REPORT OF THE SUPREME COURT

COMMITTEE ON

VIDEOTAPING COURT PROCEEDINGS

STATE OF ILLINOIS)
) SS.
SUPREME COURT)

AT A TERM OF THE SUPREME COURT, begun and held in Springfield, on Monday, the eleventh day of March in the year of our Lord, one thousand nine hundred and seventy-four within and for the State of Illinois.

Present: Robert C. Underwood, Chief Justice

Justice Walter V. Schaefer — Justice Thomas E. Kluczynski

Justice Daniel P. Ward — Justice Charles H. Davis

Justice Joseph H. Goldenhersh — Justice Howard C. Ryan

William J. Scott, Attorney General

William G. Lyons, Marshal

Attest: Justin Taft, Clerk

BE IT REMEMBERED, that, to-wit: on the 29th day of March, A.D. 1974, the same being one of the days of the term of Court aforesaid, the Court entered the following order:

In re:

Appointment of a Supreme Court Committee on Video-Taping Court Proceedings. — M.R. 1578

The Supreme Court having considered the request of the Executive Committee of the Judicial Conference for the appointment of a committee to study and report to the Court at the September, 1974 Term regarding rules for the use of video-taping procedures in the courts of this State, it is ordered that a committee for that purpose composed of the following persons is hereby appointed:

Judge William L. Beatty, Chairman
James J. Doherty
James B. Haddad
Judge Matthew J. Moran
Willis P. Ryan
James B. Zagel.

It is further ordered that the members of the Committee shall serve without compensation, but shall be reimbursed for reasonable and necessary expenses upon the submission to and approval of, the Administrative Office of statements of such expenses.

It is further ordered that the Administrative Director shall designate a member of his staff to serve as secretary to the Committee.

I, JUSTIN TAFT, Clerk of the Supreme Court of the State of Illinois and keeper of the records, files and Seal thereof, do hereby certify that the foregoing is a true copy of an order of the said Supreme Court.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the Seal of said Court this 29th day of March, A.D. 1974.

Clerk,
Supreme Court of the State of Illinois.

REPORT OF THE SUPREME COURT COMMITTEE ON VIDEOTAPING COURT PROCEEDINGS

SUMMARY OF RECOMMENDATIONS

1. The use of videotape should not be mandatory in any circumstance.

2. Videotape recordings should be admitted in evidence and played back for court and jury on the same basis as ordinary motion pictures, subject only to the usual showing of relevancy, materiality and proper verification.

3. The Supreme Court should, through appropriate rule changes, expressly authorize the use of videorecording to preserve evidence depositions in both civil and criminal cases.

4. The best practice when videorecording evidence depositions is to have a judge present to rule on objections on the spot. The Committee recognizes that it is impractical to expect that a judge could be present during every videotaped evidence deposition but recommends that whenever it is practical and possible, it should be done.

5. With the exception of necessary close-ups -- such as when x-rays or other models, documents, etc., are to be referred to during testimony -- the Committee recommends the minimum amount of switching, focus changing or other camera work during the recording of a deposition.

6. The tape editing process should always be under the control of the trial judge and the original unedited tape should always be retained for possible use in appeal.

7. No rigid editing procedures should be adopted in Illinois at this time. The trial attorneys and the trial judge given the facts and the circumstances of an individual case should be free to fashion as formal or as relaxed an editing procedure as might fit the needs of the case before them.

8. If any party requests that the videotaped evidence deposition be filed under Rule 207(b), the Clerk of the Court will be responsible for providing suitable storage. Tapes should be stored in a place in which they would be protected from conditions which might be harmful to them.

9. All expenses incurred in recording, editing and replaying videotaped depositions should be borne, in the first instance, by the proponent and, in the discretion of the trial court, taxed as costs upon the conclusion of the case.

10. The number, size and placement of viewing monitors in the courtroom; the adjustment of picture intensity (brightness, contrast) and volume, etc., are matters which should be in the discretion of the trial judge in each case.

11. Perhaps future experience could lead the court to conclude that in certain cases, the requirement of non-availability under Rule 212(b) is too stringent and the court might allow videotaped depositions to substitute for live testimony in some cases even though the witness might otherwise be available to testify. However, the Committee at this time does not recommend any change in Rule 212(b).

12. Despite elaborate claims for the success of the completely prerecorded videotaped trial and projections concerning the accuracy,efficiency and predictability of the presentation of testimony by using such methods, this Committee is not convinced that prerecorded videotaped trials should be encouraged in Illinois. The alleged advantages of presenting prerecorded videotaped testimony of all witnesses to the trier of fact cannot overcome the traditional advantages of having the plaintiff, defendant, judge, all available witnesses and the attorneys present in one place at one time to engage in the search for truth in law suits.

13. The Committee recommends that when, in the judgment of the presiding judge, a videotaped record of a civil proceeding would be desirable, he may order such a record to be maintained. The trial judge should be given broad

discretion to decide specific issues concerning the taking of such tapes at the time of trial. Either Ill. Rev. Stat. 1973, Ch. 37, para. 655 should be amended as suggested in Exhibit 3, or the Supreme Court should adopt appropriate rules to accomplish substantially the same results.

14. While it would be ideal if each county owned video equipment for use by the court, the Committee sees no fatal defect in a program which offers maximum flexibility allowing each trial judge to assess the situation before him, determine the availability of audio-visual tape recording equipment, its compatibility with other equipment being used by the courts, the quality of the audio-visual record he can expect to obtain in his courtroom with the equipment available, and decide (after considering all the variables as they affect the precise matter before him) whether to order or allow a videorecording of the proceedings.

15. It is not inconceivable that a trial judge could himself operate the recorder, aim the camera and log and monitor the record if the proceedings are simple and brief. On the other hand, a video recording of a complicated jury trial involving multiple parties, attorneys, and witnesses, with large numbers of exhibits, involving cross-examinations,

re-direct examinations and re-cross examinations of witnesses would require sophisticated equipment, trained operators and specific clearly delineated guidelines for courtroom procedures, logging of testimony, etc.

16. The judge should decide the location, point of view, and angle of any TV cameras in his courtroom. Camera switching, panning, close-ups, etc., should be kept to the absolute minimum necessary to capture the essential aspects of the proceedings.

17. Any camera production work in the courtroom, even though held to a minimum should be performed only by trained, qualified, impartial technicians, either employed by or certified by the Supreme Court.

18. Allowing the use of videotape to record the proceedings when the defendant urges its use and is able to pay the cost related to the recording might infer that every criminal defendant would be entitled to a videorecord and those who were unable to pay for it would receive it at the expense of the State. Until and unless the possible burden of mandatory usage in all cases as a result of permissive use in some cases is lifted, the Committee urges cautious entry into videotaping criminal trials.

While closed circuit television might conceivably be used to allow an unruly defendant or spectator to observe the trial from outside the courtroom, the Committee concluded that ordinarily unruly people, whether a defendant, a spectator,or any other person, should simply be ejected. If they wish to observe the trial, they should behave in the courtroom.

19. Testimony might be presented (in the temporal sense "live", but by camera) by closed circuit television when a witness cannot be physically present in the courtroom but is otherwise available to testify.

20. Much as in banks, closed circuit television could be utilized as a security monitoring system serving to alert the appropriate law enforcement authorities to any disruptions in the courtroom.

21. Lawyers and judges with closed circuit television or Picturephone installations could resolve issues normally heard in court or in a judge's chambers by a Picturephone or closed circuit television conference calls from their offices.

