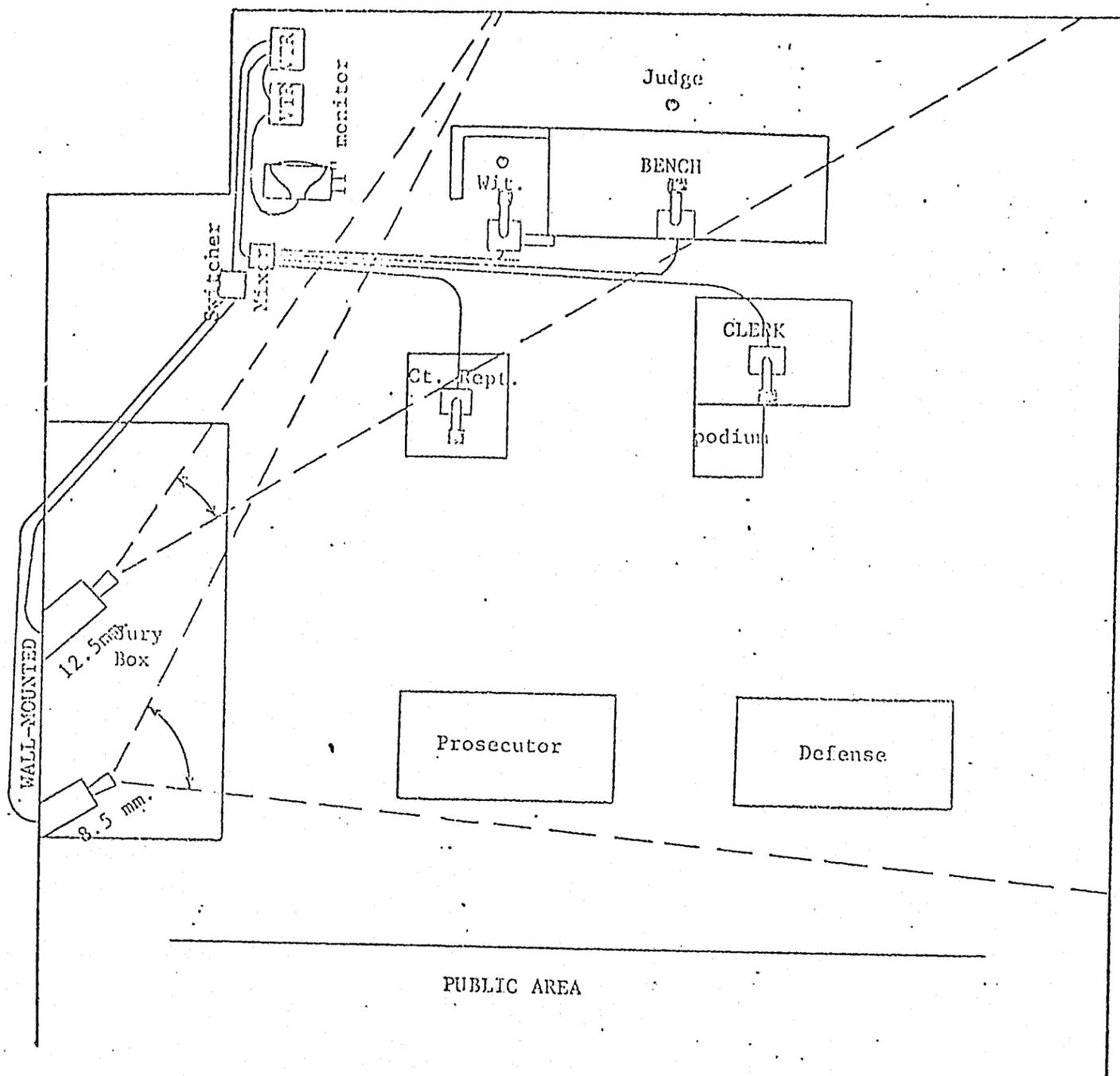
Each judge in Fulton County Superior Court rotates between a docket of civil cases one week and criminal cases the next. To accommodate to this rotation, video recording equipment was set up in a given courtroom for a week at a time; this resulted in proceedings being recorded in cooperation with five different judges. Prior to relocation to a new courtroom staff consulted with the district attorney's office to determine which criminal dockets during a given week would likely result in trials being conducted.

This extended period of video recording was used to obtain two results: 1) video records of court proceedings; and, 2) a comparison and evaluation of individual video system components. The approach taken was to start out with simple video system configurations and add complexity, while interchanging brands of like-type components.

During the first week, in the courtroom of the Honorable Luther Alverson, all arraignments on arraignment day and the case of Georgia v. John Hamilton were recorded. This last, video recorded on February 12th, 1973, involved a felony charge of armed robbery and a misdemeanor pistol charge; it resulted in a verdict of not guilty. A video equipment system employing switching between two cameras was used, as shown at Figure 12.