22. Because what is known as the EIAJ #1, 1/2" reel-to-reel format is the most widely used in the United States, if any standard for equipment were to be adopted by the

Supreme Court, that is the standard that should be adopted. However, it would be unnecessarily restrictive at this time to impose mandatory minimum standards and the format to be used by those who wish to use video-recording in the court system. We can rely on the reasonableness of the members of the legal profession; they will not buy exotic or incompatible equipment and will, for the most part, rely on the accepted formats presently available, changing to different formats only after they have been proven to be so far superior that they naturally become more acceptable.

REPORT OF THE SUPREME COURT COMMITTEE ON VIDEOTAPING COURT PROCEEDINGS

I. Introduction

A. Audio/Visual Tape Recording (A/VTR). Videotaping is an electronic process through which an audio and visual recording is imprinted on relatively permanent magnetic tape. A videotape recording can be monitored as it is being produced, requires no processing, is instantaneously available for replay, and has a potential cost far below that of sound motion pictures, while having comparable viewing and listening quality. The videotape, unlike film, can be used over and over again.

The first network use of videotape recording was a news broadcast over CBS on November 30, 1956. The program originated in New York City, was recorded at Television City in Hollywood and played back later the same night for the West Coast. In the years since 1956, the use of videotape recording has expanded to education, medicine, business, industry, government and law, as well as commercial broadcasting.

B. Closed Circuit Television (CCTV) and "Picturephone". A closed circuit television system (CCTV) is similar to a video recording system. The distinction is that with CCTV neither the sound nor the image is retained on magnetic tape for future reference. Closed circuit television might be used where retention

of a record is not necessary, but where a purpose might be served by remote viewing. For example, testimony might be presented "live," by CCTV when a witness cannot be physically present in a courtroom but is available to testify from some other location (e.g. hospital, home, laboratory or jail). "Picturephone" is the trade name of the Bell Telephone system of two-way, closed-circuit audio/visual communication.

C. Committee's Task. This Committee on Videotaping Court Proceedings was appointed by the Supreme Court on March 29, 1974, and was directed ". . . to study and report to the Court at the September 1974 Term regarding rules for the use of videotaping procedures in the Courts of this State. . . ."

In view of the broad responsibilities and the relatively short time available within which to prepare this report, the Committee set out to achieve only broad goals. First, the Committee examined all the possible uses of videotape in the litigation process. Second, the Committee evaluated the feasibility and desirability of each of these uses. Third, in those instances in which the Committee thought that videotape could be used with profit in the litigation process, it drafted suggested amendments to rules and statutes to facilitate its use.

The Committee has not had to operate without some historical precedents in the use of video technology in the courts of Illinois. The Illinois judicial system pioneered the experimental use of video recording. Video recording demonstrations

were presented in conjunction with the 12th Annual Illinois Judicial Conference at the University of Chicago Center for Continuing Education on October 21, 1965. This early demonstration of the use of videotape to preserve an audio/visual record of testimony for presentation at the trial and for keeping an audio/visual report of proceedings is generally agreed to have been the first such demonstration in history.

Furthermore, according to the report on "Potential Uses of Court-Related Video Recording," issued by the U. S. Department of Commerce, National Bureau of Standards in July of 1972:

> "The first report of a video recorded deposition intended to be used in court appeared in legal literature in April 1969. (John A. Nordberg, "First Evidence Deposition of Party Taken. . . Pursuant to Court Order," Chicago Bar Record, April 1969.) In a civil suit for damages in an accident case involving a bus striking a pedestrian, a court order was issued to permit the video recording of the testimony of the victim in the case. He was a man of advanced years and the only witness in his own behalf. The case was tried in the Circuit Court of Cook County, Illinois, where video applications in the courts were already under consideration."

The Circuit Court of Cook County presently maintains a Picturephone network connecting the Bond Court at Chicago Police Headquarters with several District police stations and connecting the Chief Judge with each of the Presiding Judges located in the Chicago Civic Center. General Order No. 73-1(M) of the Municipal Department of the Circuit Court of Cook County, provides in pertinent part, as follows:

"Whenever any person arrested for any offense within any police district of the City of Chicago has not been let to bail (excepting any person held for his safekeeping) and because of the hour or circumstances it is not practicable to bring such person before a judge, then such person shall be presented without undue delay before a judge regularly assigned to the Bond Court by means of Picture Telephone, for the purpose of setting bail, provided such police district is equipped with picture telephone and with interviewing facilities approved by the court."

II. POSSIBLE USES OF VIDEO TECHNOLOGY IN THE LITIGATION PROCESS

The potential application of audio/visual tape recording (A/VTR) and Closed-Circuit Television (CCTV) is extensive. The current suggested uses are compiled in the following list:

A. Recording evidence for display to the trier of fact:

1. Scenes of crimes or other incidents;
2. Intoxication tests;
3. Confessions or other statements of the accused;
4. Identification parades;
5. Relevant experiments and demonstrations which are difficult or impossible to perform in court;

B. Recording Evidence Depositions for presentation at Trial;

C. Recording all trial evidence for display to the trier of fact;

D. Recording all evidence, arguments and instructions for display to the jury;

E. Recording of all trial proceedings for use as a record on appeal;

F. Recording trial proceedings for use as an educational device, either for continuing judicial education or in law schools;

G. Using video equipment to allow an unruly defendant to observe his trial if he has been removed from the courtroom;

H. Using video equipment to allow unruly spectators to observe the trial or to allow large numbers of media representatives to observe a trial;

I. Using video equipment and telephone cables or microwave transmissions to present and preserve testimony of witnesses located far from the courthouse;

J. Using video equipment and telephone cables or microwave transmissions to conduct and preserve bail or motion hearings requiring argument of counsel without requiring the physical presence of counsel.

III. MANDATORY VS PERMISSIVE USE OF VIDEO TECHNOLOGY IN COURT

The Committee made the threshold decision that the use of videotape should not be mandatory in any circumstance. The absence of universally available videotape facilities requires this decision. Further, even if videotape facilities were as available as the air we breathe, there is simply too little experience with the technology, its limits and its effects to justify mandatory imposition of its use.

IV. APPRAISAL OF POSSIBLE USES

A. General. Any evaluation of the worth of video technology involves an assessment of many factors. The effectiveness of the alternatives to video must be compared. Is presentation of evidence by transcript fairer or more effective than showing a videotape to a jury, a trial court or a court of review? What are the relative merits, if any, of videotape opposed to live testimony? If there are differences, and there surely are, how important are these differences?

The cost of videotape and its alternatives must be compared. Does videotape apparatus cost less to buy and use than the salary and fees of court reporters?

The time cost of videotape and its alternatives must be compared. Does the use of videotape save time and avoid delay? Whose time is saved, the attorney, the trial judge, the jury, the witness, the reviewing court?

Further, the question of the reliability of videotape devices must be taken into account.

In drafting proposed rules and statutes, the Committee had to consider a number of questions. Not every question is answered by suggesting a change in a statute or rule, but in all cases the Committee either sought to answer a procedural question with a specific rule provision or expressly decided that the question was best left unanswered until experience revealed that one procedure was clearly better than all others.

Even after the Committee concluded that there are several acceptable applications for video recording in the courts, it had to consider who may authorize the use of videotape and who should pay for its use? What equipment may be used? Should there be minimum standards for equipment or for the operator of the equipment? How shall tapes be authenticated, indexed and preserved? How shall tapes be played? How can the absence of biased filming techniques be assured? How shall the tape be played to a jury or to a reviewing court? What procedures should be followed by counsel and witness when questions or answers are the subject of objection? Should all or some objections and objectionable material be edited from the tape before it is played to the jury, and, if so, who shall edit and how?

B. Recording Certain Forms of Evidence for Display to the Trier of Fact. The use of audio/visual techniques in the courtroom is not new. Audio recorders, for example, have long been used by law enforcement agencies to record conversations and confessions. Slides, photographs -- particularly movie film -- are dramatic, effective and efficient methods of presenting evidence at trial.

Motion pictures, if material and relevant, have always been admissible in Illinois on the same basis as photographs

(Eizerman v. Behn, 9 Ill. App. 2d 263, 1956). While the technology of producing an audio/video recording is significantly different than that of producing a sound motion picture, the product is virtually identical.

Some specific uses of videotape have already been approved by courts. It can fairly be said that videotapes of confessions, line-ups, intoxication tests, crime scenes and demonstrations or experiments are accepted by the courts under the traditional standards applied to photographs or motion pictures. See 3 Wigmore, Evidence, § 798a (Chadbourn Rev. 1970); People v. Ardella, 49 Ill. 2d 517, 276 N.E.2d 302 (1971); Hendricks v. Swenson, 456 F. 2d 503 (8th Cir. 1972); Mikus v. United States, 433 F. 2d 719 (2nd Cir. 1970); State v. Shuler, 486 S.W. 2d 505 (Mo. 1972); State v. O'Brien, 232 So. 2d 484 (La. 1970); People v. Mines, 132 Ill. App. 2d 628, 270 N. E. 2d 265 (1970).

In People v. Ardella, supra, the Illinois Supreme Court approved the use of a video recording as an aid to the oral testimony of a police officer who had witnessed the defendant's condition after an arrest for driving under the influence of intoxicating liquor. There is nothing in that opinion which indicates that the rules for admissibility of a video recording are any different than the rules for admissibility of a sound motion picture.

The Florida Supreme Court has expressly held that the standard of admissibility of videotaped material is the same as that of motion pictures. (Paramour v. State, 229 S. 2nd 855, (Florida) 1969).

The First District of the Illinois Appellate Court has held that ". . . for the introduction in evidence of photographs or videotape films it is not necessary to show the skill or training of the photographer, but the only necessary foundation is that the photographs or pictures clearly and accurately portray that which they purport to represent." (People v. Mines, 132 Ill. App. 2d 628 (1971).

The Committee concludes that the admissibility of video recordings is not a unique problem in the law of evidence but is simply an extension of the existing law concerning the admissibility of recordings and motion pictures. The fact that an audio/visual presentation has been recorded on magnetic tape rather than film should have no substantial bearing upon its admissibility as long as it can be verified as a fair representation of its subject. Accordingly, the videotape recordings should be admitted in evidence and played back for court and jury on the same basis as ordinary motion pictures, subject only to the usual showing of relevancy, materiality and proper verification.

It should be noted here that video-recorded evidence need not always be detrimental to the one against whom it is sought to be used at trial. In People v. Fenelon, 14 Ill. App. 3rd 622, 1973, the Second District of the Appellate Court held that the video portion of an audio-video recording was properly considered by the trial court in making its determination as to whether or not the defendant was intoxicated at the time tests were administered by the arresting officer -- despite the fact that the defendant had clearly asserted his Miranda rights to refuse to make any statements.

However, it is interesting to note that the decision that the tape was admissible worked to Fenelon's ultimate advantage when the Appellate Court decided that its own viewing of the videotape indicated to it that the defendant was in full possession of his faculties at the time the tests were administered. (Text):

> "In absence of scientific tests for intoxication, due weight should have been accorded the outcome of the physical tests in discerning whether guilt had been proven beyond a reasonable doubt. We have directly observed, in the recording, the same test results as seen by the trial judge. This evidence supports defendant's explanation and effectively diminishes the persuasiveness of the officers' opinions of intoxication."
>
> "On the whole record we conclude that the court's judgment was against the manifest weight of the evidence and that the defendant has not been proven guilty of the offense charged beyond a reasonable doubt. . . We therefore reverse."

C. Recording of Evidence Depositions for Presentation at Trial.

1. General. Aged witnesses or those who are critically ill or injured might now be available to give an evidence deposition but might not be available to testify live at trial. In an ordinary deposition, questions and answers are merely typed, and someone must read them to the jury. All that the jury hears is the inflection and expression of the reader. The jury is deprived of the facial expressions, voice inflection, gestures, and the like, of a live witness. Psychologists tell us that the voice is only a part of articulation; the larger part includes body expression, gestures, and facial expressions. Every trial judge instructs the jury that they are the sole judges of the credibility of the witness on the stand. Yet, in the question-and-answer transcript there is no demeanor to consider. Accordingly, they are deprived of a large portion of that which constitutes true communication.

With the advent of audio/visual tape recording, it is possible to make an accurate and relatively inexpensive audio/visual record of witnesses' testimony to be presented at the trial, if they are not then available.

The Committee concluded that video recorded evidence depositions offer several improvements over written evidence depositions. Demeanor, tone of voice, uncertainty in response and other nonverbal aspects of testimony can be preserved and visual references (that is: pointing, nodding, grimacing,

fidgeting, drawing a diagram, etc.) can also be shown to the trier of fact at the trial.

It has even been suggested that pre-recording evidence depositions in criminal prosecutions might protect witnesses. According to news reports, key witnesses in drug-traffic cases in northern Indiana may have been murdered to keep them from testifying in the trial of persons alleged to control the drug traffic in that area. If the testimony of these key witnesses had been recorded on videotape, any incentive to murder them to avoid their damaging testimony would have been eliminated.

According to the National Bureau of Standards (See p.2), Illinois was the first jurisdiction to order the use of videotape to preserve an evidence deposition.

The Committee recommends that the Supreme Court, through appropriate rule changes, expressly authorize the use of video recording to preserve evidence depositions in both civil and criminal cases. (See Attachments 1 & 2).

2. Constitutional Problems in Criminal Cases. There does not appear to be any reason why an evidence deposition ordered under Rule 414(a) could not be preserved on videotape and, if otherwise admissible, be replayed for the trier of fact at the criminal trial, providing the defendant's rights to confrontation and cross-examination are preserved as provided in Rule 414(e).

One of the most frequently voiced objections to allowing evidence depositions in criminal prosecutions is the alleged deprivation of the defendant's constitutional right to confront his accusers at the time of trial. While it has long been held that admitting prior testimony of an unavailable witness does not violate the Confrontation Clause (Mattox v. U. S. 156 U. S. 237 (1895), and while Supreme Court Rule 414 expressly authorizes evidence depositions in criminal cases in Illinois, Justice White, writing for the majority in California v. Green 399 U. S.149 (1970) (1969) has observed that:

> "It may be true that a jury would be in a better position to evaluate the truth of the prior statement if it could somehow be whisked magically back in time to witness a gruelling cross-examination of the declarant as he first gives his statement. . ."

A videotaped evidence deposition can, in effect, "magically" whisk a viewer back in time to witness the taking of the deposition.

3. Procedures. When a videorecorded evidence deposition is to be presented to the trier of fact, care must be taken to assure that the deposition: (a) is taken under circumstances most nearly approximating conditions in the courtroom; (b) is free from matter which if played before a jury would clearly be reversible error or could result in a mistrial.

The Committee concluded that the best practice when video recording evidence depositions is to have a judge present to rule

on objections on the spot; it reduces the possibility that an attorney or a deponent could sabotage the process by nit-picking, making long speeches or using other devices calculated to destroy the orderly video recording of the evidence deposition.