CONTINUED

1 OF 2



John Hamilton: Equipment Layout for Recording Trial Proceedings

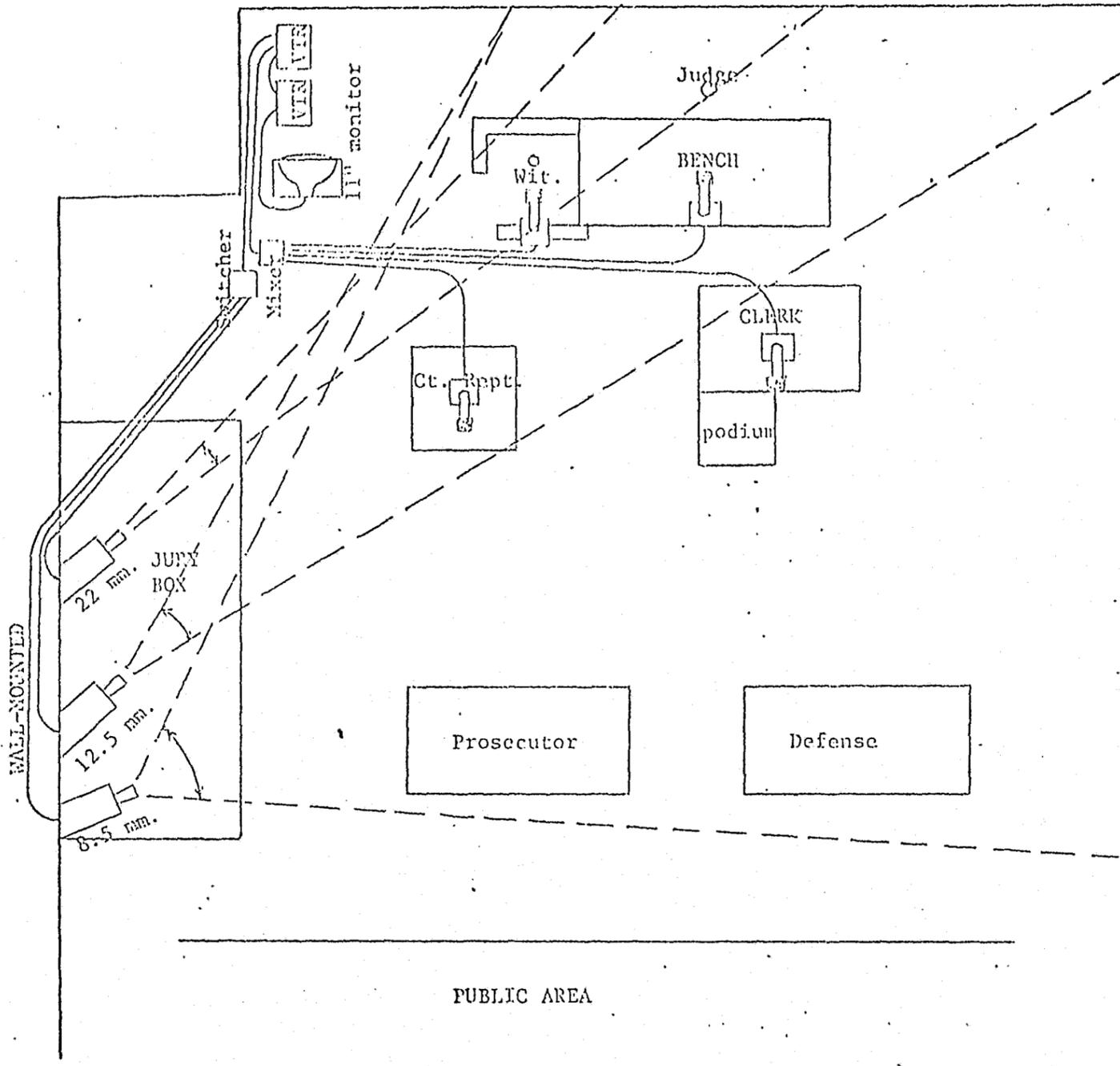
Figure 12

The following week was spent in the courtroom of the Honorable Ernest G. Tidwell, and resulted in the video recording of motions, pleas, hearings, and the trial of Georgia v. Lauder milk. This case, involving a charge of burglary, was recorded on February 19th.

At one point in the trial, after the defense counsel made a motion for mistrial on the grounds that the Assistant District Attorney had shown the jury FBI documents revealing a prior conviction, the court ordered that the video tape record be replayed to show the scene from the jury view. Since the camera had been placed directly behind the jury, it depicted the scene in question from the jury view; it was clear from the video picture that jurors could not have seen the words of the document in question and the motion was overruled. The case finally resulted in a mistrial, but on other grounds.

Laudermilk was video recorded using the same basic configuration as used in Judge Alverson's courtroom the preceding week; however, a third camera was added to allow more close-ups, as shown at Figure 13. Two VTRs, four microphones, and three fixed focus, stationary cameras were used. Scene shifts were followed by camera switching, and the digital counter on the VTR was again used as a reference base for the log of events being kept by the equipment operator. It was during recording of court proceedings in Georgia that an event log format, shown at Figure 10b, was developed.

In April, in the courtroom of the Honorable Sam S. McKenzie, taping included arraignments on arraignment day and the trial of Georgia v. Sturgis on April 9th. Sturgis, involving charges of violations of the Unlawful Drug Act, obtained a jury verdict of not guilty.