The Committee recognizes that it is impractical to expect that a judge could be present during every videotaped evidence deposition but recommends that whenever it is possible and practical it should be done.

Every effort should be made to avoid the possibility that camera work or production techniques could unfairly emphasize one or another aspect of the deponent's testimony. If two or more cameras are used, for example, there is the danger that the cameraman may unwittingly switch away from the deponent's face to record a picture of the judge or the attorney just as a significant answer is about to be given. Such a switch could detract from (or over-emphasize) the impact the answer would have. The operator could also unwittingly over-emphasize some testimony by taking a close-up of the deponent's face as he answers a question which would, but for the close-up, have had no greater significance than the question that came before or the question that follows. With the exception of necessary close-ups -- such as when x-rays or other models, pictures, documents, etc. are to be referred to during testimony -- the Committee recommends the minimum

amount of switching, focus-changing, or other camera work during recording of a deposition. In any event, the principal merit claimed for camera work is that it relieves the boredom of having to watch the witness testify in a single, monotonous format.

4. Editing: No matter how carefully a deposition is taken, things may occur which should not be shown to or heard by a jury. The editing process can be as elaborate as excising every objection and all material ruled to be objectionable (so all the jury sees and hears is uninterrupted testimony) or it can be as simple as skipping over only those matters which are clearly reversible error or which would be grounds for mistrial if admitted. The editing process should always be under the control of the trial judge and the original, unedited, tape should always be retained for possible use on appeal. Beyond that, the Committee is reluctant to recommend specific editing standards. Not every objection, not every admission of mildly objectionable material warrants the time and effort necessary to edit it out of the tape to be used at trial.

Superintendence Rule 15(B) (6) of the Supreme Court of Ohio sets forth the following procedure for handling objections:

"(b) If Objections Have Been Made. If objections have been made by any of the parties during the course of the deposition, the videotape deposition, with the certification, shall be submitted by the officer of the trial judge upon the request of any of the parties within ten days after its recording or within such other period of time as the parties may stipulate, for the purpose of obtaining rulings on the objections. An audio copy of the sound track may be submitted in lieu of the videotape for this purpose. For the purpose of ruling on the objections, the trial judge may view the entire videotape recording, view only those parts of the videotape recording pertinent to the objections made, or he may listen to an audiotape recording submitted in lieu of the videotape recording. The trial judge shall rule on the objections prior to the date set for the trial of the action and shall return the recording to the officer with notice to the parties of his rulings and of his instructions as to editing. The editing shall reflect the rulings of the trial judge and shall remove all references to the objections. The officer shall then cause the videotape to be edited in accordance with the Court's instructions and shall cause both the original videotape recording and the edited version of that recording, each clearly identified to be filed with the clerk of the trial court."

No rigid editing procedures should be adopted in Illinois at this time. The trial attorneys and the trial judge, given the facts and circumstances of an individual case, should be free to fashion as formal or as relaxed an editing procedure as might fit the needs of the case before them.

There are many different ways to edit a videotaped evidence deposition. The Committee understands that in Michigan they use a method which eliminates the necessity of an editing session. When the original videotape is shown at trial, they have someone with a typewritten transcript reading ahead of what is being shown. When they approach an objection, they stop the machine.

Counsel argue at side-bar and the judge rules on the objection. If the objection is sustained, the videotape operator simply skips over the objectionable portion.

5. Storage, Copies and Review by Parties. If any party requests that the videotaped evidence deposition be filed under Rule 207(b), the clerk of the court will be responsible for providing suitable storage. Magnetic recording tapes are sensitive to moisture and to magnetic impulses which might alter or erase information previously recorded on the tape. Tapes should be stored in a place in which they would be protected from conditions which might be harmful to them. With only minor changes to indicate that the deposition may be on magnetic tape (see Attachment 2), Rule 208 (Fees and Charges; Copies) should adequately cover any problem about the payment of fees and costs for video recorded depositions and the making of copies.

Ohio Supreme Court Superintendence Rule 15(E) provides, in pertinent part, as follows:

> "(E) Costs
>
> "1. Depositions
>
> "(a) The cost of videotape, as a material, shall be borne by the proponent.
>
> "(b) The reasonable cost of recording the testimony on the videotape shall be treated as costs in the action.
>
> "(c) The cost of playing the videotape recording to the jury in the course of the trial shall be treated as a general cost of the operation of the trial court.

"(d) The cost of an audio reproduction of the videotape recording sound track used by the trial court in ruling on objections shall be treated as costs in the action.

"(e) The cost of playing the videotape recording for the purpose of ruling upon objections shall be treated as costs in the action.

"(f) The cost of producing the edited version of the videotape recording shall be treated as costs in the cause, provided that the cost of the videotape, as a material, shall be borne by the proponent of the testimony.

"(g) The cost of a copy of the videotape recording and the cost of an audio tape recording of the videotape sound track shall be at the expense of the party requesting the copy."

The Ohio Rule (see (c) above) allocates the cost of playing the videotaped deposition during trial as a general cost of the operation of the trial court. This Committee feels that all expenses incurred in recording, editing and replaying videotaped depositions should be borne, in the first instance, by the proponent and, in the discretion of the trial court, taxed as costs upon the conclusion of the case.

6. Replay for the Trier of Fact at the Time of Trial: Presuming that the equipment on which the recording was made is compatible with the replay equipment available in the courtroom at the time of trial (See p.45 Equipment Standards) playing the

videorecorded evidence deposition for the trier of fact should pose no special problems. It is presumed that tapes will have either been edited or a procedure such as that followed in Michigan will be observed, so as to avoid playing objectionable material.

Video viewing requires intense concentration on the small, bright screen and, if not relieved with occasional breaks, can result in headaches, drowsiness, etc. One negative comment offered by the Trial Judge's appraisal of a video recorded trial in Ohio was the fact that:

> "The jury did complain that the television sets were placed too close to the jury box and, for some, slight headaches did develop. They suggested that the television screens be placed farther away to relieve possible eye strain, and they also expressed preference for short recesses in place of one hour's continuous testimony on the screen." McCrystal, James, "Ohio's First Videotaped Trial", 45 The Ohio Bar 1 (Jan., 1972)"

The number, size and placement of viewing monitors in the courtroom, the adjustment of picture intensity (brightness, contrast) and volume, etc., are matters which should be in the discretion of the trial judge in each case. The size of the courtroom, the number of jurors, the nature of the testimony and other variables--such as the availability of equipment--will affect the trial judge's decision in such matters.

7. Use of Videotaped Evidence Depositions. Under Rule 212(b), evidence depositions may be used at trial only if the deponent is dead or is unable to attend or testify because of age, sickness, infirmity, imprisonment or -- for other good reasons spelled out in the rule -- is unavailable to testify at the time of trial.

The National Bureau of Standards reports that:

> "A potential disadvantage (of using video recorded depositions) is that a witness who is aware of the availability of video recorded depositions may be less willing to appear in court, particularly if his testimony has already been recorded. In many cases, now, depositions are recorded in case the witness cannot appear. Traditionally, the witness' appearance has been highly preferable and only serious events justify his absence and the substitution of a deposition. If video depositions should prove to be substantially better substitutes for live appearances than written depositions are currently held to be, the requirement for live appearance might conceivably be loosened."