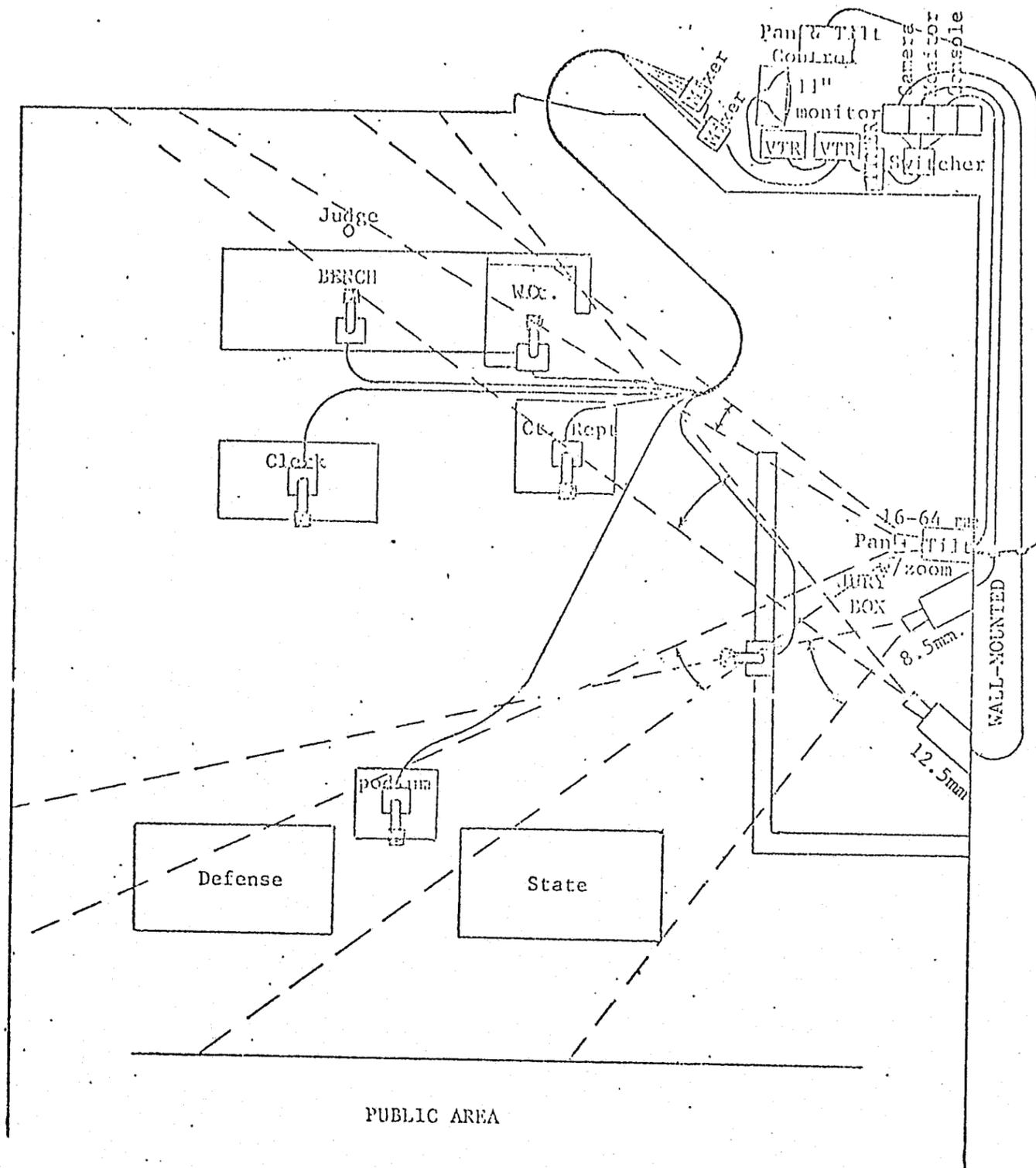
Lauderwilk: Equipment Layout for Recording Trial Proceedings

Figure 13

The video system configuration for recording, shown at Figure 14, was varied from prior configurations by addition of an internal time/date generator to produce a time based reference on the video record itself. A camera control console was added to the control center so the operator could view each camera input from a remote location prior to selecting one for recording. This technique was used in Sturgis because the control center had been shifted from the courtroom to a nearby room. Also, one of the previously used cameras was replaced by a different type and brand to obtain a comparison between cameras.

During the week of April 16th, equipment was relocated to the courtroom of the Honorable Osgood O. Williams. Video tapes of arraignments and three trial proceedings were recorded. Georgia v. Harrell, recorded on April 16th (concluded April 23rd), involved a charge of robbery and resulted in a Bench trial finding of guilty. Georgia v. Brockway, recorded on April 17th, concerned a charge of aggravated assault with intent to rape and resulted in a plea of guilty at Bench trial. Georgia v. Goughf, recorded on April 18th, concerned charges of burglary, motor vehicle theft, and armed robbery and resulted in a jury finding of guilty.

The video configuration used to record during this week, shown at Figure 15, varied from the prior week's configuration in that two more microphones were added and a remotely controlled camera pan/tilt unit with motorized zoom lens was added. The two extra microphones gave additional coverage of speakers, while the pan/tilt unit added the capability of remotely moving and adjusting the camera on which it was mounted. A special effects generator (SEG) was also added to the system configuration for use on the last day of Georgia v. Harrell.



Harrell, Brockway, and Gough: Equipment Layout for Recording Trial Proceedings

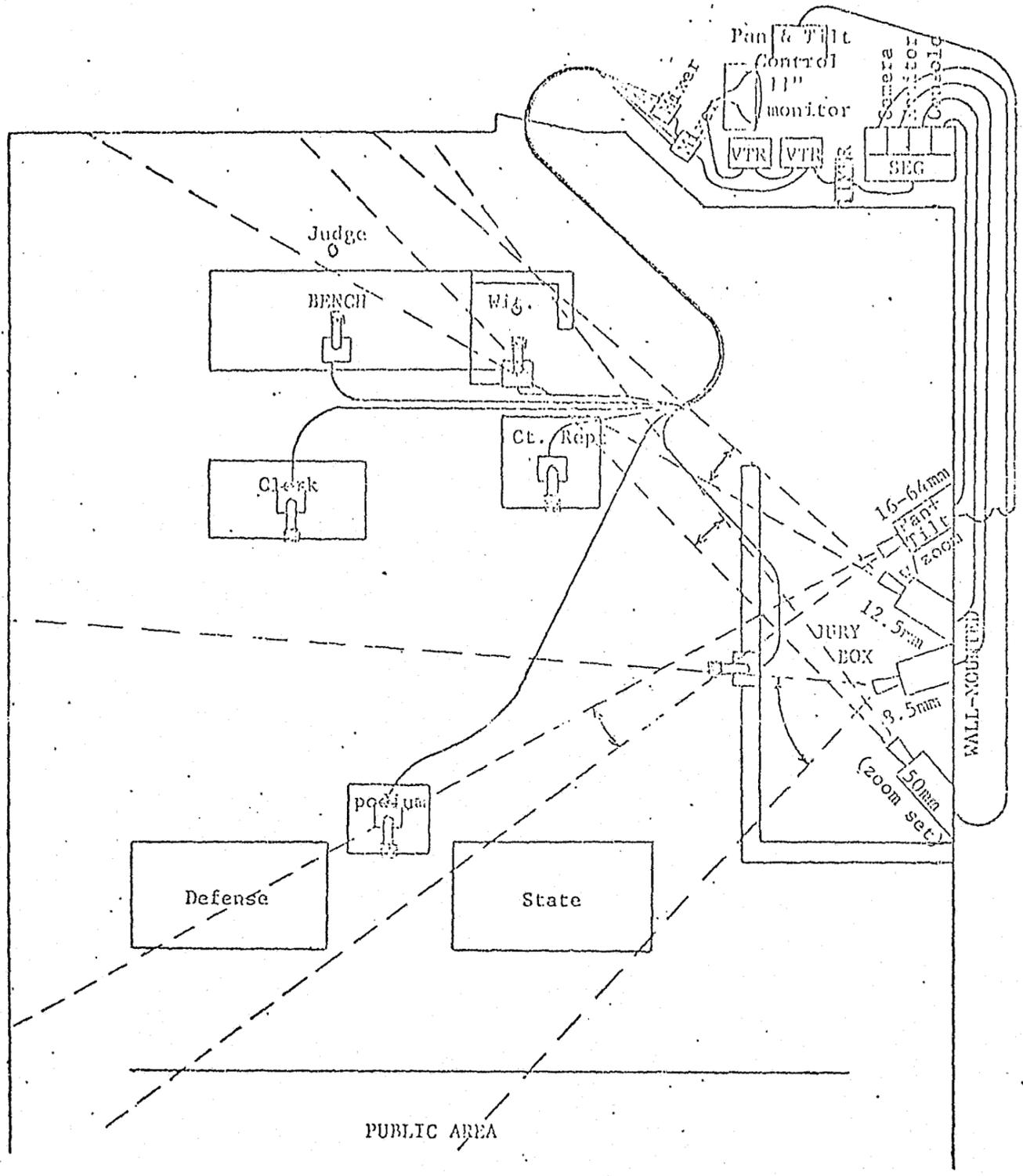
Figure 15

The recording equipment was shifted back to Judge Williams' courtroom, and during this stay two trial proceedings were recorded. Georgia v. Hart, recorded on May 7th and 8th, involved a charge of involuntary manslaughter and concluded with a jury verdict of guilty. Georgia v. James Hamilton, recorded on May 9th and 10th, concerned a charge of rape and concluded in a jury finding of guilty.

The system configuration used, at Figure 16, was modified from prior systems to add one more camera and a different type of special effects generator. The added camera allowed further experimentation with close-ups and camera-to-camera comparisons, while the SEG allowed further experimentation with special effects (corner inserts, split screens, fading, dissolving), and in the use of a preview monitor to set up special effects.

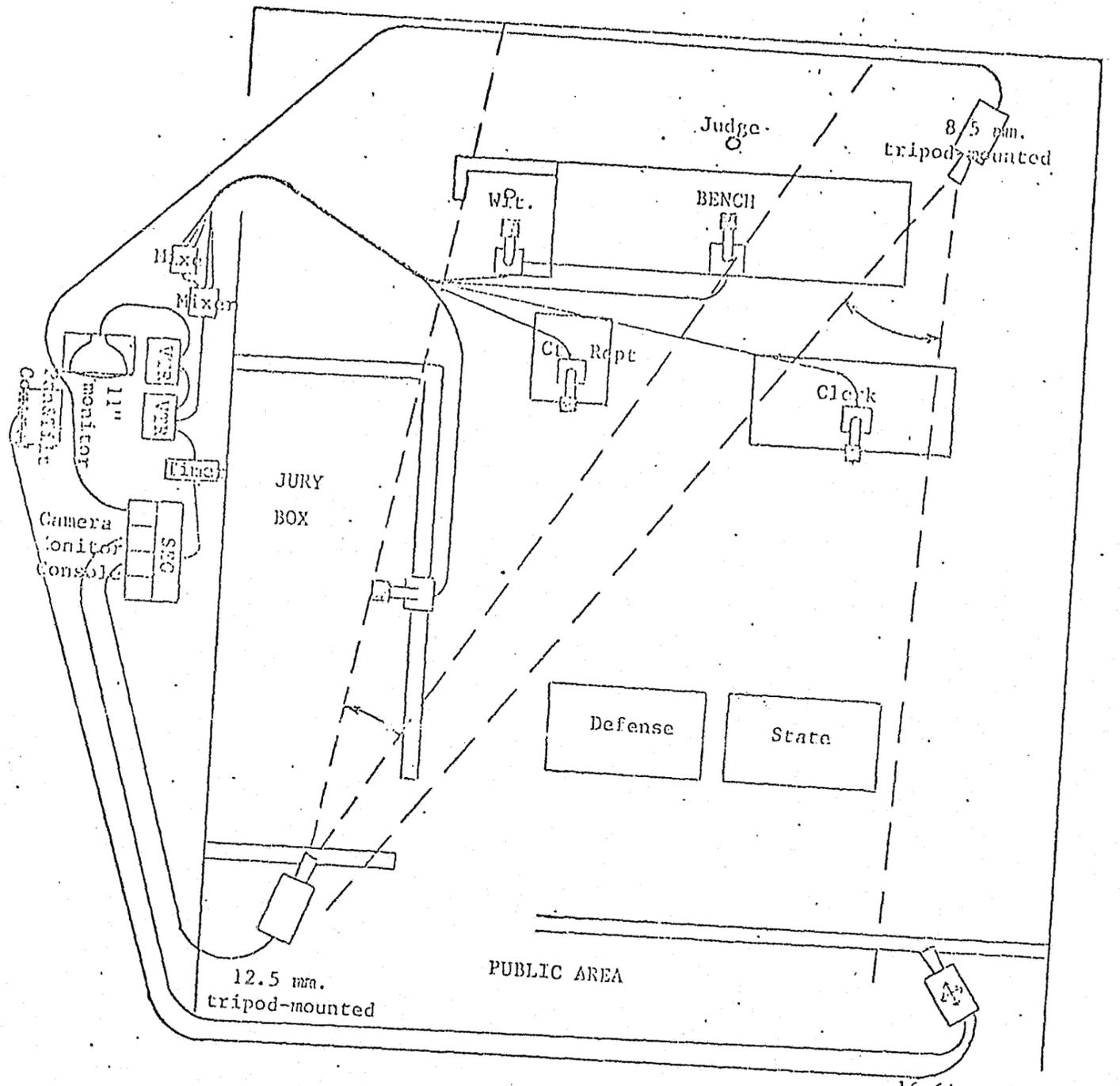
Staff noted that the deliberate addition of increasingly complex and numerous control center components caused the equipment operator to have less and less time to concentrate on an indexed event log.