There is speculation that the availability of video recorded evidence depositions may result in pressure to relax the existing restrictions on the use of evidence depositions. (Rule 212(b))

In fact, the secretary advises the Committee that recommendations have already been made to allow the introduction of videotaped evidence depositions in lieu of live testimony when an impartial medical expert's testimony is to be presented in open court under Rule 215(d) (4). The Medical Society's panel of experts might favor a system which would not require them on short notice and

possibly at inconvenient times to be called to testify as an impartial expert. Perhaps future experience could lead the Court to conclude that in certain cases the requirement of non-availability under Rule 212(b) is too stringent and the Court might allow videotaped depositions to substitute for live testimony in those cases. However, the Committee at this time does not recommend any change in Rule 212(b).

D. Recording All Evidence For Presentation to the Trier of Fact.

The logical, although--in the opinion of this Committee--the somewhat disturbing extension of the conclusion that video recorded evidence depositions may be admissible at trial is that all testimony of all witnesses would be prerecorded on videotape and presented to the trier of fact at the time of trial, without the live appearance of any witnesses.

Alan E. Morrill, Esq., writing in the John Marshall Journal of Practice and Procedure, in an article entitled, "Enter--The Video Tape Trial," predicted such a use of video recorded testimony:

> "One day very soon now, a courtroom somewhere in this illustrious land will introduce a sweeping change in the present system of trial by jury . . . A jury will have decided the issues of a law suit by merely viewing and hearing the entire proceedings of a trial on a television screen . . . This unique modification in the resolving of law suits will spread rapidly over the length and breadth of our nation notwithstanding entrenched attitudes of a portion of the trial bar. The reason that this new concept will be an overnight success can be condensed into a few words -- trial by television is superior to our present system."

On November 18, 1971, the case of McCall v. Clemens was tried before The Erie County (Ohio) Common Pleas Court, Hon. James L. McCrystal presiding. Instead of live witnesses, all evidence plus the judge's instructions were presented to the jury by video recording. The jury watched 2-1/4 hours of videotaped evidence on two 21" television screens placed before the jury box. Judge McCrystal has continued to use videotape to present pre-recorded trials (See: "The Videotaped Trial Comes of Age," May, 1974, Journal of the Am. Jud. Soc.) and the Supreme Court of Ohio has adopted elaborate Rules of Superintendence which provide for and govern the presentation of evidence exclusively on videotape. Those Rules provide, in pertinent part, "When Civil Rule 40 is invoked and all of the testimony is recorded on videotape, the videotape recordings shall be the exclusive medium of presenting testimony without regard to the availability of the individual witnesses to appear in person."

Despite elaborate claims for the success of the completely pre-recorded videotape trial and projections concerning the accuracy, efficiency and predictability of the presentation of testimony by using such methods, this Committee is not convinced that pre-recorded videotaped trials should be encouraged in Illinois.

The late Chief Justice Earl Warren in his concurring opinion in Estes v. Texas, said:

> ". . .the Courtroom in Anglo-American jurisprudence is more than a location with seats for judge, jury, witnesses, defendant, prosecutor, defense counsel and public observers; the setting that the Courtroom provides is itself an important element in the constitutional conception of trial, contributing a dignity essential to the integrity of the trial process." 381 U.S. 532 (1965)

The Committee agrees substantially with remarks prepared by Marshall J. Hartman, Esq., Director of Defender Services, National Legal Aid & Defender Assn., for presentation at a conference on video recording sponsored by the National Center for State Courts at the Federal Judicial Center in 1972. The traditional concept of a jury trial is the cornerstone of the American judicial system. Whenever possible, the jury has the right to see the whole examination and cross-examination of a witness; they have the right to see a witness enter the courtroom and leave the courtroom to see if he is composed or nervous.

A videotape would depict a witness only after he had been seated and perhaps even calmed down by his attorney. There is more to the trial of a lawsuit than a cold presentation of previously recorded testimony to a jury empanelled long after the testimony had been recorded. A trial shapes the fact-finding process as it occurs. The examination and cross-examination of

witnesses can be substantially affected by the tempo of the courtroom situation at the time the examination is conducted. It would be impractical to expect an attorney to be able to examine and cross-examine a witness as effectively in a video-taping studio as he can when he and the witness are seated before a jury which is inter-acting with the attorney and the witness as the examination proceeds. During the course of examination or cross-examination an attorney can sense that the jury is confused over a particular question or a particular answer. The questioning will then take a somewhat different tack, in order to clarify that point. If the testimony were pre-recorded, the point needing clarification would go unclarified. Parties have a right to have a trial in a public place at one time, not disjointed and pre-recorded at different times and different places. The jury has the right and the responsibility to evaluate the credibility of witnesses in the flesh, real people who live and breathe. One juror may watch the witness while another watches the defendant's reaction to that witness. It is the collective judgment of the jury which must prevail as to the relative credibility of the witnesses. If we present all testimony on videotape, the jurors would not have an opportunity to select for themselves what portion of the trial they will

concentrate on at any given moment; we would deprive the jury of an opportunity to form a collective impression of the trial and would pre-determine what they can and what they cannot see at the time testimony is being presented.

There is also the problem of creating a feeling of remoteness from the parties involved in litigation. If the jury is present in the courtroom with flesh and blood litigants and can feel the tension, anxiety, hope and fear that can well up in the trial court, the responsibility of decision-making is more personal and more vivid than if they are simply called upon to arbitrate a sterile presentation of points of view by two-dimensional parties who appear only on videotape.

It is the opinion of this committee that the alleged advantages of presenting pre-recorded videotaped testimony of all witnesses to the trier of fact cannot overcome the traditional advantages of having the plaintiff, defendant, judge, all available witnesses and the attorneys present in one place at one time, to engage in the search for truth in law suits. A study recently concluded at Brigham Young University confirms many of this Committee's conclusions:

> "A team of law teachers and psychologists at Brigham Young University Law School recently conducted a research project comparing juror reactions to a live presentation of trial testimony with the presentation of the same testimony using four alternative media -- color video tape, black and white video tape, audio tape, and testimony read from a transcript as with depositions on oral interrogatories.

Preliminary results of this research indicate that although some of the perceptions and judgments of the jurors remained unchanged between the live and the media presentations of the trial, several important differences occurred. . . .

Comparison of the juror ratings of the participants after the live trial with the juror ratings after the video tape and the audio tape trials, indicates that the jurors' perceptions of the participants were basically similar in all four trials with respect to matters of competency, credibility, and personal bias but differences occurred with respect to the attitudes (warmth, friendliness, pleasantness, manner and cooperativeness) and appearance of the witnesses. . . .

In summary, the study raises concerns about the adequacy of any media to reproduce the relative impact of a witness' testimony on the final judgment of the jurors. Given this limitation, however, when the effects of the various presentations were compared, color video tape was the medium most free of biasing effects. Black and white video tape was relatively more biasing in that it significantly distorted juror perceptions of at least one important dimension--jurors' perceptions of the witness' attitude. Color and black and white video tape, and audio tape, were all found to be superior to transcript testimony in their ability to reproduce accurately the perceptions of the jurors formed in the live trial."

E. Recording of Trial Proceedings For Use On Appeal.

1. General. The Administrative Office of the Illinois Courts filed its Interim Report on Experimental Videotaping of Courtroom Proceedings with the Supreme Court in November of 1968. That Report concluded that:

". . .any jurisdiction which has a reasonably adequate staff of skilled court reporters has no present need for an electronic recording system.

But any jurisdiction which enjoys little or no reporting service will find that a videotaped record is far superior to a voice recording."