The last week of recording in Fulton County Superior Court was conducted in the courtroom of the Honorable John S. Langford. While in this courtroom, two trial proceedings were video recorded: Georgia v. Reynolds on May 14th to 16th, which involved charges of three felony counts of armed robbery and one count of a pistol misdemeanor and concluded with a jury verdict of guilty; and, Georgia v. Latham on May 16th and 17th, which concerned a charge of involuntary manslaughter and concluded with a jury finding of not guilty. For these cases the equipment configuration used, shown at Figure 17, had one less camera and one less microphone.



Hart and James Hamilton: Equipment Layout for Recording Trial Proceedings

Figure 16



Reynolds and Latham: Equipment Layout for Recording Trial Proceedings

Figure 17

Much information and experience was gained in recording court proceedings in Fulton County Superior Court; however, the extended effort netted only ten cases of trial proceedings. Of these, three have resulted in appeal. An appeal was filed in Georgia v. Goughf after a motion for new trial was overruled; this case was docketed in the Supreme Court of Georgia on September 21, 1973. Georgia v. James Hamilton was appealed after a motion for a new trial was denied; this case was docketed in the Georgia Court of Appeals on January 7, 1974. Georgia v. Reynolds also resulted in filing of an appeal after a motion for new trial was overruled; judgment was affirmed by the Supreme Court of Georgia on January 9, 1974 (video record was not submitted along with the written record). A summary of these, other trial proceedings video recorded in Georgia, and specific equipment used are at Appendix B.

There was a double benefit derived from video recording these records of proceedings. First, experience data on equipment, system layouts, and courtroom recording problems was obtained.⁹

Second, a video record was provided for use as a parallel record on appeal. As the cases on appeal are perfected, the Georgia appellate courts will have an opportunity to view the video record and offer obiter dictum as to its legal acceptability and to the procedures needed for it to be treated as an official record on appeal. The organization and jurisdictional authority of Georgia courts is described at Appendix C and the case processing flow on appeal from Superior Court is shown at Appendix D.

9. See Volumes II and IV of this report for the technical results yielded from analysis of this data.

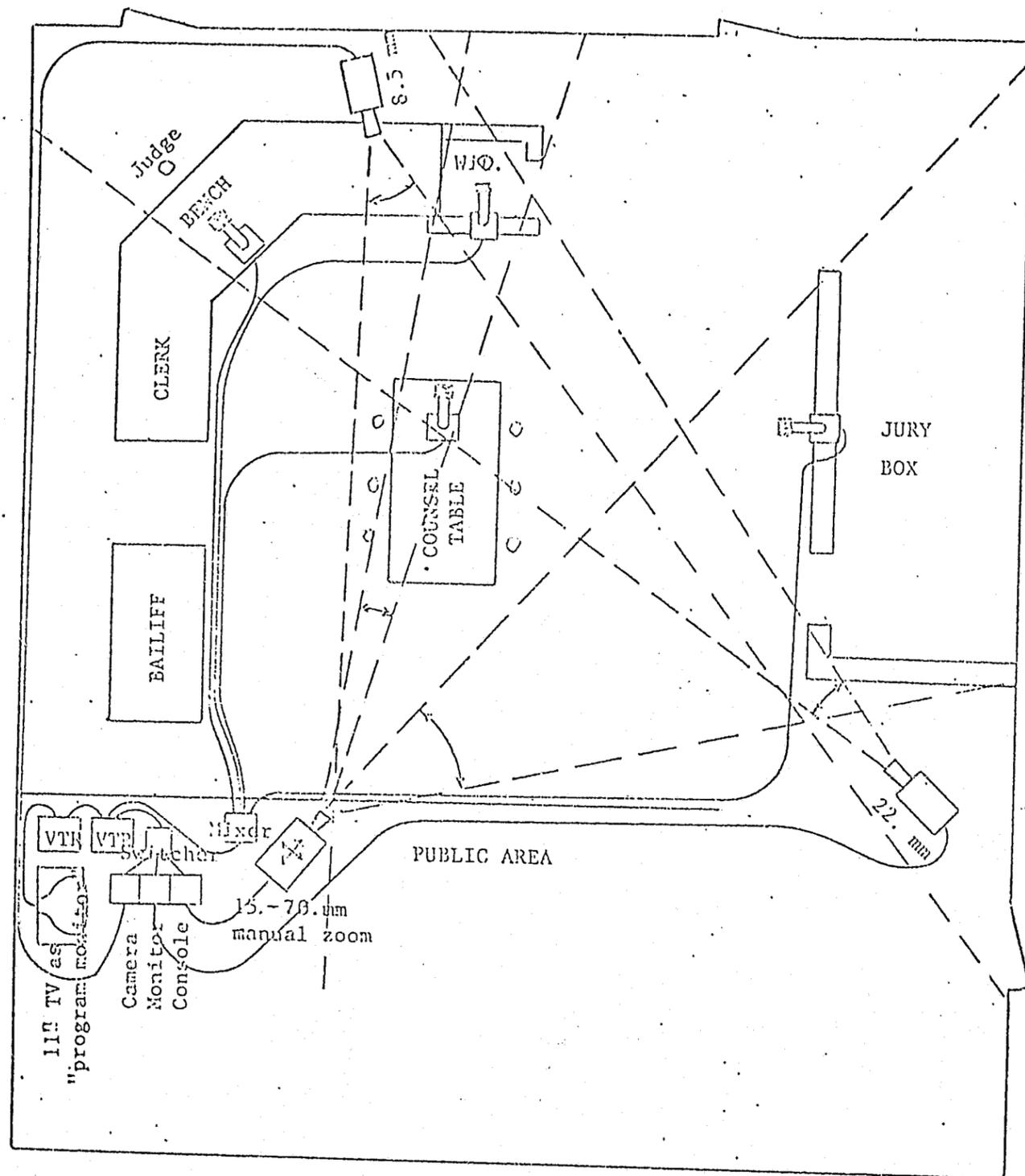
3. Missouri

During mid-April, 1973, through the aid and cooperation of a member of the Video Advisory Committee, approval for video recording court proceedings in Kansas City was obtained from the Honorable Harry Hall, Judge, Jackson County Circuit Court, Missouri. With cooperation from Judge Hall and Judge Sprinkle of the same court, three trial proceedings were video recorded as a supplement to and in parallel with the regular court reporter.

Video equipment was initially set up on April 11th in Judge Sprinkle's courtroom to record Missouri v. Eley, which involved a charge of rape. Video recording continued until the victim and victim's mother objected to the use of video to record the proceeding. Despite being reassured that the taping was of a solemn and professional nature, the objections were restated. Sensing the frustration and sensitivity of the victim and victim's mother, Judge Sprinkle ordered the video equipment turned off.

The video equipment was then shifted to Judge Hall's courtroom; video recording there included a portion of an in-progress case, some pleas, and two trials. In regard to the two trials, Missouri v. Moore, recorded on April 13th, concerned a charge of rape and resulted in a hung jury. Missouri v. Walker recorded on April 17th and 18th, involved a charge of theft by misrepresentation (con game) and resulted in a jury verdict of guilty.

The video system used to record these court proceedings, as shown at Figure 18, employed switching between three stationary cameras, one of which was manually operated. The operator controlled this camera, the video tape recorders, other control devices and, as well, filled out an event log. Although the operator and his control center



Moore and Walker: Equipment Layout for Trial Proceedings

Figure 18

were in the courtroom; the sound from the equipment (a slight VTR motor hum) did not seem to distract participants.