The report goes on:

"I would not want to rule out the possibility that Trialvision may one day be recognized as such a valuable aid to justice that it would be the exclusive means of reporting certain trials, even when a competent reporter would otherwise be readily available to report the case by traditional means. It is difficult at this time to calculate the impact that Trialvision may have on courts in the future. . . .Among those who agree that a voice recording has a valuable dimension not found in a cold, typewritten record (without regard to how accurate it may be), it is readily agreed that adding a TV picture enhances the value of the audio recording, by adding another and equally valuable dimension--sight. Recording both the sights and sounds of a courtroom proceeding produces a record which is truly the next thing to being present in court."

The Committee recommends that when, in the judgment of the presiding judge, a video record of a civil proceeding would be desirable, he may order such a record to be maintained. Once again, in keeping with the theory that procedures should be not so completely spelled out as to be restrictive, the Committee recommends that the trial judge should have broad discretion to decide specific issues concerning the taking of such tapes at the time of trial.

The Committee recommends that either Ill. Rev. Stat. 1973, Ch. 37, para. 655 should be amended as suggested in Attachment 3

or that the Supreme Court should adopt an appropriate rule to accomplish substantially the same result. While the Committee is of the opinion that only minimum restrictions be placed on the discretion of a trial judge in providing for a videotaped record of proceedings, some specific problem areas should be considered.

2. Who Owns the Videorecording Equipment and the Tapes? Unless the court owns, and therefore controls, the videorecording equipment, it will be difficult to assure the availability of equipment when it is needed, the compatability of the equipment used in the trial court with equipment which might be available to the reviewing courts and the quality of maintenance--and therefore the reliability--of the equipment. Of course, some of these problems might be solved by adopting specific equipment standards. However, as will be seen under a subsequent heading, the Committee has serious reservations about compelling adherence to specific equipment standards. While it would be ideal if each County owned videorecording equipment for use by the court, the Committee sees no fatal defect in a program which offers maximum flexibility, allowing each trial judge to assess the situation before him, determine the availability of A/VTR equipment, its compatability with

other equipment being used by the courts, the quality of the audio/visual record he can expect to obtain in his courtroom with the equipment available, etc., and decide (after considering all the variables as they affect the precise matter before him) whether to order or allow a videorecording of the proceedings. In the same vein, it really matters little who owns the tapes used to record the proceedings as long as the trial judge assures himself of the quality of the tapes to be used and provides, by order, for their safekeeping to prevent deterioration, accidental erasures or tampering. If an appeal is taken by one other than the owner of the tapes, the court might consider that fact in determining the amount of the bond.

3. Who Operates the Recording Equipment? Someone has to start the videorecorder and aim the camera(s). Someone has to keep some kind of log so that when a tape is replayed the viewer will have some index to tell him what is on the tape and at what point each significant event begins and ends. The Administrative Office, in its Interim Report of 1968, suggested that during any experimental period, full-time court personnel would be needed to monitor and log the proceedings:

> "Each recording machine has a clocking device which continuously indicates the footage of tape expended on the reel. The information stored on the tape can be retrieved promptly, if the person seeking to retrieve it knows at what point on the tape the information he seeks was recorded. In order to maintain such a record,

> it is necessary for someone to write a log of events, identifying the footage on the tape at which certain events occur. Until a satisfactory alternative could be devised, someone would have to log the proceeding.
>
> That same person would be responsible for monitoring the proceeding. Monitoring consists of maintaining constant watch over the recording process to insure that both sound and picture are being recorded with maximum clarity at all times. . .
>
> Supporters of electronic recording systems insist that a deputy clerk or bailiff can perform these duties in addition to other routine, in-court responsibilities. Critics insist that it is too time-consuming and requires additional personnel.
>
> During any experimental period with a permanent installation, we would require a full-time monitor-logger. If other satisfactory arrangements were then determined to be feasible, we could recommend alternatives in a later report."

Once again, the Committee suggests the most flexible possible approach to this problem. It is not inconceivable that a trial judge could himself operate the recorder, aim the camera and log and monitor the record if the proceedings are simple and brief.

On the other hand, a videorecording of a complicated jury trial involving multiple parties, attorneys and witnesses, with large numbers of Exhibits and involving cross-examinations, re-direct examinations and re-cross-examinations of witnesses would require sophisticated equipment, trained operators, and specific, clearly delineated guidelines for courtroom procedures, logging of testimony, etc.

4. What Should Be Recorded and Who Decides What Should be Recorded.

The breadth of perception of one reviewing a proceeding can range from the narrow ability to read a transcript which simply reports the questions and answers in written form to being physically present so the reviewer can not only hear the questions and answers, but can see, hear, sense and absorb the totality of the proceedings--tone of voice, inflexion, gestures, expressions, etc. As pointed out earlier, a videotape recording captures a significantly greater amount of information about the totality of a proceeding than either a transcript or an audio recording. Precisely what is captured, however, depends upon the TV camera's point of view. As previously discussed under Procedures for recording depositions (pp. 20-21), careless camera work can distort, overemphasize or underemphasize a part of a proceeding. In the opinion of the Committee, the judge should decide the location, point of view and angle of any TV camera(s) in his courtroom. Camera switching, panning, close-ups, etc. should be kept to the absolute minimum necessary to capture the essential aspects of the proceeding. First and foremost the camera should capture the witness, head and shoulders, preferably from a location behind the jury box, offering a camera angle identical to the line of vision enjoyed by a juror. In descending order of importance,

the following participants may be included when appropriate:

Attorney conducting examination

Criminal Defendant

Litigant(s) in Civil Cases

Judge (particularly when ruling on motions, etc.)

Any camera production work in the courtroom, even though held to the minimum suggested in this Report, should be performed only by trained, qualified, impartial technicians, either employed by or certified by the Supreme Court.

In the rare instance in which the parties might disagree with the judge's placement of the camera(s) or the camera work, if any, being used by the technician, an objection of record should preserve the issue for appeal. In the event the objecting party can show actual prejudice, the judge's camera placement order might be considered grounds for reversal and remandment with directions.

5. No Video Record in Any Criminal Proceeding.

The Committee is not aware of any unique legal or constitutional barrier to recording pretrial, trial, or post-trial proceedings in criminal cases. Nevertheless, for practical reasons, the Committee urges restraint in any use, experimental or operational, of videorecording to maintain a record of criminal proceedings. There is concern that allowing the use of videotape to record the proceedings when the defendant urges its use and is able to

pay the costs related to the recording might infer that every criminal defendant would be entitled to a videorecord and those who were unable to pay for it would receive it at the expense of the State. The imposition of such a requirement would unduly burden the court system. It would require the availability of recording equipment, tape, personnel, etc. in every courtroom in which criminal proceedings are carried on. This mandatory capital investment would be too burdensome at this time. Any program to introduce videorecording in the courts should be undertaken with assurances that the court will fully control the extent to which and the rate at which such procedures will be incorporated into the system. Creating a situation in which the video record might be considered mandatory for all indigent criminal cases, because it had been allowed for some, would disrupt the orderly experimentation which would be necessary if procedures are to develop in a sound and orderly fashion. Perhaps the making of videorecorded reports of proceedings could be extended to criminal cases when equipment becomes so generally available to the trial courts that mandating its use in criminal cases would not be looked upon as a serious hardship.

The Committee considered the possibility that a videotaped record of certain criminal proceedings might be particularly desirable. For example, videorecorded preliminary hearings would speed pretrial preparation. The defense generally insists on

a transcript of the preliminary hearing as part of its pretrial discovery. Delays in preparing transcripts in some areas result in substantial pretrial delay. Videorecorded guilty plea proceedings under Rule 402 might more perfectly capture for the record whether a defendant had been fully informed of and understood his rights, whether the plea was truly voluntary and whether there was an adequate fact basis therefor. Nevertheless, until and unless the possible burden of mandatory usage in all indigent criminal cases, as a result of permissive use in some cases, is lifted, the committee urges cautious entry into videotape usage in any criminal case. While video-recording of criminal trials may not present any more serious legal or constitutional questions than recording civil trials, it quite certainly does produce a great many more practical problems, not the least of which is the tremendous volume of such cases appealed and the need for certainty in the accuracy of the records in such cases.

F. Using Video Recorded Trials as Educational Tool. At least one criminal trial has been filmed, and broadcast over the National Educational Television network. The films of that trial, involving a Denver Black Panther leader accused of assaulting a police officer and resisting arrest, were originally

used as source material for a study of computer translation in court reporting.

Actual trials have already been filmed for educational purposes, hence there is a precedent which may apply to videotaping for the same purpose. Access to the tapes will have to be determined by judicial ruling, but it should be noted that §3.7 of the ABA Canons would allow such access.

> "(7) A judge should prohibit broadcasting, televising, recording, or taking photographs in the courtroom and areas immediately adjacent thereto during sessions of court or recesses between sessions, except that a judge may authorize:
>
> (a) The use of electronic or photographic means for the presentation of evidence, for the perpetuation of a record, or for other purposes of judicial administration;
>
> (b) the broadcasting, televising, recording or photographing of investitive, ceremonial, or naturalization proceedings;
>
> (c) the photographic or electronic recording and reproduction of appropriate court proceedings under the following conditions;
>
> (i) the means of recording will not distract participants or impair the dignity of the proceedings;
>
> (ii) the parties have consented, and the consent to being depicted or recorded has been obtained from each witness appearing in the recording and reproduction;

(iii) the reproduction will not be exhibited until after the proceeding has been concluded and all direct appeals have been exhausted; and

(iv) the reproduction will be exhibited only for instructional purposes in educational institutions.

G. Using Video Equipment to Allow Unruly Defendant or Spectator to Observe Trial. Using a videotape system to allow an excluded defendant to observe his trial seems clearly permissible, a fortiori, under Illinois v. Allen, 397 U. S. 337 (1970). However, the Committee unanimously agreed that, ordinarily, unruly people whether defendant, spectator or any other person should simply be ejected. If they wish to observe the trial, they should behave.

H. Closed Circuit Television's Use for Courtroom Security, Remote "Appearances" by Witnesses and Motion Hearings, etc.

Related Technologies. In addition to videorecording in the courts, several types of court activity could benefit from the introduction of related technologies. Closed circuit television might be used, for example, where retention of the record is not necessary, but where court purposes are served by remote viewing. Thus, testimony might be presented (in the temporal sense "live" but by camera) by CCTV when a witness cannot be physically present in the courtroom but is otherwise available for testifying.

With the current state of the art, the witness would probably be in the same building, for system connections over long distances, whether by line or microwave, are difficult and expensive. As an example, a witness might expect to be called in several cases in one day, and could be available to testify from a central location for any of the cases. This would be much more efficient than shuttling among courtrooms.

Closed Circuit Television For Use as Security Measure and Other Applications. Much as in banks, CCTV could be utilized as a security monitoring system, serving to alert the appropriate authority to any disruption in the courtroom. Officials could be dispatched as soon as a problem occurred, rather than remaining on-call in the courtroom to serve in the event of a contingency. There would also be no overt indication that interruptions are expected, of itself a possible triggering mechanism for potential disruptions. This application is currently in use in the Presiding Judge's courtroom at the Cook County Criminal Court Building.

Picturephone enables the parties to a telephone conversation to both hear and see each other. This system is currently available on a limited scale in a few cities, but should be widely available in the future. The Cook County Circuit Court presently uses picturephone for bail hearings and for communications on the administrative level (see p. 3).

Although the engineering is still experimental, it is possible to display a Picturephone picture on a large monitor screen, whereas built-in screens currently used are only a few inches across. Larger screens would permit testimony to be telephoned into a courtroom to be viewed by the jury. It is also possible to adapt a home TV receiver to carry Picturephone signals. Telephone calls have been displayed on theatre screens as large as 12 feet square. In a more conventional application, lawyers and judges with Picturephone installations could resolve issues normally heard in court or in the judge's chambers via Picturephone conference calls from their offices. Direct interaction from remote locations could save substantial time and cost. As an additional feature, it is already possible to transmit document copies via Dataphone lines and parallel connections would permit nearly any type of business normally conducted in chambers to be resolved during and as a part of regular telephone calls.

V. EQUIPMENT STANDARDS

There is a wide-spread understanding among those who have considered the applicability of video technology in the operation of the court systems, that the courts should establish, by rule or order, some minimum standards concerning the equipment which should be used for court-related purposes. For example, the Ohio Supreme Court's Rule of Superintendence No. 15(d), Equipment, provides as follows:

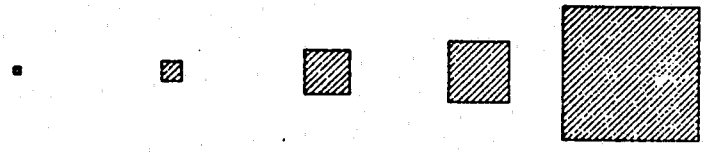
1. "Standard-To minimize the incompatability of equipment, the EIAJ Standard, the Japanese Standard, 1/2" videotape specifications together with specifications for recording and playback equipment is specified as the standard for use in the recording of testimony and other evidence on videotape for introduction in the Trial Courts of this state. If a party records testimony on videotape which is not compatable with the established standard, the party shall be responsible for the furnishing of reproduction equipment or for conversion to the established standard--all of which shall be at the cost of the party and not chargeable as costs in the action."

In August of 1969 the Electronic Industries Association of Japan promulgated the "EIAJ No. 1" standardized specification for recording characteristics of 1/2" videotape recording equipment. Most Japanese manufacturers have adopted that standard for at least most of their videotape recording product lines. A number of manufacturers are now producing 1/2" videotape recorders for which tapes can be interchanged, regardless of manufacturer. These companies also produce non-standard equipment but the availability of a variety of standardized equipment provides greater flexibility wherever several users are involved with more than one piece of equipment. Although the EIAJ standard has not been formally accepted outside Japan, the Japanese manufacturers produce the bulk of the professional quality 1/2" recorders available in this country at the present time. So standardized equipment in the 1/2" format is widely available here.

Because what is known as the EIAJ No. 1 1/2" reel-to-reel format is the most widely used in the United States, if any standard for equipment were to be adopted by the Supreme Court, that is the standard that should be designated. On the other hand, according to electronic's industry spokesmen, "the technology of the recording media has not really reached maturity, and any standard adopted today may not hold up under future developments." (Zenith Tech Facts, No. 1972, p.1) It appears that the technology of video recording is in a state of continuing improvement and consequently, in a state of continuing flux. It would be unnecessarily restrictive, at this time, to impose mandatory minimum standards in the format to be used by those who wish to use videorecording in the court system. So long as the videorecording can be replayed at no additional expense to the court system and reproduces an accurate, reliable picture and sound before the trier of fact (or before a reviewing court), it is really unnecessary for the court system to supply specific minimum standards for requipment, tape, etc.