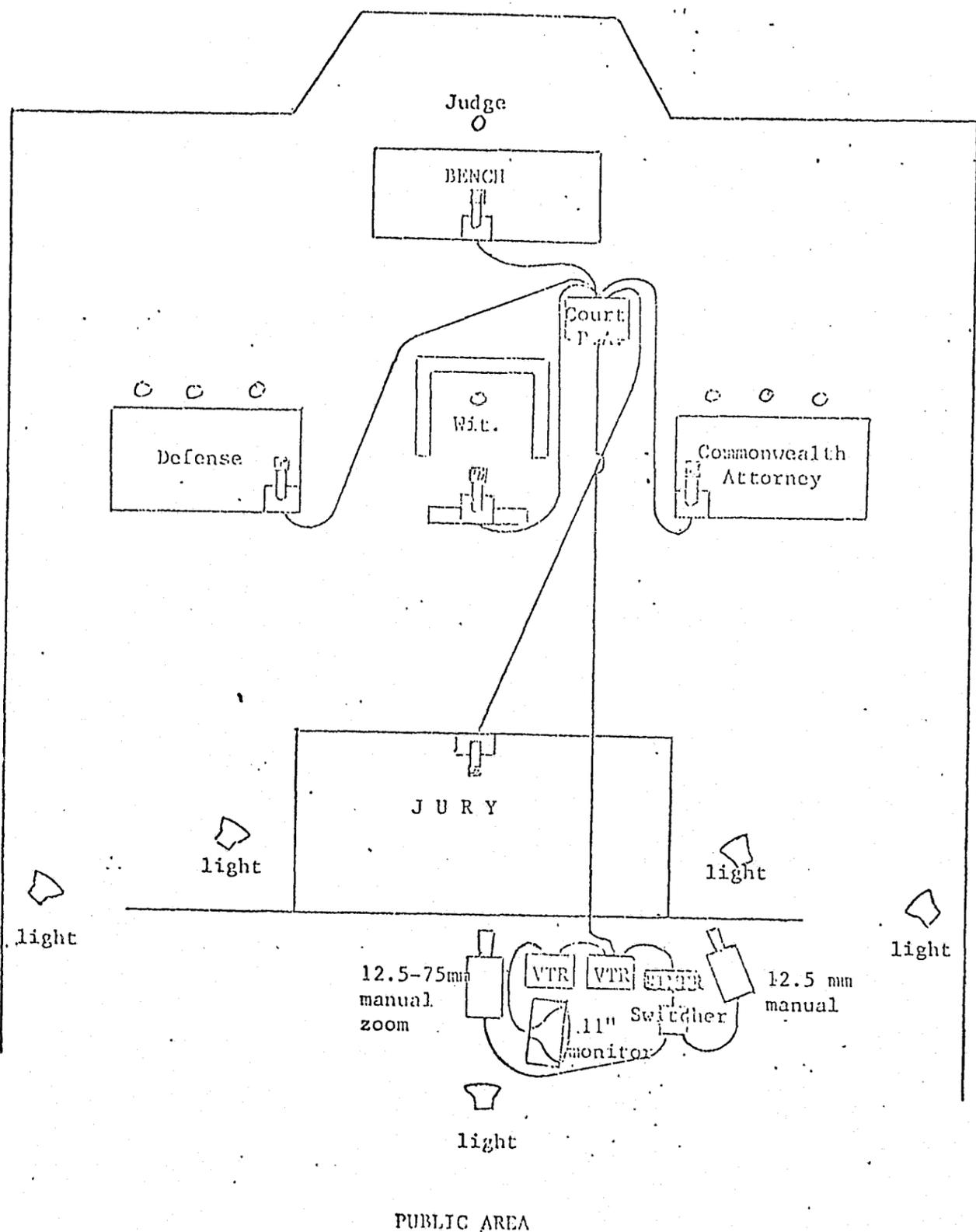
Missouri v. Walker resulted in appeal; however, the appeal is not yet perfected. A summary of Walker, other trial proceedings and specific equipment used is at Appendix B.

4. Kentucky

The last project case in which trial proceedings were video recorded occurred in Frankfort, Kentucky, on June 27, 1973, in the courtroom of Judge Henry Higgs. This case, Kentucky v. Null, Jr., had two separate video applications associated with it: first, as discussed in Section V.A.3, the testimony of a victim was pre-recorded and presented at trial; and second, the at-trial court proceeding itself was then video taped, using the equipment layout at Figure 19. Video recording was done in parallel with, and supported, the regular court reporter; the audio cassette recorder of the court reporter was connected to the audio track of the video record being taken, and the court reporter was subsequently furnished with an audio copy of the proceedings for his record.

Available light level in the courtroom was too low for proper contrast, so three studio lights and two spotlights were set up in the courtroom. Because of objections from participants about the glare from added lighting, Judge Higgs ordered one light turned off and the rest repositioned to bounce light indirectly off the ceiling, which made the added lighting ineffective.

Null, Jr., which ended in a jury finding of not guilty, represents the first time in Kentucky that a record of proceedings had been made



Null, Jr.: Equipment Layout for Recording Trial Proceedings

Figure 19

using video technology. The specific equipment used, as well as the case summary is at Appendix B.

E. Other Activity

Experience and court interest gained from conducting the preceding applications resulted in two other related activities during the project: installation of a video recording system in Fulton County Superior Court, and the providing of video design assistance to courts in Portland, Oregon, and Atlanta, Georgia.

Project implementation also directed itself to exploration of other court-related uses of video technology, such as for education/broadcast, two-way communication, and courtroom security. Unfortunately, these efforts were stymied because: either the timetable for accomplishment was too long, attendant costs were too great in terms of available project resources, or the indicated willingness of participants to cooperate failed to materialize.

By Spring, 1973, project information gained in regard to court-related uses for video reached the point where knowledge could be effectively shared with users by helping one or several select and install video systems. Fixed location of equipment in several widely representative courts offered three advantages: 1) cost-effectiveness appraisals could be developed from experience data; 2) interest in efficiently applying video technology to court uses would continue long after the project terminated; and, 3) additional video tapes could be generated for use in the appellate process to resolve questions associated with the medium.

1. Courtroom Equipment Installation/Technical Assistance

Contact was made with courts in Atlanta, Boston, Denver, Miami, Portland, Oregon, and St. Louis seeking interest and approval for

location of a courtroom video equipment installation; of these, courts in Atlanta, Boston, and Portland were willing to employ video in actual operations. The three preliminarily selected sites were later reduced to one, Atlanta, because of unavailability of sufficient project funds to finance all locations. In Atlanta, equipment was installed in the courtroom of the Honorable Osgood O. Williams, Judge of Fulton County Superior Court.

The installed system is designed to be modular, individual components can easily be removed to other locations, to facilitate recording outside the courtroom for other applications such as pre-recorded testimony and pre-recorded evidence. This allows the court operating flexibility in developing experience data for various court-related video applications.

2. Education/Broadcast

Through the cooperation of the National College of the State Judiciary, arrangements were made to conduct two classes on court uses of video technology. Conducted at a seminar on the campus of the National College of the State Judiciary at the University of Nevada in Reno, the classes were addressed to limited and general jurisdiction judges. Approximately 125 judges attended.

The presentation included a summary of project development to date, a discussion of potential applications for court users, legal issues and procedural problems, advantages and disadvantages associated with the medium, and a video tape demonstration of its uses. Many of the judges showed a cautious interest in court uses for the medium, and several suggested possible educational uses. Often suggested uses were: reinforcing admonishments such as might be given by a

Traffic Court judge, explaining jury duty to jurors, explaining defendants' rights to groups of defendants, and explaining to defendants what could be expected during their day in court.

Discussion with faculty of the National College of the State Judiciary raised the possibility of a joint effort to produce a model video tape on giving jury instruction, for use by judges, and a model video tape explaining jury duty, for use in orienting jurors reporting for jury duty. The time frame for project completion did not allow accomplishment of this task.

Additional educational uses were preliminarily arranged in several other locations. The possibility of preparing a video tape to educate jurors on their duties was also discussed with several judges in Fulton County Superior Court, Atlanta. The Superior Court of the District of Columbia tentatively agreed to jointly produce a video tape for showing to defendants in the lockup, on explaining their rights before arraignment or trial. The District of Columbia Bail Bond Agency agreed to jointly produce a video tape for showing to groups of bail and bond defendants, on explaining their obligations while on bail or bond. Despite extensive planning, actual taping for these efforts did not take place.

Project activity included contacting several law schools and courts to discuss possibilities for a joint effort between court and law school to develop educational tapes based on live proceedings, and for the installing of a video connection between court and school such that live proceedings could be viewed by law students. Meetings with the Deans of the Miami Law Center, Miami, the Emory University School of Law, Atlanta, and the Hastings College of the Law, San Francisco, resulted in an expressed interest in these educational links between

court and law school. Although local judges in each area also expressed interest and willingness to cooperate, other priorities did not allow time for full development of these opportunities.

One use discussed with Hastings College of the Law was that of video taping an appellate hearing for both a civil and a criminal appeal, for later broadcast over educational television on Law Day, May 1st. Video taping arrangements were dropped, however, when the California Ethics Committee, in response to a query, stated that California Rule of Court Number 980 confines video taping in court for educational purposes to use by educational institutions, but not for rebroadcast on TV, whether commercial or educational. Thus, video taping for public educational viewing would have been an improper publicizing of courtroom proceedings. The Ethics Committee further stated that this interpretation was also in consonance with the 1972 ABA recommended standards in its Code of Judicial Conduct; ABA Canon 3a (7)(c) prohibits public viewing of court proceedings, but specifically allows for educational uses of video recording when, among other things, it is used solely for educational purposes in educational institutions.

3. Two-Way Communication

While making preliminary arrangements for recording New York County District Attorney Office line-ups as evidence, also raised for discussion was the possibility of a joint undertaking to develop a video application of two-way communication, through a video link with the court. Having already given agreement to cooperate in the pre-recording of line-ups for evidentiary purposes, this agency was hesitant to undertake any other applications without more experience.

Suggestions were, however, put forward regarding the best uses for such an application. The consensus of members of the District

Attorney's Office was that a video connection between the grand jury room and expert witnesses would be the only initial use of two-way video communication that could be entertained in this jurisdiction. It was suggested that video connections be made between the grand jury room and local crime laboratory offices so that chemist, ballistics, and coroner experts could be called on to give grand jury testimony without having to wait 20 to 30 minutes, and incurring a 20 minute walk to the building. A logistics problem cited would be getting the substance at question in drug cases to the grand jury room for physical examination, a requirement in all drug cases except undercover sales; this would diminish any gain from use of video.

The District Attorney's Office considered video line-ups to be more useful, particularly for Wade Hearings in the Supreme Court of New York City. It was observed that a Wade Hearing often dragged on for a week, just trying to establish line-up fairness; on video tape this could be shown in 15 minutes. Hence, priority was given to the evidentiary taping of line-ups and two-way communication was not pursued.

The feasibility of a two-way communication link was also explored with members of the District of Columbia Superior Court, the United States Attorney's Office and St. Elizabeth's Hospital in the District of Columbia. Considered was the establishment of a video communication link between the hospital and court, for competency hearings, to help eliminate doctors' wasted time in making appearances for competency hearings in Superior Court. The idea was abandoned after detailed discussion with hospital, U. S. attorneys, and court staff revealed

that there was a more cost effective means of achieving a solution: use of a telephone rather than closed circuit television or Picturephone.

Staff noted that an added difficulty to use of Picturephone is its rather limited distribution (Pittsburgh, Washington, D. C., New York City, and Chicago); even in cities where Picturephone networks are available, availability within the city is limited. (A Picturephone network is currently in use between local police stations and the Bail Bond Court of the Circuit Court of Cook County, Illinois, First Municipal District.)

4. Courtroom Security/Unfinished Efforts

Plans for setting up a video link between a courtroom and an isolation room for unruly defendants also failed to materialize. The intended site for this application was the Supreme Court of New York in Manhattan, which allows exclusion of unruly defendants from the courtroom during trial proceedings. To avoid the waste of time and money in setting up equipment and having it sit idle for an extended period of time, until an appropriate case presented itself, the approach taken was to respond on short notice to any case identified as having a high likelihood of unruly behavior by the defendant. Such a case was not forthcoming during the project.

Other planned project activity for which actual taping did not result included: 1) the pre-recording of testimony for criminalist witnesses in St. Louis, civil case lay witnesses in Atlanta, expert witnesses in Indiana, and a Voice Print Analysis expert and a lay witness in the District of Columbia; 2) the recording of court proceedings

at preliminary hearings in Boston; and, 3) the recording of trial proceedings in Illinois, Indiana, and Oregon.

A final, on-going project effort consisted of collecting and cataloging into library form information relating to video. Included were: statutes, codes, and court rules pertaining to electronic court reporting; cases and articles in legal references, periodicals, and magazines on video tape and related technologies; and material from project applications (cases, resulting articles, and duplicate video tapes). This material has provided the basis for Volume III of this report.

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