According to experts in the field, the use of discs rather than tapes for storing video recorded material offers the promise of being able to store significantly larger quantities of information in a significantly less bulky, significantly less costly format. Additionally, if data were stored on discs, the user

would have instantaneous access to any part of the pre-recorded material without having to search through tapes which must be wound and unwound on and off of reels:

> "Clearly what is needed at this moment is some technological breakthrough that would give such an advantage to one particular system that it would be universally accepted. This breakthrough could possibly be in the area of information storage density. The following chart shows the present state of the art:
>
> Information Density
>
> Area Required for 1,000,000 Bits
>
> 
>
>
> "It is apparent that videotape is running far behind the video disc in the efficient use of recording material. Furthermore, the cost of videotape is considerably higher per square foot than the cost of the vinyl used in video discs. Add to this the cost of the cassette assembly and one is forced to conclude that the video cassette is bearing a burden that may leave it at the post in the race for dominance in the video playback sweepstakes. This conclusion is reinforced by the mounting evidence that many major hardware manufacturers are shifting their research and development efforts toward video disc investigations.
>
> "There are many people within our governmental bodies here in the U. S. that are insisting that standards be adopted before any public monies are spent for the purchase of equipment. . .there is a possibility that such activity may eventually force the industry to conform to one standard. However, the possibility also exists that the technology of the recording media has not really reached maturity and any standard adopted today may not hold up under future developments." Zenith Tech Facts, No., 1972, p. 1.

It seems reasonable to presume that people engaged in the practice of law would be seeking to use tapes and recording equipment which would be compatible with their fellow practitioners' and with equipment owned or operated by any court. Consideration in the Committee was given to a suggesstion that the Supreme Court (through appropriations which might be made available by the General Assembly) should purchase equipment for each county. That would obviously encourage practitioners to purchase only equipment compatible with that owned by the Court. An expenditure of that nature would not be warranted, however, unless the use of video recording in the courts became very widespread. We can rely on the reasonableness of the members of the legal profession. They will not buy exotic or incompatible equipment and will, for the most part, rely on the accepted formats presently available, changing to different formats only after they have been proven to be so far superior that they naturally become more acceptable.

Two recent technological developments announced within this past year are eloquent arguments for not imposing rigid equipment standards which may be obsolete before they are printed:

> "Home television sets will become miniature motion picture theaters late next year with a revolutionary development by MCA Disco-Vision that allows set owners to show color feature films with the ease of playing phonograph recordings.

"Each record plays 40 minutes per side. Thus, two of these flexible 12-inch discs provide plenty of space for any film produced.

"An attachment consisting of a turntable and component smaller than most stereo sets will cost $450. Instead of a needle, the unit employs an optical system with no physical contact between record and arm.

"So flexible are the new discs, only .010-inch thick, they can easily be rolled in a tube for mailing. Storage takes considerably less space than standard stereophonic records.

"In addition to entertainment, Disco-Vision will revolutionize storage and retrieval information and educational data-keeping systems.

"Government and industry have beseiged the company with queries. The inexpensive nature of the discs, for instance, would be a boon to credit card companies for verifications.

"Books may be copied on Disco-Vision, allowing a set owner to project, page by page, the entire Encyclopaedia Britannica on his set. A counter allows the owner to determine the page number.

"Disco-Vision also would do away with the heavy, bulky storage of 35 mm. film and tapes of live television shows." (Chicago Sun-Times, Thurs., May 2, 1974, p. 100, column 1)

"A tape recorder prototype with the capability to compress speech was demonstrated recently at the Federal Judicial Center.

"Electronic speech compression allows listeners to hear a tape recording in one-half to one-third the time usually required. Today, one of the many obstacles to using tape recordings rather than written transcripts of the record on appeal is the time required by Appellate judges to listen to a recording of the entire record.

"However, the speech compression device can replay a hearing or an entire trial at two to three times the speed of the actual occurrence by reducing the length-- in time-- of both consonants and vowels without changing the pitch.

"Center staff members who observed the demonstration found it was relatively easy to understand word meaning when the recording was replayed at twice the normal speed but difficult to understand at three times the normal speed.

"The speech compression device also has the capability to replay a videotape recording at two or three times the normal speed. Although this may not be appropriate for viewing of prerecorded testimony by a jury, it could be very helpful for attorneys who have videotaped a deposition and wish to review it while preparing for trial." The Third Branch, a newsleter published monthly by the Ad. Off. of U. S. Courts and the Federal Judicial Center. Oct. 1973 (emphasis supplied).

RULE 206e

(e) The officer before whom the deposition is to be taken shall put the witness on oath and shall personally, or by someone acting under his direction and in his presence, record the testimony of the witness. The testimony shall be taken stenographically or by sound or audio-visual recording device, unless the parties agree otherwise, and shall be transcribed at the request of any party. Objections made at the time of the examination to the qualifications of the officer taking the deposition, to the manner of taking it, to the evidence presented, or to the conduct of any person, and any other objection to the proceedings, shall be included in the deposition. Evidence objected to shall be taken subject to the objection. In lieu of participating in the oral examination, parties served with notice of taking a deposition may transmit written questions to the officer, who shall propound them to the witness and record the answers verbatim.

RULE 208. Fees and Charges; Copies

(a) Who Shall Pay. The party at whose instance the deposition is taken shall pay the fees of the witness and of the officer and the charges of the recorder or stenographer for attending. The party at whose request a deposition is transcribed and filed shall pay the charges for transcription and filing. The party at whose request a tape recorded deposition is filed without having been transcribed shall pay the charges for filing. If, however, the scope of the examination by any other party exceeds the scope of examination by the party at whose instance the deposition is taken, the fees and charges due to the excess shall be summarily taxed by the court and paid by the other party.

(b) Amount. The officer taking and certifying a deposition is entitled to any fees provided by statute, together with the reasonable and necessary charges for a recorder or stenographer for attending and transcribing the deposition. Every witness attending before the officer is entitled to the fees and mileage allowance provided by statute for witnesses attending courts in this state.

(c) Copies. Upon payment of reasonable charges therefor, the officer shall furnish a copy of the deposition to any party or to the deponent.

(d) Taxing as Costs. The aforesaid fees and charges may in the discretion of the trial court be taxed as costs.

To amend Chapter 37, Section 655. Means of Reporting -- Transcripts, or to be adopted as a Supreme Court Rule

The Court reporter shall make a full reporting by means of stenographic hand or machine notes, or a combination thereof, of the evidence and such other proceedings in trials and judicial proceedings to which he is assigned by the chief judge, and the court reporter may use an electronic instrument as a supplementary device.

In Civil cases where all or particular portions of the proceedings could be better preserved for review by audio-video recording or where an Official Court Reporter is not readily available to record the proceedings, the proceedings may on order of the trial judge be recorded on audio-video tape.

To the extent that it does not substantially interfere with the court reporter's other official duties, the judge to whom, or a judge of the division to which a reporter is assigned may assign a reporter to secretarial or clerical duties arising out of official court operations.

The court reporter shall furnish forthwith one transcript of the evidence and proceedings in a trial or other judicial proceedings correctly made to any party to the trial or proceedings upon the request of such party of his attorney.

Upon Motion Transcripts of Video Tapes May Be Ordered

Unless and until otherwise provided in a Uniform Schedule of Charges which may hereafter be provided by rule or order of the Supreme Court, a court reporter may charge not to exceed 25 cents per 100 words for making transcripts of his notes. The fees for making transcripts shall be paid in the first instance by the party in whose behalf such transcript is ordered and shall be taxed in the suit.

The transcripts shall be filed and remain with the papers of the case. When the judge trying the case shall, of his own motion, order a transcript, the judge may direct the payment of the charges therefor, and the taxation of the charges as costs in such manner as to him may seem just. Provided, that the charges for making but one transcript shall be taxed as costs and the party first ordering the transcript shall have preference unless it shall be otherwise ordered by the Court.

END